

29 November 2013



Dr Malcolm Roberts  
Chairman  
Queensland Competition Authority  
Level 19, 12 Creek Street  
BRISBANE QLD 4001

Dear Malcolm

**Aurizon Network Pty Ltd – 2013 Draft Access Undertaking (2013 DAU): Response to stakeholder submissions**

Aurizon Network welcomes the opportunity to provide a response to the Queensland Competition Authority (QCA) in respect of the stakeholder submissions lodged in October 2013 in response to our 2013 DAU submission.

The purpose of the 2013 DAU is to seek to promote the long-term competitiveness and performance of the Queensland coal network through ensuring the efficient and timely investment in the network, while maintaining a safe and reliable network that can deliver volume growth and facilitating and strengthening our partnership with supply chain participants.

A number of stakeholders expressed the desire for regulatory certainty and the expedient approval of the tariff structure, particularly in a time of significant cost pressure and reduced margins. We share these concerns.

Aurizon Network is committed to working closely with our stakeholders and the QCA to support the regulatory process and timeline, including the approval of allowable revenue and reference tariffs by 30 June 2014.

The aim of this response is to address many of the concerns and issues raised in stakeholder submissions. Further, this document provides an indication of where Aurizon Network intends to voluntarily amend the UT4 proposal in response to the customer consultation process, subsequent to the initial lodgement in April 2013.

We value our stakeholder feedback and appreciate the commentary provided within the submissions to enable and facilitate the timely and efficient approval of the 2013 DAU.

The key changes presented for further consideration are:

<b>Scope</b>	<ul style="list-style-type: none"> <li>– Aurizon Network will re-draft the provisions in relation to electricity supply to provide further clarity around the provision of electricity and the EC charge to ensure that Aurizon Network will on-sell to all users.</li> </ul>
<b>Confidence in the regime</b>	<ul style="list-style-type: none"> <li>– Aurizon Network will make amendments to the 2013 DAU to provide further confidence in the integrity of the regulatory framework, particularly in relation to:             <ul style="list-style-type: none"> <li>– its non-discrimination obligations and management of protected information in the ringfencing regime</li> <li>– the reinstatement of the QCA's ability to appoint an auditor</li> <li>– amendments to Part 11 to allow timely access to dispute resolution.</li> </ul> </li> </ul>
<b>Expansion process and pricing</b>	<ul style="list-style-type: none"> <li>– A new draft of the expansion process is included within Annexure B.</li> <li>– Aurizon Network will accept the inclusion of the QRC's preferred principles for the pricing of network expansion capacity and will continue to work closely with the QRC in the ensuing months.</li> </ul>
<b>Negotiation framework</b>	<ul style="list-style-type: none"> <li>– Aurizon Network will incorporate a number of amendments to the negotiation process, following from customer suggestions.</li> </ul>
<b>Demonstration of supply chain capacity</b>	<ul style="list-style-type: none"> <li>– Aurizon Network will review the drafting of the provisions relating to the demonstration of supply chain capacity and will address the requirements of the different stages of the negotiation process.</li> </ul>
<b>Allocation of available capacity</b>	<ul style="list-style-type: none"> <li>– The mechanism for the allocation of spare capacity will be refined.</li> </ul>
<b>Flexible management of access rights</b>	<ul style="list-style-type: none"> <li>– Aurizon Network will continue to consult further with customers on the short term capacity swapping proposal in response to industry requests.</li> </ul>
<b>Performance and reporting</b>	<ul style="list-style-type: none"> <li>– Aurizon Network is committed to improved transparency in reporting and information provision.</li> <li>– Aurizon Network will examine the provision of information, the timing and the examination of performance metrics. We will also continue to undertake periodic condition-based assessments to further accountability and improved transparency, without financial penalty.</li> </ul>

In addition to the main submission, the document contains Annexure 1 and 2, detailing the minor issues requiring further clarification or drafting (UT3 EUAA and UT4 EUAA comparison, UT3 TOA and UT4 TOA comparison and Standard Operator Access Agreement) and Annexure 3 (the re-drafted Expansion Process – Part 8).

While Aurizon Network has addressed many of the concerns raised by stakeholders, we recognise that these issues are by no means exhaustive, and therefore will extend our consultation process to reach further agreement wherever possible.


We also remain cognisant of the requirement of the Authority to conduct itself in accordance with the relevant provisions of the *Queensland Competition Authority Act (1997)* in making a decision and conducting a consultation process.



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In addition, we both support and uphold the Authority's position of being mindful of the interests of all stakeholders, not only Aurizon Network and the QRC (and its members) and of the importance of ensuring that the DAU assessment process is appropriately transparent.

Should you have any questions in relation to the attached materials, please contact me on (07) 3019 9562 or via email at [lane.stockman@aurizon.com.au](mailto:lane.stockman@aurizon.com.au).

Yours sincerely



**Lana Stockman**  
**Vice President Regulation**  
**Aurizon Network Pty Ltd**



# Response to Industry Submissions

**Aurizon Network's 2013 Draft Access Undertaking**

**29 November 2013**

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# 1 Key Points

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Aurizon Network welcomes the opportunity to respond to industry comments on the 2013 Draft Access Undertaking (**2013 DAU**) (**UT4**). Aurizon Network has been directly engaged in discussions with industry on UT4 since April and will continue to consult as the process continues.

## (a) General comments

- UT4 is a prescriptive open access framework, imposing nearly 2,000 pages of obligations on Aurizon Network and the broader Aurizon Group. This makes UT4 one of the longest, most comprehensive and most prescriptive regulatory frameworks in Australia. Moreover:
  - the vast majority of Aurizon Network's obligations from the 2010 Access Undertaking (**2010 AU**) (**UT3**) have been retained and it is not intended that the role of the Queensland Competition Authority (**QCA**) be diminished;
  - a comprehensive suite of accountability mechanisms remain to ensure that Aurizon Network complies with its obligations under the access undertaking and the *Queensland Competition Authority Act 1997* (**the Act**);
  - the tariff structure, building block methodology, take or pay and revenue cap frameworks remain almost completely unchanged from UT3; and
  - as with UT3, UT4 maintains a 'negotiate-arbitrate' structure, but supplements that model with an even more comprehensive suite of fall-back options, including a robust dispute resolution framework, QCA approved Reference Tariffs and eight standard agreements (totalling over 1,600 pages) containing default terms and conditions.
- While recognising that there are several areas where constructive engagement with industry has, and will continue, to improve the undertaking, Aurizon Network continues to consider that UT4 is a reasonable, balanced proposal that complies with the Act. Since the submission in April, a number of points have been agreed with industry.
- It is acknowledged that industry has raised issues in relation to some aspects of the UT4 proposal. This document responds to those issues by identifying those areas where Aurizon Network has reached an agreed approach with industry or has indicated that the issues are readily solvable.
- These amendments encompass some major changes, including a re-drafted expansion process, a commitment to include pricing principles for new capacity and the inclusion of an additional short-term capacity swapping mechanism. They also include a considerable number of refinements to the legal drafting to address points of uncertainty, set out in Annexure A.

## **(b) The UT4 revenue proposal and the competitiveness of Queensland coal**

- Aurizon Network understands that many industry participants are operating in challenging market conditions and are seeking relief from below-rail tariffs. However, Aurizon Network's tariffs are calculated using a conventional building blocks methodology that reflects efficient costs – not the commodity cycle. Aurizon Network cannot increase its tariffs during periods of high profitability for industry, nor reduce them during periods of low profitability.
- Submissions have also cited a proposed tariff increase of 36% (on average) between the last year of UT3 and the first year of UT4, which was based on a forecast UT3 tariff (not the actual tariff). The proposed average change in non-electric tariffs between the last year of UT3 and the first year of UT4 is a modest 66c a net tonne (or 17.7%). The electric access tariff (AT5), on the other hand, is declining by an average of 22c a net tonne (or -18.0%).<sup>1</sup>
- The increase in average tariffs is driven by increases in the underlying building blocks of efficient costs. The primary changes are a larger asset base (offsetting the WACC reduction), an expanded maintenance program to cover a larger, busier network and correcting the historic understatement of overhead costs by the government-owned business. There is also considerable scope for the UT4 tariffs to decrease over the next four years as the market recovers from historically low coal production and network utilisation increases. As noted in the UT4 proposal, if the network was to rail at contract in 2013/14, tariffs would, on average, be 27% lower.
- There is a significant gap between Aurizon Network's proposed return on capital (weighted average cost of capital or **WACC**) of 8.18% and the 5.65% submitted by the Queensland Resource's Council (**QRC**). A WACC of 5.65% is considerably lower than any comparable benchmark return and Aurizon Network is concerned that it does not meet the legislative requirements. It would not be in the interests of Aurizon Network's shareholders to continue to invest in the network at 5.65%. That outcome would not be in the long-term interest of the coal industry, non-coal users of the network (including agricultural users), or Queensland.

## **(c) Aurizon Network's approach to developing and funding network expansions**

- The most significant issue for many industry participants is the process for developing and funding network expansions in Part 8. Aurizon Network has always been committed to a transparent and commercial expansion process, overseen by the QCA. The UT4 drafting reflects that commitment. Nevertheless, following constructive engagement with the QRC, major changes are proposed to address industry's issues, including introducing greater levels of prescription and clearer scope for dispute resolution.
- As regards funding, industry has put forward an expectation that Aurizon Network's shareholders should be required to fund network growth at a regulated return of 5.65%. As outlined above, Aurizon Network has significant concerns with this proposed return. In addition, Aurizon Network has already committed nearly \$2 billion of capital expenditure over the UT4 period, \$1 billion of which will be at regulated returns. A blank cheque from Aurizon's shareholders is not a feasible or sustainable long-term funding model.

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<sup>1</sup> Queensland Competition Authority (2013). Addendum to the Consultation Paper on Aurizon Network's 2013DAU, 7 November; and Aurizon Network (2013). UT4 Explanatory Materials: Volume 3 – Maximum Allowable Revenue, 30 April, p.10.



Aurizon Network remains committed to identifying alternative sources of capital, including further refinements to the Standard User Funding Agreement (**SUFA**).

**(d) Ringfencing, disputes and compliance**

- Aurizon Network is not a regulated business, but is rather a business that sells a regulated service. It is also part of a larger corporation, relying on other divisions in the Aurizon Group to provide support services and corporate functions. The UT4 ringfencing framework reflects this, as did the UT3 ringfencing framework on which the UT4 framework is based.
- Aurizon Network has not wound back any element of the ringfencing framework in UT4, but has updated the obligations to make them more workable and to reflect the fact that UT3 (which describes Queensland Rail’s structure) was never amended to reflect the functional structure of the Aurizon Group. It also continues to ensure that Aurizon Network will comply with its obligations under the Act.
- Aurizon Network believes in a strong dispute resolution and compliance framework. Amendments to UT4 are proposed to put beyond doubt that Aurizon Network does not intend to undermine the role of the QCA, reduce the effectiveness of the dispute resolution process, or in any way compromise its strict compliance framework.

**(e) The UT4 process**

- Aurizon Network is committed to the QCA’s process and timeline and supports the approval of its Maximum Allowable Revenue and Reference Tariffs by 30 June 2014. Resolving major policy issues, like the expansion process, by the end of the financial year is also supported. Aurizon Network is committed to open access and wants to reassure industry that it will not allow UT3 to expire prior to the approval of UT4. Aurizon Network is currently engaging with the QCA to agree the timing of a voluntary Draft Amending Access Undertaking to extend UT3.

SUMMARY OF KEY PROPOSED CHANGES TO THE 2013 DAU	
Topic	Proposed Change
<b>Scope</b>	– Aurizon Network will re-draft the provisions in relation to electricity supply to make clear that while EC is not a regulated service, access to the electric infrastructure is included in the regulated service and that Aurizon Network is seeking only to recover, via the EC rate, those costs relevant to <i>on-selling</i> electricity.
<b>Non discrimination</b>	– Aurizon Network will make amendments to the 2013 DAU to provide further confidence to third parties in the integrity of the regulatory framework, particularly in relation to its non-discrimination obligations.
<b>Ringfencing</b>	– In response to industry feedback, Aurizon Network will make a number of further improvements to the ringfencing regime that clarify drafting, address the functional structure and are consistent with best practice.
<b>Dispute resolution</b>	– Amendments to Part 11 will be made to put beyond doubt that Aurizon Network does not intend to restrict access to dispute resolution, or the role of the QCA.

<b>Expansion process and pricing</b>	<ul style="list-style-type: none"> <li>– A new draft of the expansion process, reflecting more than six months of discussions with the QRC, is attached to this submission (Annexure C).</li> <li>– Aurizon Network will accept the inclusion of the QRC's preferred principles for the pricing of network expansion capacity in the undertaking.</li> <li>– Aurizon Network will continue to explore options with the QRC over the coming months.</li> </ul>
<b>Negotiation framework</b>	<ul style="list-style-type: none"> <li>– Aurizon Network will implement a number of changes to the negotiation process, as suggested by industry.</li> </ul>
<b>Demonstration of supply chain capacity</b>	<ul style="list-style-type: none"> <li>– Aurizon Network will review the drafting of the provisions relating to the demonstration of supply chain capacity to ensure that the evidence required reflects what would reasonably be required at the relevant stages of the application and negotiation process.</li> </ul>
<b>Allocation of available capacity</b>	<ul style="list-style-type: none"> <li>– Amendments to Part 7 will be made to clarify the mechanism for which scarce capacity is allocated. This includes refinements to the criteria to be used.</li> </ul>
<b>Flexible management of access rights</b>	<ul style="list-style-type: none"> <li>– Aurizon Network will include a proposal for short term capacity swapping, which will improve the flexible allocation of capacity and promote efficient use of the infrastructure.</li> <li>– The mechanism must ensure that no other access holder is made worse off by the swap.</li> </ul>
<b>Performance and reporting</b>	<ul style="list-style-type: none"> <li>– Aurizon Network is committed to improved transparency in reporting and information provision.</li> <li>– It will examine the provision of information on performance against contract to individual access holders on a quarterly basis. It is also examining the performance metrics that are included in the contracts and has been consulting with industry on this.</li> <li>– Aurizon Network will also continue to undertake periodic condition-based assessments in the interests of accountability and improved transparency, provided the outcomes are not linked to the RAB value and the costs of the assessment can be recovered via Reference Tariffs.</li> </ul>
<b>Compliance and audit</b>	<ul style="list-style-type: none"> <li>– Aurizon Network has proposed amendments in response to industry feedback and has agreed to reinstate the QCA's ability to approve the auditor. It will also include an obligation regarding the nomination of a compliance officer and the responsibilities they will have in ensuring that Aurizon Network complies with its obligations under the undertaking. Aurizon Network has also agreed to provide a public version of the audit report in the most recent audit plan.</li> </ul>

## 2 Introduction

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### 2.1 Purpose of this response

Public submissions on Aurizon Network's 2013 DAU were lodged in October 2013. The purpose of this document is to respond to the primary issues of significance raised in those submissions, including by indicating where Aurizon Network will voluntarily amend its UT4 proposal. This document also incorporates proposed changes arising from direct engagement with industry.

It is vital that the 2013 DAU promotes the public interest in investment and sustainable development, while appropriately balancing the commercial interests of all interested parties, including Aurizon Network, train operators, coal producers and non-coal users of the network. Aurizon Network considers that the 2013 DAU achieves this objective by maintaining the comprehensive UT3 open access framework, while refining some elements of the undertaking to make it more effective and workable.

Industry submissions are a valuable opportunity for Aurizon Network to refine its proposal to better promote the objects of the Act. To this end, Aurizon Network has adjusted its proposal over the last six months in response to constructive engagement with industry and with the QCA. This submission catalogues, for the QCA's consideration, a number of proposed major changes to the 2013 DAU, including a re-drafted expansion process (Part 8), a commitment to include pricing principles for new network capacity in the undertaking (Part 6), the inclusion of a short-term capacity swapping mechanism and a number of refinements to the legal draft to address points of uncertainty.

Of course, there are a number of issues where the views of Aurizon Network and some industry participants remain divergent, including the UT4 Maximum Allowable Revenue proposal.

### 2.2 Scope and interpretation

This response is a supplement to the UT4 documentation submitted in April. It is intended to assist the QCA in its consideration of the 2013 DAU, having regard to the public submissions to date.

It is important to note that this response does not exhaustively address all of the issues that have been raised in the industry submissions. The focus of this response is on the most significant issues identified in the submissions. Annexure A contains a detailed list of the issues raised and Aurizon Network's response to those issues. The Annexure focuses on areas where:

- Aurizon Network agrees with the position submitted; or
- further clarification of Aurizon Network's proposal is required.

Aurizon Network has already submitted a very detailed submission with the 2013 DAU; it is not considered useful to repeat aspects of that submission in this document. If Aurizon Network has not responded to an issue raised by industry, this should not be interpreted as agreement by Aurizon Network. On those issues, it should be assumed that the position remains in accordance with the April documentation.

Aurizon Network has not submitted new legal drafting with this submission. The exception to this is that a redrafted Part 8 (Expansions) is contained in Annexure C. This has been lodged because consultation with industry on the expansion process precedes the lodgement of UT4 and is therefore well advanced.

### 2.2.1 Outstanding UT3 issues

Aurizon Network concurs with industry that it is important for key outstanding UT3 processes to be resolved prior to the commencement of UT4. This includes SUFA, the Draft Incentive Mechanism and the pricing of electric traction infrastructure. Recognising that these existing reviews need to run their course, no additional comments on these three matters are provided in this submission.

### 2.2.2 The QRC's alternative draft of the 2013 DAU

Aurizon Network notes that an alternative version of the 2013 DAU has been submitted by the QRC. The QRC has made some constructive suggestions and Aurizon Network has had regard to that drafting in preparing this submission, noting that some of the alternative drafting deals with minor points of clarification, whereas other drafting contains new policy proposals.

As noted above, the 2013 DAU was accompanied by detailed explanatory material that provided the rationale for each proposal, what Aurizon Network is seeking to achieve and how specific amendments might fit together in a broader context. Aurizon Network has reviewed the QRC's alternative drafting to understand its intent. Where it appears a particular proposal in UT4 is unclear, Aurizon Network has clarified the proposal in this submission.

While Aurizon Network will make a number of amendments to the 2013 DAU as detailed in this response, it is important to emphasise that it is Aurizon Network's 2013 DAU that will be assessed against the requirements of section 138(2) of the Act. Aurizon Network remains of the view that its 2013 DAU satisfies the statutory criteria. In the event any proposal or drafting in the 2013 DAU subsequently remains unclear, Aurizon Network is happy to discuss further, either with industry and/or the QCA.

## 2.3 The UT4 process from here

A number of industry participants have raised questions regarding the UT4 timeline, particularly in relation to the prospect of UT4 not being approved by the time UT3 expires on 30 June 2014.

In this respect, Aurizon Network is working with the QCA to ensure that UT3 will not expire before UT4 is approved. Specifically, Aurizon Network has committed to lodge a Draft Amending Access Undertaking (**DAAU**) extending UT3 and incorporating the final UT4 Maximum Allowable Revenue and Reference Tariffs approved by the QCA. Aurizon Network does not consider it necessary for either an initial undertaking notice to be served, nor for the legislation to be amended.

While Aurizon Network agrees with the QRC that "timing is secondary to the quality of the outcome"<sup>2</sup>, it also does not wish to see the situation that occurred in UT3, which contained a number of outstanding processes. Thus, Aurizon Network is committed to finalising UT4 by 30 June 2014. In the event that a final decision is made by 30 June 2014 that relates only to the Reference Tariffs, Aurizon Network will continue to work closely with the QCA and industry to maintain momentum on the resolution of all policy issues. Aurizon Network remains opposed to the inclusion in UT4 of any policy issues that require amendment of the undertaking during the term.

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<sup>2</sup> Queensland Resources Council (2013). QRC Submission, Covering Letter, p.3.

## 2.4 Structure of this response

Having regard to the scope and interpretation as outlined above, this response by Aurizon Network is structured as follows:

- this main document summarises Aurizon Network's response to the key themes and issues emerging from the submissions;
- Annexure A contains a more detailed response to the issues raised in the submissions on volume one of the 2013 DAU (the undertaking and schedules);
- Annexure B is in three parts and includes:
  - a detailed response to the issues raised in the submissions on the standard access agreements;
  - a comparison of the key changes to Aurizon Network's current UT3 End User Access Agreement and the UT4 End User Access Agreement;
  - a comparison of the key changes to Aurizon Network's current UT3 Train Operations Agreement and the UT4 Train Operations Agreement; and
- Annexure C contains an updated draft of Part 8 of the 2013 DAU (Network Development and Expansions).

## 3 Key Themes in Submissions

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There are a number of common (and closely related) themes in the submissions that underpin some of the issues raised with 2013 DAU. Aurizon Network recognises that these are important issues for industry and would therefore like to respond to them in this document.

### 3.1 The competitiveness of Queensland coal

A number of industry participants have highlighted the cost pressures and reduced margins facing them. Aurizon Network understands that many of its coal customers are operating in challenging market conditions and is mindful of its own obligation to justify its revenue requirement as being efficient.

Aurizon Network is attuned to the competitiveness of the coal supply chain. Aurizon Network's shareholders will have more than \$6 billion of the balance sheet invested in infrastructure supporting the coal industry by the end of UT4 in Regulated Asset Base (**RAB**) terms, for which there is limited or no alternative use. Being highly leveraged to the Central Queensland Coal Network (**CQCN**), Aurizon Network is aligned with industry in the need to ensure that Queensland coal remains competitive. It would be irrational for Aurizon Network to propose an undertaking that would deliberately undermine the competitiveness of the coal industry.

#### 3.1.1 The size of the tariff increase in UT4

Many respondents cite in their submissions that tariffs are increasing on average by 36% between the last year of UT3 and UT4. This figure appears to be based on forecast prices for FY2012/13 rather than actual prices. A comparison of the actual tariffs from FY 2012/13 and the proposed tariffs under UT4 for 2013/14 shows an increase in average non-electric tariffs of 66c a net tonne (17.7%). These numbers align with the QCA's analysis of proposed UT4 tariffs, which it published in November 2013.<sup>3</sup>

This tariff increase is largely driven by a substantially larger asset base, an expanded maintenance program to cover a larger network and correcting the historic understatement of overhead costs by the former government-owned business. There is also considerable scope for the UT4 tariffs to decrease over the next four years as the market recovers from historically low coal production and network utilisation increases.

Proposed electric tariffs, on the other hand, are declining by 22c a net tonne (18.0%).

#### 3.1.2 The significance of below rail charges to the competitiveness of the supply chain

Aurizon Network believes that its proposed tariffs are reasonable. While genuinely cognisant of the difficulties facing coal producers, particularly thermal coal producers, the proposed below rail tariffs are a very modest contributor to costs. Analysis presented in the UT4 proposal shows that below rail access charges in total account for around only 4% of total FOB cash costs.<sup>4</sup> This means that the average change in tariffs (66c a tonne) is an extremely modest change in the underlying costs of

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<sup>3</sup> Addendum to QCA's consultation paper on Aurizon Network's 2013 Draft Access Undertaking, available on the QCA website

<sup>4</sup> Refer Volume 3, Maximum Allowable Revenue and Reference Tariffs, p.8.

coal producers, even given the current spot market prices (~\$85 per tonne for Newcastle thermal, and ~\$145 per tonne for metallurgical coal).

Aurizon Network is aware of comments made regarding the contribution that rail infrastructure costs contribute to the development of a new coal project. Aurizon Network does not consider that below rail capital costs have significant impacts on the economic viability of a Bowen Basin Mine development. By way of example, the following table summarises key capital costs from a recent mining project (the cost estimates have been sourced from publicly available documents). The table indicates that Aurizon Network’s capital costs would be less than 14% of total development costs once additional costs associated with rollingstock, water and electricity infrastructure and private mine spurs are included in the total project costs.

**Table 1: Case study – Recent Mining Project<sup>5</sup>**

Input	Capital costs (\$m)	Capacity (mtpa)	Cost per tonne	Percentage of total
Mine (Stage 1)	\$743	5.5	\$135.1	51%
WICET* (Stage 1)	\$2,500	27	\$92.6	35%
WIRP** (Blackwater Segments)	\$864	23.5	\$36.8	14%
Total			\$264.5	

\* Wiggins Island Coal Export Terminal

\*\* Wiggins Island Rail Project

Many industry participants are also of the view that Aurizon Network’s UT4 tariff proposal is at odds with the cost containment strategies they are employing in their own businesses and that Aurizon Network also needs to reduce its prices in an environment of significant pressure on the Queensland export coal industry’s competitiveness. In effect, the request is that Aurizon Network aligns its tariffs to complement the cyclical nature of the commodities market.

As noted above, Aurizon Network’s interests are fully aligned with its customers in wanting to achieve world class supply chain performance and enabling the future growth and development of the industry. However, the fundamental point of difference is that the pricing of Aurizon Network’s declared service is subject to economic regulation and the QCA only varies tariffs in response to underlying changes in cost or risk. Aurizon Network cannot, for example, raise prices in periods when coal prices are high and industry capacity to pay is likely to be at its strongest, with a view to reducing tariffs when demand (and industry profitability) is more subdued (such as at the current time). This is a well acknowledged part of economic regulation and is referred to as ‘asymmetric truncation’.<sup>6</sup>

Until recently, existing capacity has been fully contracted and there were significant pressures on Aurizon Network to expand capacity. When demand falls, producers can (and do) respond quickly

<sup>5</sup> Information on the WICET Stage 1 project costs has been sourced from: Wiggins Island Coal Export Terminal Pty Ltd (2012). Submission to the Productivity Commission on its Draft Report Titled “Australia’s Export Credit Arrangements”, March.

<sup>6</sup> Refer: Productivity Commission (2013). National Access Regime, Draft Inquiry Report, Canberra, p.105: “One channel through which investment incentives of infrastructure service providers can be compromised is where regulation is expected to expropriate above-normal returns but not compensate for below-normal returns (‘asymmetric truncation’)...This asymmetry arises due to the likelihood that third parties will only seek access when demand for the service is high, and the risk that the service provider will not be fully compensated for the costs imposed on it from providing access. If the future curtailment of high profits means that a potential investor’s expected return is driven lower than the required hurdle rate of return, regulation will inhibit investment.”

and decisively, by reducing output, deferring new projects or expansions or even putting existing mines into care and maintenance mode. The capacity of a multi-user rail network, on the other hand, is not readily divisible. It is not possible to 'mothball' part of the network to a level that is necessary to service actual demand. Further, it is essential to continue to maintain the network to an appropriate standard, noting that unless the downturn showed signs of becoming more permanent, volumes will inevitably ramp up again, and possibly quickly. Periods of low demand can also provide valuable windows of opportunity to undertake corrective and preventative maintenance.

Aurizon Network understands the significant pressures that industry participants are currently facing: as noted above, its own future depends on a viable and prosperous export coal industry. However, it cannot be expected to apply substantial tariff concessions during a downturn when it will continue to incur fixed costs. It needs to be able to maintain its tariffs at a level that covers those costs (including a return on capital) because it is unable to increase tariffs when there is an upswing.

### **3.2 Winding back protections in the regulatory framework**

A key issue raised in submissions is that Aurizon Network has sought to substantially 'wind back' protections that appeared in UT3 with the redrafting of the 2013 DAU.

As explained in the UT4 explanatory materials, since the first undertaking for the Central Queensland Coal Network (CQCN) was approved in 2001, successive 'bolt on additions' have been made to the document. The result was that by UT3, the undertaking had become unwieldy and unworkable, risking the effectiveness and enforceability of the rights and protections afforded all parties. Some provisions had never been used, obligations were frequently unenforceable and un-auditable, others were beyond the scope of the enabling legislation, and the out-of-date drafting (which originated from Queensland Rail) did not reflect how Aurizon Network operates and is structured.

As a result, the form of the 2013 DAU has indeed undergone some change, though the broad structure remains the same. Further, and more importantly, the substance of Aurizon Network's core obligations remains. Aurizon Network has not sought to wind back its obligations in a way that will have an appreciable impact on the substantive rights or obligations of parties and certainly not in any way that will lessen competition in a dependent market.

Two changes in UT4, which have been particular issues for industry, were introduced in UT3 and remain the only known examples of such provisions in any third party access regime in Australia: Aurizon Network's voluntary obligation to fund some investments and the QCA's oversight of 'access conditions'.

Overall, however, the UT4 proposal is a prescriptive, detailed and comprehensive regulatory framework, comprising nearly 2,000 pages of legal drafting. Indeed, the UT4 regulatory framework is longer than some of Australia's most prescriptive regulatory regimes, including the National Electricity Rules and the National Gas Rules.



**Table 2: Length of the undertaking framework: UT1 to UT4 (as at the start of each period)**

Documents	UT1	UT2	UT3	UT4 (proposed)
Undertaking and Schedules	215 pages	282 pages <sup>7</sup>	282 pages	269 pages
Standard Agreements	n/a	281 pages	315 pages	949 pages
Standard User Funding Agreements	n/a	n/a	n/a	652 pages
<b>Total</b>	<b>215 pages</b>	<b>563 pages</b>	<b>597 pages</b>	<b>1,870 pages</b>

As shown in the above table, the significant increase in the length of the undertaking is attributable to the standard agreements introduced to provide the safety net for customers during negotiations.

### 3.3 The ‘negotiate-arbitrate’ model

A number of industry participants have expressed dissatisfaction with the ‘negotiate-arbitrate’ model. This is because Aurizon Network has explicitly drafted the 2013 DAU to ensure that the undertaking is aligned to the underlying legislation. UT3 was drafted in essentially the same way.

Some responses have described any incorporation of ‘negotiate-arbitrate’ as a move to light-handed regulation. For example, the QRC states:<sup>8</sup>

“The appropriate form of regulation can range from anything from a regulator mandating standard access terms and setting tariffs, to lighter forms of regulation such as a negotiate-arbitrate framework, where commercial negotiations occur between the access seeker and provider with a regulator resolving any disputes through arbitration, or price monitoring.”

Negotiate-arbitrate is the standard model for third party access regimes in Australia, forms the legal rules that the QCA is required to adhere to, has been committed to by the Queensland Government under National Competition Policy,<sup>9</sup> and has always been the basic design rule of Aurizon Network’s undertaking.<sup>10</sup> It is not light handed regulation. Light handed regulation such as price monitoring is a fundamentally different model than negotiate-arbitrate (and recognised as such under the relevant COAG agreements).<sup>11</sup> Indeed, this is recognised in the Act itself, with price monitoring and negotiate-arbitrate found in separate parts of the statute.<sup>12</sup> In relation to the QCA’s role, the UT4 proposal is entirely consistent with the UT3 position, namely, that the QCA has a fundamental role in approving standard access agreement terms, in approving Reference Tariffs and resolving access disputes.

<sup>7</sup> Includes line diagrams

<sup>8</sup> Queensland Resources Council (2013). pp.16-17.

<sup>9</sup> Cite the relevant provision in CIRA.

<sup>10</sup> This is has been recognised by the QCA itself, having recently made a submission to the Productivity Commission stating that the third party access regime that applies to Aurizon Network is: “... a negotiate-arbitrate regime whereby if an access provider and an access seeker are unable to agree to the terms of an access agreement, either party can refer the matter to the Authority for determination...” Queensland Competition Authority (2013). Submission to the Productivity Commission on the National Access Regime, March, p.2.

<sup>11</sup> Council of Australian Governments (2006). Competition and Infrastructure Reform Agreement.

<sup>12</sup> Price monitoring investigations are provided for under Part 3. Aurizon Network’s access regime is contained in Part 5.

Some submissions have cited the telecommunications sector as a clear example of why negotiate-arbitrate 'doesn't work. Apart from some fundamental industry differences, Aurizon Network does not consider that case to be relevant. In its recent draft report on the National Access Regime the Productivity Commission specifically acknowledged the issues that have been occurring in the telecommunications sector and noted the recent changes that had been made to the regulatory framework.<sup>13</sup> This example was not seen as undermining the suitability of 'negotiate-arbitrate', which the Productivity Commission recommended be retained.<sup>14</sup>

In the telecommunications sector, until recently the ACCC lacked a power to determine upfront "standard" terms and conditions for access for declared services (including the price). The ACCC likewise could neither compel, nor amend, an undertaking. The combination of these factors meant that every access negotiation was essentially run afresh, with the only recourse being binding ACCC arbitration under the statute.<sup>15</sup> As those arbitrations were usually confidential, only binding on the two parties, and involved appeals to the Australian Competition Tribunal, there was scope for the access provider to frustrate negotiations.<sup>16</sup>

That position has now been rectified by legislative change, though not in such a way as to remove 'negotiate-arbitrate'. The ACCC now has a power to make upfront access determinations for each declared service, encompassing price and non-price terms.<sup>17</sup> This is analogous to the standard terms and conditions for access, including Reference Tariffs, which can be approved by the QCA under sections 137(2)(a) and (j) of the Act. As is the case under the Act, telecommunications access seekers under Part XIC of the *Competition and Consumer Act 2010* are still free to negotiate an alternative to the ACCC standard, however the access determination provides a benchmark position.

### 3.4 The impact of Aurizon's privatisation

An issue raised by a number of industry participants is the impact of privatisation on the perceived incentives of the business. For example, the QRC submitted:<sup>18</sup>

"The coal industry has serious concerns about the effect that privatisation may have on the efficiency and competitiveness of the below rail service and on the approach which a privatised monopoly service provider would take to its business."

Even while it was under government ownership, Aurizon Network was always required to act in the best interests of its shareholders and to maximise shareholder value. However, it is certainly the case that the nature of its shareholder base has changed. Consistent with all of its privately owned supply chain partners, Aurizon Network must promote its shareholders' interests as its primary aim.

That said, there clearly must be a long-term alignment between Aurizon Network's shareholders and the coal industry. Aurizon Network recognises the key role it has to play in the performance of the Queensland coal industry and the continued growth and expansion of the network. To do anything

<sup>13</sup> Refer: Productivity Commission (2013). section 4.3.

<sup>14</sup> Productivity Commission (2013). National Access Regime, Draft Inquiry Report, Canberra, p.129. "the Commission considers that primacy should be given to negotiation, subject to an effective threat of arbitration. Moreover, although there are some concerns about the operation of the negotiate-arbitrate framework, there is no basis for concluding that alternative measures would lead to better outcomes."

<sup>15</sup> It is noted that some 164 disputes were raised as at mid-October 2010, many of which were in relation to pricing. Productivity Commission (2013). National Access Regime, Draft Inquiry Report, Canberra, p.129.

<sup>16</sup> Productivity Commission (2013). National Access Regime, Draft Inquiry Report, Canberra, Box 4.5.

<sup>17</sup> The ACCC continues to lack the QCA's power to develop its own undertaking.

<sup>18</sup> Queensland Resources Council (2013). p.7.

other than actively promote and support this growth is not only important to industry participants, but is also in the best interests of Aurizon Network's shareholders, who expect it to maintain and grow the value of their assets. Aurizon Network has made a commitment to its customers and its shareholders to achieve world class supply chain performance and considers that it is well on the way to fulfilling this goal.

Indeed, in being accountable to private shareholders, the commercial disciplines imposed on the business are stronger, aligning the commercial priorities of customers with those of shareholders. The imperative to improve efficiency, grow, and maximise performance, is much stronger than it was prior to privatisation as the business is now subject to the constant scrutiny of the market.

### **3.5 Aurizon Network's influence over the development path**

It has also been suggested that Aurizon Network is seeking to control the outcome of the entire development path for the Central Queensland Coal Region (CQCR). Aurizon Network recognises that it has a pivotal role to play in influencing the development path, although this will continue to be driven by the location and timing of port and mine developments. Aurizon Network has never sought to exercise any degree of undue influence over the timing of developments and is hopeful that a redrafted Part 8 (Annexure C) will put this commitment beyond question.

### **3.6 The case for changing UT3**

A number of submissions have recommended reverting to the approved 2010 AU with some amendment, including incorporating the outcomes of any UT3 processes that are resolved. Aurizon Network considers that there is a strong case for changing the 2010 AU, with the reasons for this set out in its UT4 proposal.

As stated above, Aurizon Network agrees that its UT4 proposal changes the drafting of its undertaking, but does not agree that the substance of its core obligations under the Act have changed. There were a number of aspects of the UT3 framework that were clearly unworkable and unsustainable. This includes the number of outstanding (and significant) matters that were left for resolution during the course of UT3. Indeed, the QRC has indicated that it does not object to changing the undertaking 'in principle'<sup>19</sup> although Aurizon Network acknowledges that the QRC does not agree with a number of the proposals that have been made.

Some industry participants have suggested that major changes should be avoided, recognising the long term sunk investments that they have made in coal infrastructure. Aurizon Network concurs with the need for regulatory certainty, but does not regard any aspect of the UT4 proposal as putting at risk sunk investments made by third parties in the supply chain. Moreover, the need for certainty is not a reason to avoid refining the framework to better promote effective, commercial and timely open access for Aurizon Network's customers, including potential new entrants.

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<sup>19</sup> Queensland Resources Council (2013). p.7.

### 3.7 Accountability for compliance

Some submissions have claimed that Aurizon Network is seeking to remove QCA oversight and remove options for dispute resolution. This is not the case, with Aurizon Network recognising the need for effective regulatory supervision and dispute resolution. All of the key accountability mechanisms from UT3 have been retained, with the 2013 DAU including:

- the provision of separate below rail financial statements;
- a Protected Information Register;
- mandatory training requirements in relation to Protected Information obligations;
- dispute resolution;
- a complaints mechanism;
- reporting, including compliance and breach reports;
- disclosure of access agreements to the QCA;
- the provision of certifications by Aurizon Network's Executive Officer;
- the ability for the QCA to request information;
- the requirement to maintain a Compliance Officer; and
- the ability of the QCA to audit Aurizon Network's compliance with any matter under the undertaking.

In addition, all the QCA's statutory powers to ensure compliance remain, including the ability of the QCA to require Aurizon Network to provide information on terms and conditions on which access is provided to a related party (section 105), the ability of the QCA to require the production of information evidencing compliance with the undertaking (section 150AA), and the power of the QCA to investigate whether Aurizon Network is complying with the provisions in relation to preventing or hindering access (section 125).

## 4 Response to key issues raised in submissions

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The following responds to the most significant issues raised in the submissions. As stated above, a more detailed response is provided in Annexure A.

### 4.1 Scope of the undertaking

A number of industry participants have raised issues with the proposed drafting of Part 2 of the 2013 DAU, in particular, the proposal to restrict it to 'core access-related services'<sup>20</sup> and the exclusion of certain associated or ancillary services.

#### 4.1.1 Associated Services

Some industry participants have commented that the 2013 DAU applies only to the negotiation and provision of access and does not apply to other services provided by Aurizon Network. To that end, the QRC has requested that the QCA (or another independent party) be empowered under the undertaking to regulate the price and non-price terms on which specified non-declared services are provided. It is stated that Aurizon Network is the only "practicable" provider of these services.<sup>21</sup> Such a provision did not appear in UT3, which like UT4, related only to the provision of the declared access service.

Before discussing this issue, it is important to highlight that 'associated services' are of marginal significance in revenue terms to both Aurizon Network and the coal industry. In FY13, Aurizon Network earned less than \$10 million providing 'associated services' to all its customers in the Central Queensland Coal Region (**CQCR**) (i.e. coal producers, train operators and other entities seeking these services). This is less than 1% of Aurizon Network's total annual revenue. It is also noted that since an organisational restructure in FY13, mechanised and construction services (which comprise a more significant, but still small amount of unregulated revenue) will be offered by Aurizon Operations, not Aurizon Network.

More generally, Aurizon Network has consistently indicated in discussions with industry that it is happy to work with them on negotiating the terms on which it provides all its services and is prepared to consider any reasonable commercial model (including those with dispute resolution arrangements) proposed by industry for the provision of unregulated, associated services.

That noted, the request for Aurizon Network to volunteer what are unregulated services into the regulatory regime cannot be accepted. The Act covers the regulation of declared services, not the regulation of businesses that provide declared services. It is legitimate, under the regulatory framework, for Aurizon Network to provide a range of services other than the declared service without having them automatically regulated. Moreover, section 137(2) only contemplates an undertaking containing provisions relating to the declared service. As a consequence, the 2013 DAU covers only the provision of "Access", the definition of which mirrors the scope of section 250 and is unchanged from UT3.

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<sup>20</sup> A number of industry participants have stated that the undertaking is limited to the Core Access Related Functions. This is not the case. The Core Access Related Functions in Part 3 are part of Aurizon Network's functional separation from the Aurizon Group. They are not relevant to the coverage of the undertaking itself.

<sup>21</sup> Queensland Resources Council (2013). p.29.

It is noteworthy that the Queensland Government has recently reviewed the scope of the declared service. At that time, the Government indicated to the National Competition Council that the declared service did not exclude services that would pose a barrier to access and that no services were excluded that were integral to accessing the services covered by the regime.<sup>22</sup> In proposing the inclusion of additional services within the scope of the declared service, the Government also made clear that this would occur by way of the process set out in the certified regime, with the decision being made by the relevant Minister.

#### **4.1.2 Electricity Supply**

A number of industry participants have commented on the terms on which Aurizon Network will provide electricity.

The drafting of the 2013 DAU reflects the UT3 position, namely, that Aurizon Network's obligation to sell electricity (which is not a declared service) under the undertaking is a voluntary commitment. The on-selling of electricity by Aurizon Network is regulated under the *Electricity Act 1994 (Qld)*, not the Act.

That noted, Aurizon Network has not fundamentally changed the UT3 commitment to sell electric energy for the operation of Train Services.<sup>23</sup> The drafting in the 2013 DAU simply repeats the position (also acknowledged in the 2010 AU) that this is a voluntary commitment. Under the 2013 DAU, this commitment is made to all parties, regardless of whether Aurizon Network has agreed to sell electric energy to its related operator or not. This gives electric train operators greater certainty than under UT3, which only applied where electricity was sold to the related operator.

The limitations on on-selling are essentially the same as those in the 2010 AU, namely that Aurizon Network will not supply electric energy if it is unlawful to do so. Aurizon Network's commercial objective is to recover all of its costs relevant to the on-selling of electricity and as such the EC rate will continue to operate as a cost pass-through mechanism. As Aurizon Network has maintained the inclusion of EC in the 2013 DAU, it remains subject to the prohibitions on discriminating in favour of the related operator in relation to the supply of electricity. Aurizon Network has also made clear that customers can source electricity from alternative suppliers, where they choose to do so. As in UT3, the QCA is unable to regulate the price of electricity through dispute resolution because it does not have the power to do so.

Aurizon Network will redraft this provision to clarify that while EC is not included in the regulated service, access to the electric infrastructure is included. Accordingly, the component of the Reference Tariff relating to access to electric energy for a Reference Train Service is approved by the QCA (and is within the scope of the dispute resolution provisions).

Aurizon Network is working collaboratively with industry participants to leverage expertise in the industry to develop best practice solutions in relation to electric energy procurement.

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<sup>22</sup> Queensland Government (2010). Application to the National Competition Council for a Recommendation on the Effectiveness of an Access Regime, Queensland Third Party Access Regime for Rail Services Provided by Queensland Intrastate Rail Network, p.22.

<sup>23</sup> While it is not ideal to have non-declared services in the undertaking, Aurizon Network understands that many contracts in the supply chain have been struck assuming the existence of an EC reference tariff.

**Aurizon Network will re-draft the provisions in relation to electricity supply to make clear that while EC is not a regulated service, access to the electric infrastructure is, and that Aurizon Network is seeking only to recover, via the EC rate, those costs relevant to on-selling electricity.**

## 4.2 Relationship between access agreements and the access undertaking

One of Aurizon Network's objectives for UT4 was to streamline the undertaking. One change that has therefore been proposed is to minimise duplication between agreements and the undertaking itself. Some responses have suggested that this is motivated by anticompetitive intent. In particular, Asciano stated:<sup>24</sup>

"This removal and shifting of clauses reduces transparency, certainty and regulatory scrutiny, and increases the potential for Aurizon Network to negotiate discriminatory terms with its related above rail operator."

Aurizon Network welcomes the feedback on this issue and will consider areas where the proposed movement of provisions from the undertaking to the access agreement could cause a genuine problem. For example, Aurizon Network is intending to clarify the drafting of the dispute resolution provisions in Part 11 to state that these provisions apply if a dispute is raised in *any* access negotiation, whether or not the provisions subject to a dispute are set out in the undertaking or in an (unexecuted) standard agreement. This is discussed further below.

Underlying the decision to move some issues into agreements is Aurizon Network's objective to more closely align the regulatory framework with the Act. In short, the primary mechanism by which ongoing commercial relationships between Aurizon Network and access holders are managed is via access contracts (rather than by way of periodic regulatory resets). A party seeking to negotiate a contract with Aurizon Network which meets their reasonable requirements (as Aurizon Network is obliged to offer per section 101 of the Act), should not have to rely on a regulatory process or provision to ratify or make effective, or to complete, a bargain.

There are two main principles that Aurizon Network has applied in assessing what should reside in the access agreement. An issue is considered better addressed in the access agreement where:

- it can feasibly be negotiated and there is no public interest reason to suggest otherwise;
- it is highly commercial and/or operational in nature and thus difficult for the QCA to determine having regard to the section 138 criteria.

For clarity, it is important to note that whether a matter is in the undertaking or in an agreement does not, in and of itself, provide a guide to how important the issue is, or give any information on whether the protections afforded to access seekers are appropriate. Aurizon Network frequently encounters a perception that there is greater protection to access seekers and access holders if a matter is included in the body of the undertaking proper, rather than an agreement, as it is sometimes thought that the QCA will not scrutinise agreements. However, the entire 2013 DAU (Volumes 1, 2 and 3) is collectively "the undertaking" for the purpose of the Act, with the agreements subject to the same statutory tests and scrutiny for their approval as the undertaking itself.

Underlying the issues raised is a suggestion that the QCA is unable to scrutinise dealings between the related operator and Aurizon Network that occur pursuant to contract. Aurizon Network is obliged to comply with certain provisions in both statute and the undertaking in relation to non-

<sup>24</sup> Asciano (2013). Submission to the Queensland Competition Authority in Relation to the 2013 Aurizon Network Draft Access Undertaking, p.9.

discriminatory conduct. If Aurizon Network deliberately and unfairly discriminates in favour of its related operator in any way (regardless of whether the relevant conduct occurs under the undertaking, the access agreement, or both), Aurizon Network breaches its legal obligations.

The fact that certain provisions, such as resumption (for example), are not contained in the undertaking but rather is agreed as a matter of contract, does not in any way alter Aurizon Network's obligations under Part 3 of the 2013 DAU. Removing these provisions from the undertaking provides no protection to Aurizon Network if it unfairly discriminates against a third party in agreeing and/or applying the resumption provisions.

It is also important to emphasise that the QCA has extensive powers to scrutinise Aurizon Network's conduct under agreements. Clause 10.3.1 in the 2013 DAU still requires Aurizon Network to disclose the below rail aspects of access agreements to the QCA "to allow the QCA to satisfy itself that the Below Rail aspects of the Access Agreement do not offend against the provisions of this Undertaking or the Act." An equivalent power to scrutinise access agreements with a related party is in the Act.<sup>25</sup> Moreover, in addition to the above, under the 2013 DAU the QCA can also:

- request information that it reasonably requires to assess whether Aurizon Network is performing its obligations or functions pursuant to the undertaking (clause 10.3.2(a));
- require an audit of Aurizon Network's compliance with the undertaking (clause 10.7); and
- utilise its statutory powers of investigation, including those relating to compliance with the undertaking and those in relation to investigations of the prohibition on hindering access.

**Aurizon Network will review the 2013 DAU to ensure that the proposed movement of provisions from the undertaking to the access agreement could not lead to genuine problems. This will be guided by the feedback provided by industry, having regard to the principles identified above.**

### 4.3 Non-discrimination principles

As outlined above, one of the key themes emerging from the submissions are issues regarding Aurizon Network's perceived incentives – and potential ability – to discriminate against third parties in favour of its related operator (or other supply chain participants that become part of the Aurizon Group).

There is already a range of protections in the undertaking and the Act to prevent this from occurring. However, Aurizon Network will amend the 2013 DAU to provide further confidence to third parties in the integrity of the regulatory framework. These changes include:

- a new provision clarifying that the intent of the undertaking is to provide that actions taken pursuant to it are consistent with the non-discrimination provisions in the Act and to ensure that Aurizon Network applies these obligations consistently to all access seekers, access applications and access negotiations (unless there is an express provision in the undertaking to the contrary);

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<sup>25</sup> section 103



- a new provision providing for a general obligation on Aurizon Holdings to not take any action that would cause Aurizon Network to be in breach of its obligations under the undertaking; and
- an amendment to Part 3 extending Aurizon Network’s obligations in relation to non-discriminatory conduct against third parties competing with another Aurizon Party in a relevant upstream or downstream market (where the Aurizon Party could be a coal producer, an export coal terminal in the CQCR, an interconnecting railway or railway operator).

**Aurizon Network will make amendments to the 2013 DAU to provide further confidence to third parties in the integrity of the regulatory framework, particularly in relation to its non-discrimination obligations.**

## 4.4 Ringfencing

Issues have also been raised with the proposed ringfencing framework in the 2013 DAU. In particular, some of the submissions reflect a perception that Aurizon Network has sought to substantially weaken the ringfencing regime. This in turn is seen as being motivated by a desire by Aurizon Network to be able to maximise the leverage of its integrated business model, which creates “numerous actual or potential conflicts of interest”<sup>26</sup> between Aurizon Network and its related companies. The QRC has submitted a proposed re-draft of Part 3, which is based on mark-ups to Aurizon Network’s proposed 2013 DAU.

Aurizon Network acknowledges that where a declared service is provided by a vertically integrated business, a robust ringfencing regime is essential in providing third party access seekers and holders adequate confidence in the integrity of the regulatory framework. However, having regard to the comments made by industry, it is important to reiterate from the outset that it is the *services* provided by Aurizon Network that are declared for third party access and are therefore regulated, not all the activities of the legal entity Aurizon Network Pty Ltd.

The ringfencing framework governs Aurizon Network’s conduct in negotiating and providing access. The proposed UT4 ringfencing framework reflects this, as does the current UT3 framework on which it has been based. Aurizon Network considers it imperative to evaluate its proposed ringfencing framework having regard to this overarching purpose and the requirements under the Act.

### 4.4.1 Legislative basis for ringfencing

The Act contains various provisions that expressly require an access provider like Aurizon Network to not unfairly differentiate between access seekers, or to prevent or hinder a user’s access to a declared service in specified circumstances. The Act also provides that in specified circumstances, an access provider will be taken to have engaged in conduct that prevents or hinders access to a declared service. In particular, this will be deemed to be the case where the access provider provides access to a related party on more favourable terms than the terms on which it offers access to a competitor of its related party.

<sup>26</sup> Rio Tinto Coal Australia (2013). Submission to the Queensland Competition Authority in response to Aurizon Network proposed 2013 draft access undertaking (UT4), p.108.

Section 137(1A) supports the general prohibitions on unfair discrimination by providing (amongst other matters) that:

“An access undertaking for a service owned or operated by a related access provider must include provisions for identifying, preventing and remedying conduct of the related access provider that unfairly differentiates in a material way between:

- (a) in negotiating access agreements, or amendments to access agreements, relating to the service – access seekers; and
- (b) in providing access to the service – users”.

Importantly, as highlighted above:

- each of the relevant provisions of the Act seeks to protect fair access to the **declared service**. The legislative framework does not require, and there is no basis to seek, ringfencing beyond access to the declared service;
- section 137(1A) applies to a declared service owned or operated by a related access provider. It does not apply to any other service or to anyone other than a related access provider; and
- the Act regulates conduct in relation to the provision of access; not the business or structure of the access provider.

These fundamental legislative principles and constraints need to be considered in evaluating the ringfencing regime proposed in Aurizon Network’s 2013 DAU. Aurizon Network considers that in many cases, the changes sought in submissions would impose obligations that are beyond the scope of the Act. Further, many of the changes requested (both within and outside the scope of the Act) are considered unnecessary given the ringfencing regime already proposed in the 2013 DAU and Aurizon Network’s existing statutory obligations.

#### **4.4.2 Aurizon Network’s proposed regime**

Aurizon Network recognises the need for an appropriate, clear and workable ringfencing regime to:

- mitigate against the risk of vertical foreclosure and to help ensure that Aurizon Network does not discriminate unfairly between related and unrelated access seekers and users;
- protect confidential information;
- ensure transparent accounting and reporting; and
- address the legislative requirement in section 137 of the Act to include a provision in its undertaking to identify, prevent and remedy conduct that may unfairly discriminate in a material way.

The drafting of the 2013 DAU meets these requirements by containing:

- express provisions that prohibit unfair discrimination and express rights of complaint and dispute in cases of potential breaches of that prohibition;
- express provisions which detail (in more depth, clarity and prescription than in UT3) the nature of Protected Information, who can access it, for what purpose and what must not be done with that information; and
- detailed reporting, audit and compliance provisions.

The drafting of Part 3 in the 2013 DAU departs from the ringfencing provisions in the 2010 AU because the UT3 drafting is, in many places, unclear and overly complex, leading to a lack of certainty and practical application for both Aurizon Network and customers. Moreover, UT3 does not reflect the current functional model of service delivery within the Aurizon Group.

#### **4.4.3 Response to the proposed changes requested in submissions**

The purpose of Part 3 in the 2013 DAU is to supplement the enforcement of the Act; not to supplant it. Except to the extent that Aurizon Network volunteers measures and standards that are not required by the Act, matters cannot be imposed or enforced that are not supported by the legislation.

Even for the changes proposed by industry that are not beyond the scope of the Act, as noted above, the QCA's role in assessing Part 3 as part of the UT4 approval process is prescribed by section 138 of the Act. The QCA will look to see if Aurizon Network's drafting meets the standards prescribed in section 138, not whether there may be an alternative means to achieve the same end. In saying this, it is not clear from submissions as to why Aurizon Network's drafting fails to meet the requirements of section 138, nor is the proposed alternative drafting seen to meet these requirements.

In a number of instances, Aurizon Network is willing to include provisions requested by industry (and has already included provisions in its current drafting of Part 3) that are not required by or within the scope of the Act or other applicable legislation. Aurizon Network has included those provisions in its original draft of Part 3 and is prepared to agree further provisions of this kind that have been requested by industry (as detailed in Annexure A), in the interests of providing a robust ringfencing regime. Some of the amendments that it will make to Part 3 (in addition to the non-discriminatory matters noted in 4.3) include:

- making it clear that the purpose of Part 3 includes regulating the provision of access by Aurizon Network to ensure it is managed and supplied independently from other members of the Aurizon Group who compete in the upstream and downstream markets that depend on access to the declared service; and
- a prohibition on the short term secondments of employees from high competition risk areas of Aurizon Network, including Aurizon Network management.

However, Aurizon Network has a legitimate right and interest in limiting the extent to which it exposes itself to obligations and consequences that have no legislative basis. For example, some of the proposals that would be the source of particular concerns for Aurizon Network include:

- a requirement on Aurizon Network to divest its lawful shareholdings in non-CQCN businesses;
- a requirement that would require the entire Board of Aurizon Network Pty Ltd to be replaced;
- the imposition of restraint of trade on Aurizon Network's employees;
- a prohibition on an Aurizon employee entering Aurizon Network's offices unless authorised by a director; and
- a prohibition on all train operators (including Asciano and non-coal operators) obtaining network capacity without being authorised by a coal producer, even when lawfully entitled to do so under the QCA Act.

Aurizon Network would reiterate that it is willing to continue to discuss this issue with industry and refine its proposal where necessary to ensure that the Part 3 framework is a balanced and reasonable response to what is a genuine issue. However, it is important to consider the legal, commercial and practical implications of the proposed framework.

**In response to industry feedback, Aurizon Network will make a number of changes to the ringfencing regime that clarify drafting, address the functional structure and are consistent with best practice.**

## 4.5 Dispute resolution

A number of submissions have interpreted the 2013 DAU as seeking to restrict the application of the dispute resolution mechanism. It has also been commented that Aurizon Network is seeking to minimise the role of the QCA in resolving disagreements between itself and access seekers. These comments seem to originate from various alternative interpretations of the drafting and can be resolved with minor clarifications to the drafting. These clarifications are contained in Annexure A.

Aurizon Network recognises the importance of a robust dispute resolution mechanism to the integrity of the undertaking framework. Its intent under the 2013 DAU is not to seek to prevent access seekers from obtaining effective and timely dispute resolution. While it is sensible and appropriate for large companies like Aurizon Network and its customers to resolve disputes commercially, it is nevertheless the case that when disputes do arise, an effective dispute resolution mechanism is absolutely essential.

Indeed, Aurizon Network actually sees merit in the dispute resolution provisions being invoked more frequently, noting that the undertaking mechanism has never actually been used to resolve an access dispute. An appropriate focus on bilateral dispute resolution would, in part, resolve the impasse where parties regard periodic regulatory resets as a form of de facto dispute resolution. Dispute resolution would also highlight the merit of drafting contracts (e.g. access agreements, SUFA, etc.) in the context of a real commercial negotiation, rather than in the more hypothetical construct of regulatory proceedings.

### 4.5.1 Scope of the dispute resolution mechanism in Part 11

Consistent with the UT3 position, it is intended that the dispute resolution mechanism in Part 11 will apply to any dispute arising from the operation of the undertaking (including from any provisions requiring Aurizon Network to perform an obligation). The broader objective is to mirror but not to exceed the statutory power of the QCA to resolve access disputes, where Aurizon Network and an access seeker cannot agree on an “aspect of access” and where there is no executed access agreement in place (section 112). Aurizon Network will review the 2013 DAU drafting to put this beyond question.

The slight qualification to this broad statement is that specific dispute resolution clauses have been proposed for inclusion in Part 8, at the request of the QRC. Aurizon Network accepts that additional detail in relation to the expert-led, multi-party disputes envisaged in Part 8 is appropriate. However, in the absence of a specific dispute resolution clause in Part 8, it is intended that Part 11 will apply to the expansion process.

An issue that has also been raised in submissions is that the current drafting of the 2013 DAU (clause 11.1.1) limits the list of parties that can dispute matters under the undertaking.

Aurizon Network is concerned with an 'umbrella' provision that allows any party to raise a dispute, regardless of whether that party might be affected by a decision under the undertaking. However, Aurizon Network also acknowledges that there may be circumstances where it is appropriate to extend the ability to raise a dispute to parties other than an access seeker or train operator, such as a customer of those parties.

Aurizon Network has already sought to acknowledge these rights within applicable clauses, including in Parts 6 and 8. With the benefit of the industry feedback it will also review the 2013 DAU more broadly to clarify, where necessary, the application of the dispute resolution mechanism and complaints handling process to parties other than access seekers or train operators.

#### **4.5.2 Dispute resolution under access agreements**

Some industry participants have expressed some confusion in relation to their ability to bring disputes under access agreements. Aurizon Network is able to clarify the operation of these provisions in the 2013 DAU, which are consistent with all of Aurizon Network's prior undertakings.

Consistent with the UT3 position, where an access agreement has been executed, the common law of contract applies to determine the rights and obligations of the parties to the contract. Where a breach of contract is suspected, any party to the contract (including Aurizon Network) is able to bring legal proceedings seeking an appropriate remedy, including specific performance or damages. However, as with most commercial contracts, the standard access agreements contain a staged process for dispute resolution, intended to minimise the cost and time that would arise were parties required to bring court proceedings for every suspected breach.

As was the case under UT3, the QCA is able to arbitrate disputes under the standard access agreement by consent. The reason consent continues to be required is that it is not appropriate for the QCA to approve an undertaking which gave it a power to apply, to unwilling parties, the common law of contract in interpreting or resolving contractual disputes. Thus the QCA's ability to arbitrate contract disputes must continue to be by consent, as in UT3.

Where an access holder believes that Aurizon Network is complying with the terms of the contract, but is otherwise breaching a term of the undertaking, then Part 11 applies.

#### **4.5.3 Compliance with the ringfencing framework**

A number of submissions reflect a view that uncertainty in relation to the applicable dispute resolution mechanism could be a means by which Aurizon Network might seek to favour its related operator. The issue appears to be that, if no dispute resolution mechanism is available (noting that this should not ever be the case), Aurizon Network will be free to behave in an anticompetitive way. This issue is misplaced, as whether an access agreement has been executed or not is irrelevant to the compliance of Aurizon Network with its ringfencing obligations. Aurizon Network's administration of both the undertaking and its executed contracts must be consistent with other laws, including those in legislation designed to protect third party operators and the obligations in Part 3.

#### 4.5.4 Dispute resolution process

Having regard to industry feedback, a number of minor clarifications to the dispute resolution process will be made, as outlined in Annexure A. These include:

- the correction of an inconsistency between the Explanatory Notes and the text of the undertaking to provide that mediation is by agreement of the parties; and
- some amendments to the arbitration provisions to clarify that Aurizon Network does not intend for the undertaking to limit the statutory powers of the QCA.

**Amendments to Part 11 will be made to put beyond doubt that Aurizon Network does not intend to restrict access to dispute resolution, or the role of the QCA.**

## 4.6 Expansions

### 4.6.1 The expansion process

Aurizon Network recognises that the expansion process is one of the most significant issues for UT4 and this is clearly reflected in the submissions. Aurizon Network's overarching commitment to the future growth and development of the CQCN was outlined above.

Discussions with industry on the expansion process commenced prior to the submission of the UT4 proposal in April and this has continued since lodgement occurred (largely through a QRC working group). As highlighted by the QRC in its submission, Aurizon Network produced an updated version of Part 8 in response to the QRC's expansion process principles. While Aurizon Network is continuing to consult on this, the draft of Part 8 attached to this submission considers drafting provided by the QRC and other issues raised by industry.

Key changes which are proposed to be made to the 2013 DAU are as follows:

- Industry has raised issues around the references to Aurizon Network's legitimate business interests, particularly in relation to the obligation to expand the network. Aurizon Network's intention was not to unreasonably restrict the expansion of the network - rather the intention was to align its obligations in the undertaking with its obligations under the Act. Accordingly these provisions have now been modified to better mirror the requirements of the Act;
- Industry has sought that the movement between study phases be more 'mechanical' and objective and that access seekers should fund prefeasibility and feasibility studies. This has generally been reflected in the drafting. However, Aurizon Network believes it is appropriate for it to be able to fund studies where agreed with access seekers or where access seekers do not finalise funding arrangements within a reasonable timeframe;
- Access seekers who are permitted to fund studies are now selected through the application of a clear process, including specified criteria. Any dispute over the selection of funders is referable to an expert for resolution. This also extends to the parties to be provided provisional capacity allocation and the parties from whom Aurizon Network could withdraw a provisional capacity allocation;

- Aurizon Network must consult with the study funders in relation to the size and scope of studies. If the funders do not agree with Aurizon Network's proposal, or any other element of the proposed study funding arrangements, this will be resolved through expert resolution;
- The scope of expansions will be agreed either through the consultation, agreement and/or resolution of user funding schedules or through the negotiation of access agreements; and
- After the execution of the first user funding arrangements based on SUFA, Aurizon Network will submit a DAAU reflecting amendments targeted at improving the SUFA arrangements.

A redraft of Part 8 to reflect the above matters, which have been based on discussions with the QRC, is attached as Annexure C.

#### **4.6.2 Expansion funding**

Aurizon Network recognises that its proposal to remove the \$300 million funding commitment from UT3 is a significant issue for customers, as evidenced in the submissions. However, it reiterates the overarching intent of this proposal, which is to re-align Aurizon Network's obligation in relation to funding investments with the requirements under section 119 of the Act. It is also important to emphasise the fundamental distinction between facilitating or enabling expansions of the network (which remains Aurizon Network's core responsibility) and who bears the costs of those expansions.

Acknowledging the issues that have been raised, Aurizon Network has been in discussions with industry regarding projects that it may be willing to fund, alongside asset renewals, under the regulatory framework (at the regulated rate of return), including system robustness projects, transfer infrastructure and smaller expansions. It will continue to discuss this with industry over the coming months and is hopeful that a negotiated solution to this issue will be forthcoming in the short term.

#### **4.6.3 Expansion pricing principles**

The question of how access to capacity created by an expansion should be priced largely comes down to how the costs should be allocated between the customers that have triggered the expansion and other users of the shared network. Aurizon Network's proposed treatment of the matter was to include cost allocation within the scope of the customer voting process, providing customers with the opportunity to have input into the way in which the costs of an expansion that directly affects them should be treated. It was then intended that the QCA determine the issue, having regard to the principle of economic efficiency, where Aurizon Network sought to include expansion costs in a Reference Tariff.

Some industry participants have questioned the inclusion of this matter within the scope of the voting process. Instead of such a mechanism, the QRC has made a number of constructive suggestions on the approach to pricing expansions, including addressing some of the issues that have been identified by industry. Aurizon Network is currently working with the QRC to agree the approach and the drafting required to implement it. The key principles that underpin the approach should be:

- existing customers are protected from being made materially worse off by an expansion;
- the access prices for similar services should be aligned in the long run;
- to the extent that an expansion results in benefits accruing to existing customers, it is reasonable to allocate some of the costs of the expansion to those customers; and
- the QCA's ability to assess any application in accordance with the Act cannot be limited.

Aurizon Network will continue to progress these discussions in the coming months.

**A new draft of the expansion process, reflecting more than six months of discussions with the QRC, is attached to this submission (Annexure C).**

#### **4.7 Negotiation framework**

Aurizon Network's overarching intent in drafting Part 4 of the 2013 DAU was to provide a clear and efficient path for parties to apply for and negotiate access rights, without substantially altering from UT3, the steps in that process or Aurizon Network's key obligations in negotiating with access seekers. A number of suggestions have been made by industry to improve the drafting and a more comprehensive response is provided in Annexure A. Some of the changes that Aurizon Network is proposing to make in response to the feedback include:

- an obligation on Aurizon Network to notify an access seeker if their access application is incomplete and specify what information would be required to make the application complete and compliant;
- accepting the inclusion of reasonable limitations on the additional information that Aurizon Network can seek from an access seeker about its access application;
- an obligation on Aurizon Network to provide reasons for suspending access negotiations where access rights cannot be provided in the absence of an expansion or a customer specific branch line;
- reviewing possible exceptions to what might constitute a substantial alteration to access rights that an access seeker has sought, which would allow it to revise its access application without the revised application being deemed a new application;
- a new obligation in the Indicative Access Proposal (**IAP**) for Aurizon Network to provide information about an expansion that is necessary to accommodate the requested access rights (including timeframes);
- more information on how an access charge has been determined under an IAP;
- providing access seekers with a mutual right to suspend a negotiation for access rights where an expansion or customer specific branch line is required; and
- more objective grounds for decisions such as whether the revision to an access application substantially alters the access rights sought (as per above) or whether an access seeker has failed to comply with obligations and processes in the undertaking.

Aurizon Network is considering appropriate drafting for these and other changes that will be made in Part 4.

**Aurizon Network will implement a number of improvements to the negotiation process, as suggested by industry.**



## 4.8 Demonstration of supply chain capacity

Some industry participants have raised issues with Aurizon Network's proposal to strengthen the requirements in the access negotiation process in relation to demonstrating adequate supply chain capacity. Aurizon Network considers this to be an essential part of the regulatory framework and one which all elements of the supply chain have an interest in supporting. That noted, it is possible to clarify some aspects of the proposal in response to submissions.

The rationale for the change is explained in Aurizon Network's UT4 proposal. The alignment of capacity entitlements is of fundamental importance to the efficient operation of the supply chain. This was acknowledged in discussions between participants in the Dalrymple Bay Coal Chain as part of the development of the principles underpinning the Long Term Solution (which was not implemented), with the alignment of capacity entitlements being one of the key principles that participants did agree to.

Aurizon Network acknowledges the interdependencies between the various components of the supply chain, particularly below rail and port, and recognises that an access seeker may not have all of the necessary supply chain capacity secured when it lodges its access application. For this reason, the drafting refers to the "likelihood" of securing access rights.

For example, in the early stages of the process, port capacity could be evidenced by the access seeker demonstrating that it is progressing discussions with a port infrastructure provider, which could be expected to continue to occur in parallel with the negotiation of below rail access rights (as the port may similarly require evidence in relation to below rail access rights before it agrees to grant capacity). However, where Aurizon Network would be concerned is where an access seeker lodged an application without having commenced discussions to secure port capacity, or was in a situation where there is considerable uncertainty as to whether port capacity would be available at the nominated commencement date for the below rail access rights.

It is therefore important to emphasise that Aurizon Network's intent in strengthening this requirement is to not impose an obligation on access seekers that extends beyond what could reasonably be required at the relevant stages of the negotiation process. Aurizon Network will therefore review the drafting of the 2013 DAU to reflect this.

**Aurizon Network will review the drafting of the provisions relating to the demonstration of supply chain capacity to ensure that it does not impose obligations that extend beyond what would reasonably be required at the relevant stages of the application and negotiation process.**

## 4.9 Allocation of existing capacity

The 2013 DAU proposes removal of the queuing framework, which in UT3, is relevant to the allocation of new capacity as well as any existing capacity that becomes available. The allocation of the capacity created by an expansion is subject to its own process and is addressed in Part 8 of the 2013 DAU, as discussed above. The allocation of existing capacity is addressed in Part 7.

In removing the queue, Aurizon Network recognises that it needs to be replaced with an appropriate and transparent mechanism for allocating access rights, including dealing with mutually exclusive access applications. It has proposed that this be based on the application of capacity allocation criteria.

While there is support in the industry submissions for the replacement of the queuing framework with capacity allocation criteria, issues have been raised regarding Aurizon Network's ability to exercise discretion in applying the criteria, which creates uncertainty for access seekers. The QRC has proposed removal of the following criteria from clause 7.5.2(d) of the 2013 DAU:

- "Aurizon Network's legitimate business interests";
- "to allocate capacity to its highest marginal value";
- "to ensure Aurizon Network's revenue adequacy".

Aurizon Network agrees to remove the first two criteria. However, it is considered important to retain the third criterion regarding revenue adequacy as this is one of the pricing principles contained in Part 6 (and is also a right provided for under the Act).

Aurizon Network will also include flow charts in the undertaking to clarify how key processes such as capacity allocation will work.

**Amendments to Part 7 will be made to clarify the mechanism for which scarce capacity is allocated. This includes refinements to the criteria to be used.**

## 4.10 Flexibility in managing access rights

A common theme in the industry submissions is a desire for greater flexibility in the management of access rights, including for the purpose of managing take or pay obligations. There are two key areas that Aurizon Network would like to respond to, being its operator capping proposal and the need for a more flexible short term transfer mechanism.

### 4.10.1 Short term capacity swaps

The QRC has proposed the introduction of a process to facilitate short term transfers, by enabling customers within a cluster (or within a short geographical distance of each other) to seek pre-approval of a transfer.

Aurizon Network sees merit in the QRC's proposal. Enabling temporary transfers or 'capacity swaps' between access holders could provide a number of benefits, including managing variations in the utilisation of Train Service Entitlements (TSEs), meeting demand for surge capacity and mitigating take or pay liabilities.

Currently, access holders have the ability to 'borrow and lend' TSEs within their own portfolio of access rights. The flexibility this actually provides could be limited depending on the size and scope of that portfolio (which could particularly be the case for a new third party entrant). Aurizon Network will therefore develop and implement a process for capacity swaps that would allow access holders to borrow and lend TSEs outside of their own portfolio, provided that a suitable counterparty can be found. This would provide greater commercial certainty in being able to identify borrow and lend opportunities.

The key issue in implementing such a process in a complex multi-user system like the CQCN is ensuring that no other party's ability to utilise its access rights is compromised, noting that typically, transfers are subject to a capacity analysis. Aurizon Network therefore considers it imperative that the key principle underpinning the ability to implement a swap under this mechanism is that no other access holder's rights would be adversely affected if it proceeded. It would also be necessary to confirm that all elements of the supply chain are able to accommodate the swap.

Aurizon Network will therefore implement a flexible swapping mechanism. Some of key features of this mechanism could include:

1. implementation via the System Rules. The reason for this is that the pre-determined criteria that will need to be met to ensure that no existing access holders are made worse off will be influenced by the geographical and operational characteristics of each system;
2. to avoid the need to amend the relevant contracts, the swaps could be effected by way of a third party shipment notice. In other words, consumption of the TSE that has been utilised by a counterparty under a swap would be deemed as a consumption of the access holder's TSE for the purpose of take or pay. It will also be counted as a consumed TSE when assessing priority in the event of a future contested train path; and
3. swaps will need to be nominated by the access holder as part of the weekly train orders. For swaps that do not meet the required criteria, this can occur via the existing mechanism in the access agreement, which will still require a capacity analysis.

The principles outlined above are proposed as a starting point. This will be progressed in consultation with industry, together with any required transitional matters.

#### **4.10.2 Operator capping**

A key objective of introducing operator capping is to provide stronger performance incentives for operators by allowing the operator to attribute the consumption of access rights from over-railing to mitigate its take or pay obligations (either through its direct contracted access rights or through end-user nomination), prior to distributing those benefits to the broader system. The QRC and other industry participants have suggested operator capping would favour larger operators over operators with a smaller customer base, which could therefore create a barrier to entry and discourage competition.

Aurizon Network considers the value proposition in operator capping is associated with mine production variability, not operator scale. The capping framework already operates contractually within a current individual access holder's access agreement, even where it includes only two loading points. This shows that value is independent of scale.

Indeed, the value of operator capping is likely to diminish as the number of mines within the customer grouping increases, as the excess revenue collected against a particular access

entitlement is distributed across more volumes in the customer base. Even large operators would seek to 'reduce scale' through mine and customer nominations. In other words, the operator is incentivised to nominate smaller customer groups for the purpose of operator capping as the excess revenue collected from a particular haul that has over-railed is distributed over a smaller number of mines, which will be seen as more valuable. In addition, an end user may seek to periodically reassign train paths between operators for a mine if it seeks to take advantage of excess railings elsewhere within another customer grouping maintained by an operator, further incentivising improved operator performance.

Aurizon Network maintains the view that operator capping is innovative and adds a further competitive dimension in the downstream market. It is also complementary to other approaches to managing production and demand variability. Consistent with other key features of the regulatory framework, Aurizon Network believes it important that the above proposals are considered within the context of all of the mechanisms that provide customers with flexibility in managing their access rights. This now includes:

- the alternate form of access (including the inherent flexibility for end users to change train operators);
- mine capping, operator capping and system capping, all of which enable take or pay obligations to be mitigated for production and demand variability;
- the new swapping mechanism described above, in response to a proposal by the QRC;
- clarification of the Contested Train Path process in the Network Management Principles, noting that further amendments to this are being considered to provide more flexibility in allocating Contested Train Paths within an access holder's portfolio; and
- increasing Aurizon Network's ability to respond to requests for additional access rights (including ad hoc paths) by enabling it to optimise the use of existing network capacity via anti-hoarding mechanisms, such as the resumption provisions.

**A proposal for short term capacity swapping will be developed, which will improve the flexible allocation of capacity and promote efficient use of the infrastructure. The mechanism must ensure that no other access holder is made worse off by a customer transferring their capacity to another under the swap.**

#### 4.11 Performance and reporting

Some industry participants have raised issues with the frequency and transparency of reporting. In particular, issues have been raised regarding Aurizon Network's proposal to remove its quarterly operational reports (although the annual report will be retained). Comments have also been made about the information in the reports. For example, Asciano stated that the performance reports produced by Aurizon Network "are not either relevant or useful, particularly as the reports do not link performance to access agreements".<sup>27</sup>

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<sup>27</sup> Asciano (2013). p.33.

A clear message emerging from the submissions is that industry wants improved transparency. Aurizon Network appreciates the importance of this and is therefore fully committed to improving transparency and working with its customers to develop a better reporting framework. This includes making better use of the range of existing forums to discuss performance.<sup>28</sup>

Aurizon Network is happy to work with industry on developing a reporting framework that actually provides timely information that is of genuine use to supply chain participants, where it is unclear that the quarterly performance reports were ever sufficiently timely to be of use to a customer. This would include making the necessary investments in IT infrastructure, where necessary.

#### 4.11.1 Quarterly operational performance reports

The first issue that Aurizon Network would like to address is the comments made by the QRC regarding its rationale for the removal of the quarterly operational report obligation. In the explanatory material accompanying the 2013 DAU, Aurizon Network highlighted the concern that market participants could draw inaccurate conclusions from the quarterly performance data in terms of how it might be predicted to affect end of year results. This information needs to be able to be put in context, recognising that supply chain performance could fluctuate considerably over the course of the year.

The QRC does not consider that the proposal to shift to annual public operational reporting is justified, stating that Aurizon Holdings Limited is already subject to ASX continuous disclosure requirements.<sup>29</sup> The ASX Listing Rules specify the disclosure obligation to be as follows:<sup>30</sup>

“Once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity’s securities, the entity must immediately tell ASX that information.”

This requirement is subject to a number of exclusions, for example:

“..the information comprises matters of supposition or is insufficiently definite to warrant disclosure...”

In other words, the disclosure obligation needs to be balanced against “the interests of the entity in not having to disclose information prematurely or where it would clearly be inappropriate to do so.”<sup>31</sup>

Information on the network’s operational performance in a single quarter may not be representative of actual performance for the entire financial year. Aurizon Network is particularly concerned at the suggestion that, in being unwilling to publish quarterly performance data, Aurizon Network is potentially withholding information that it should otherwise be disclosing to the market. Aurizon Network’s actual concern is that in being required to publicly disclose operational performance data each quarter, the information could *mislead* the market, unless the users of that information fully understand the broader context and the potential variations in throughput levels within the year.

Aurizon Holdings Limited is well aware of its obligations under the Listing Rules and takes them very seriously. If it has genuine concerns about the operational performance of the network to the extent that it could reasonably be expected to have a material effect on the price or value of its shares, it would disclose that information to the market under the continuous disclosure obligations. The

<sup>28</sup> For example, refer Table 10 in Volume 4 of the UT4 proposal.

<sup>29</sup> Queensland Resources Council (2013). p.76.

<sup>30</sup> ASX. ASX Listing Rules, Guidance Note 8, Continuous Disclosure: Listing Rules 3.1 – 3.1B.

<sup>31</sup> ASX. p.7.

satisfaction of its obligations under the ASX's Listing Rules is the responsibility of Aurizon Holdings Limited and it will remain fully accountable for the consequences of disclosing (or not disclosing) information.

On this basis, Aurizon Network remains committed to publicly disclosing operational performance data coinciding with the release of its end of year financial results. It is willing to look at confidentially supplying information to individual access holders on a more frequent basis (for example, via a secure portal), to provide more transparency in relation to performance under their contract and for the network as a whole, as well as to assist access holders in managing their contractual obligations. This is discussed in the following section.

#### **4.11.2 Contractual performance**

As stated above, Aurizon Network acknowledges that customers want better information, particularly on an individual level. This is important for two reasons. First, it is important in monitoring Aurizon Network's performance as a service provider under the contract. Second, customers need information to manage their access rights and obligations under the contract, including the consumption of TSEs and take or pay obligations.

The provision of information at an individual customer level needs to be considered in the context of the access agreement. The drivers cited above suggest that this information provision has two distinct purposes: one is to monitor contractual performance and the other is to make informed decisions about the management of access rights. The first purpose is also closely related to the incentive framework and therefore needs to be considered in that context.

Aurizon Network is committed to improving transparency, particularly at an individual customer level. It has therefore been in discussions with its customers to develop more appropriate KPI reports in the access agreements (including the inclusion of a standard set of KPIs in the Standard Access Agreement). An important part of this work is establishing what information is needed to satisfy the intended purpose. Aurizon Network will continue to work through these issues with industry in the coming months.

#### **4.11.3 Maintenance and asset condition reporting**

Recognising the issues that have been raised in relation to transparency, Aurizon Network is examining other areas in which reporting can be improved. One key area that has been identified in the industry submissions is maintenance. Aurizon Network is currently examining the provision of information to customers on planned versus actual maintenance activity on a confidential basis.

Another key area is asset condition. Some industry participants have questioned Aurizon Network's proposed removal of the UT3 obligation to undertake a condition-based assessment of the network at the end of each regulatory period, which is directly linked to the QCA's assessment of the opening RAB value for the next period and hence is a possible source of optimisation risk.

Aurizon Network remains firmly of the view that the linking of this condition-based assessment to the RAB value exposes it to an unreasonable and unacceptable level of regulatory risk, for which there is otherwise no regulatory precedent in Australia. The reasons for its concerns were detailed in Volume 2 of its UT4 proposal.

In saying this, Aurizon Network will commit to continue to undertake periodic condition-based assessments in the interests of accountability and improved transparency. This could be included as part of the reporting obligations in Part 10 of the 2013 DAU. However, the outcomes of this

assessment should not be able to be used to trigger a re-opening of the RAB value, or have any other form of financial penalty or consequence for Aurizon Network. It would also be necessary for the costs of the assessment, which can be material given the nature of the investigation and expertise required, be recoverable via Reference Tariffs.

**Aurizon Network is committed to improved transparency in reporting and information provision. It will examine the provision of information on performance against contract to individual access holders on a quarterly basis. It is also examining the performance metrics that are included in the contracts and has been consulting with industry on this. Aurizon Network will also continue to undertake periodic condition-based assessments in the interests of accountability and improved transparency, provided the outcomes are not linked to the RAB value and the costs of the assessment can be recovered via Reference Tariffs.**

## 4.12 Compliance and audit

Aurizon Network recognises that the audit regime provided for in the undertaking is an important dimension of ensuring accountability and engendering confidence in the integrity of the regulatory framework. Industry participants do not have access to all of the information required to assess whether or not Aurizon Network is complying with its obligations under the undertaking, including (but not limited to) non-discrimination, and rely instead on the integrity of the audit process.

Changes proposed in the 2013 DAU relate to the way in which an audit is triggered, as well as how the process is conducted. This was primarily aimed at improving efficiency. Some industry participants have queried the effectiveness of the audits and have also raised issues with the proposed removal of the automatic obligation to undertake annual audits.

Aurizon Network reiterates the importance of evaluating the audit regime within the context of the other accountability mechanisms contained in the undertaking framework, as well as the other powers the QCA has under the Act, as listed in section 3.7 above. In other words, while it is important to evaluate the effectiveness of the audit framework in isolation, regard needs to be given to the range of other mechanisms that are available. It is also important to understand the role of each mechanism and how they fit together in ensuring that Aurizon Network remains accountable for its obligations under the undertaking and the Act.

### 4.12.1 A more flexible audit framework

It is not Aurizon Network's intention to dilute the effectiveness of the audit regime. In its view, the proposed audit regime in the 2013 DAU is a more flexible framework that is designed to satisfy the purpose of the audit, which is to assess Aurizon Network's systemic compliance with its obligations under the undertaking, identify any systematic failures and ensure that they are remedied.

#### *Number of audits*

The 2013 DAU places no limitations on the number or timing of the compliance audits that the QCA may require. It does propose to limit the number of audits of its reporting obligations to once per year. This is because the reporting obligations are more procedural in nature, with established processes and timeframes. Otherwise, Aurizon Network is indifferent to the number of audits that are conducted, provided it is compensated for the costs of undertaking them (and has proposed amendments to Schedule F to address this). Under UT4, the QCA can order as many audits as it wishes.

### *Scope of audits*

The 2013 DAU does not limit the matters that can be subject to an audit, provided it relates to Aurizon Network's compliance with the undertaking. Proposed clause 10.7 provides that the QCA may request an audit if it has 'reasonable grounds'. Importantly, whether or not the grounds are reasonable is assessed by the QCA, not Aurizon Network. This reasonably broad scope would also capture matters raised by industry participants, for example:

- the audit could be triggered by a party raising a matter with the QCA (although Aurizon Network reiterates the concern stated in its UT4 proposal, which is that the audit mechanism should not become a de facto complaints mechanism);
- the QCA may request that an audit be re-done if it was not considered satisfactory; and
- there is a concern that a systemic failure identified in a previous audit had not been remedied.

Some industry participants suggested specifying the matters that will be subject to audit in the undertaking however this is considered unnecessary and indeed potentially more limiting than the current broad scope.

### *Appointment of the auditor*

One of the other issues that industry has raised is Aurizon Network's proposal to appoint the auditor (provided certain requirements are met). Aurizon Network is therefore proposing to amend the 2013 DAU to allow the QCA to annually approve an auditor to complete the necessary compliance audits.

### *Implementation of audit recommendations*

One of the recommendations made in submissions is that each year's audit should assess whether the previous year's audit recommendations have been implemented. Aurizon Network recognises the importance of ensuring that any systemic failures identified in the audit are remedied. The 2013 DAU already commits Aurizon Network to use its reasonable endeavours to implement any audit recommendations as soon as reasonably practicable (clause 10.8(j)). It should also be noted that the QCA has often followed up with Aurizon Network on its progress in implementing recommendations from an audit. Aurizon Network is happy for compliance with a previous audit report to be dealt with as part of the Audit Plan, if this is considered relevant to industry and/or the QCA.

### *Compliance Officer*

Some industry participants have suggested that the obligations of the compliance officer should be expanded to take all steps necessary to ensure that Aurizon Network is able to meet any obligation or activity imposed on it by the 2013 DAU. Aurizon Network recognises the role of the compliance officer in providing confidence in the access regime, including providing a single point of contact with responsibility for implementing and maintaining appropriate systems and practices within Aurizon Network's governance framework and to ensure Aurizon Network's compliance with its obligations under the 2013 DAU.

Aurizon Network will therefore replace clause 10.4 in the 2013 DAU with an obligation for it to nominate a compliance officer. This obligation will outline the matters relevant to the compliance officer's responsibility to ensure Aurizon Network is able to comply with its obligations in the 2013 DAU. Aurizon Network will also be obliged to notify the QCA of the person nominated as the



compliance officer at the commencement of the 2013 DAU and during the term of the 2013 DAU if at any time that nomination changes.

#### **4.12.2 Transparency**

Aurizon Network understands the need for transparency. One of the comments made in submissions is that a public version of the audit report should be posted on the QCA's website.<sup>32</sup> It should be noted that in developing the most recent Audit Plan with the QCA, Aurizon Network has already agreed that a public version of the audit report will be made available. It is considered appropriate to address this in the Audit Plan on an ongoing basis, and has been progressed with the QCA on this basis.

**Aurizon Network has proposed amendments in response to industry feedback and has agreed to reinstate the QCA's ability to approve the auditor. It will also include an obligation regarding the nomination of a compliance officer and the responsibilities they will have in ensuring that Aurizon Network complies with its obligations under the undertaking. Aurizon Network has also agreed to provide a public version of the audit report in the most recent audit plan.**

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<sup>32</sup> Asciano (2013).

### 4.13 Train Service Types

The 2013 DAU includes a new definition of Train Service Type. Submissions have questioned the rationale for this change and more detail has been requested on this proposal. This information is provided below.

As a matter of practice, Aurizon Network and operators have typically entered into access agreements which grant access rights for the operation of multiple types of train services between different origin and destination pairs for different customers (train service types). In addition, where an operator has required additional access rights for a new origin and destination pair for a customer, Aurizon Network and the operator have typically varied an existing access agreement to include those additional access rights. As a consequence, Aurizon Network's access agreements typically apply to multiple train service types.

In preparing the UT4 standard access agreements, Aurizon Network considered it appropriate to update the provisions to reflect how the access agreements are actually administered in practice. A review of the UT3 standard access agreements identified that:

- only a small number of provisions contemplated the existence of multiple train service types. For example, see the definitions of “First Escalation Date”, “Load Variation Table”, “Nominated Annual Train Services” and “Nominated Monthly Train Services” and Schedule 3 of the UT3 Standard Operator Access Agreement (SOAA);
- a number of provisions did not address (or clearly address) the existence of multiple train service types, when, in the context of the provisions, it would be more appropriate for them to be drafted to address the existence of multiple train service types. For example:
  - the Access Interface Deed provision in the UT3 SOAA contemplated that only one customer would be required to execute an Access Interface Deed, when typically an access agreement applies to train services types for multiple customers;
  - the suspension provisions in the UT3 SOAA allowed Aurizon Network to suspend an operator's right to operate all train services in circumstances in which it would be more appropriate to only suspend the operator's right to operate train services for an individual train service type;
  - the termination provisions in the UT3 SOAA allowed Aurizon Network to terminate the entire access agreement in circumstances in which it would be more appropriate to only terminate the agreement in respect of an individual train service type;
  - while the access charge schedule in the UT3 standard access agreements contained references to “Train Service type”, it did not clearly provide that the “Base Access Charges” (now referred to as “Access Charge Rates” in the UT4 standard access agreements) were specific to particular train service types and that the access charges were to be calculated separately for each train service type; and
  - the UT3 standard access agreements did not clearly address the fact that different train services types would have different compliance dates, commitment dates, expiry dates and customers.

- Many provisions did not address (or clearly address) the consequences of the inclusion of additional access rights for new train service types during the term of the access agreements. For example:
  - the Access Interface Deed provision in the UT3 SOAA did not address the requirement for a new customer to execute an Access Interface Deed in the event of the inclusion of additional access rights for a new train service type for the customer;
  - the security provision in the UT3 SOAA did not address the requirement for additional security in the event of the inclusion of additional access rights for a new train service type;
  - the interface risk management provisions in the UT3 standard access agreements did not clearly address the requirement for the Interface Risk Management Plan to be amended in the event of the inclusion of additional access rights for a new train service type; and
  - the rollingstock and rollingstock configuration authorisation provision in the UT3 standard access agreements did not clearly address the requirement for the authorisation of new rollingstock and rollingstock configurations in the event of the inclusion of additional access rights for a new Train Service type.

Consequently, Aurizon Network has included a new definition of “Train Service Type” and reviewed and updated the provisions of the standard access agreements to ensure that, where appropriate, they address the existence of multiple Train Service Types and the inclusion of additional Train Service Types during the term of an access agreement.

The introduction of the concept of Train Service Types does not change the way access rights are contracted, in that access rights were always granted for an origin-destination pair with a specified Train Service Description (such as Loading and Unloading Times, Distance, Dwell times). The Train Service Description for a Train Service Type does not include additional information that was not previously required under a Train Service Description in the UT3 standard access agreements.

## 5 The UT4 revenue proposal

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Some of the industry submissions have queried the reasonableness of Aurizon Network's proposed Maximum Allowable Revenue and Reference Tariffs. Aurizon Network's revenue proposal will be scrutinised in detail by the QCA and its consultants and it is therefore not proposed to address these questions here, which would largely involve restating what has already been submitted in the UT4 proposal, including the expert reports that accompanied that proposal.

One important area of clarification is the actual magnitude of the proposed tariff increases between UT3 and UT4, which was addressed in section 3.1.1. There are two other issues that Aurizon Network would like to respond to here, which is the rate of return and operating expenditure allowance.

### 5.1 Rate of return

#### 5.1.1 The need to assess the reasonableness of Aurizon Network's proposal

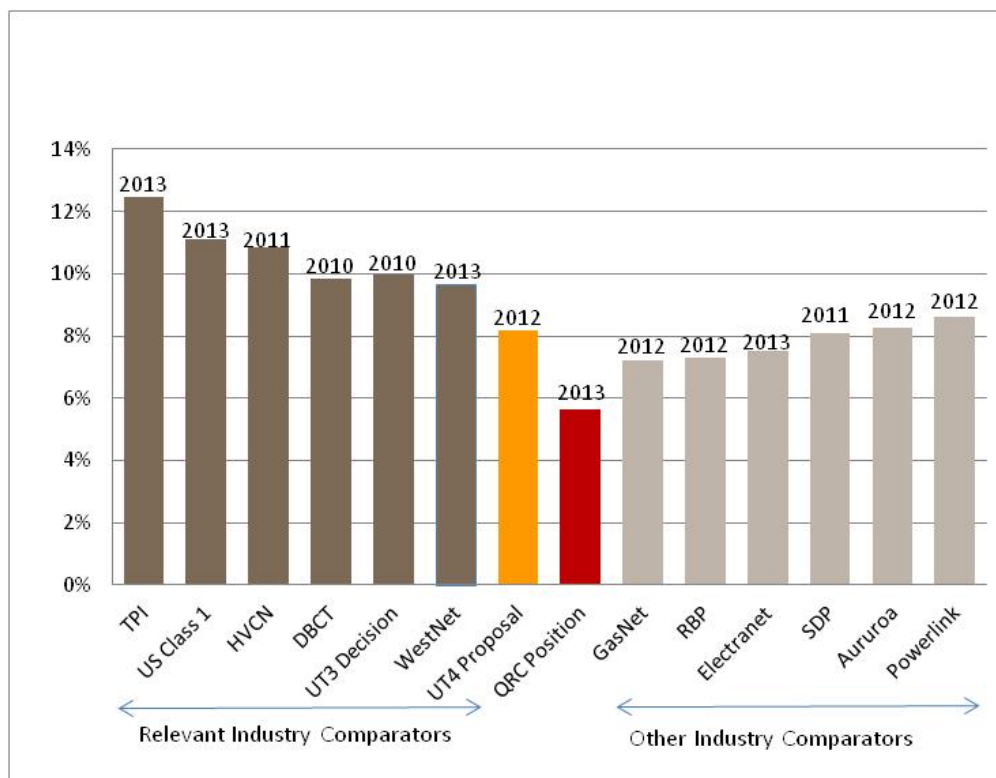
The assessment of rate of return is invariably one of the most contentious issues in regulatory processes given the inherent uncertainty in estimating the expected values for parameters that are not readily observable in the market.<sup>33</sup> Aurizon Network reiterates the importance of giving due regard to the relevant requirements in the legislation (in particular, s 168A(a)) and whether or not the proposed rate of return is reasonable, having regard to these requirements and relevant market evidence.

Aurizon Network has significant concerns with the QRC's proposed rate of return of 5.65% and does not consider that it meets the requirements of the Act. This is particularly the case when it is compared against other outcomes for infrastructure providers (including regulated businesses and port infrastructure owned by coal producers), as demonstrated in the figure below.

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<sup>33</sup> Even in the case of the risk free rate and debt margin, which are directly measured by reference to market data, it is necessary to assume that the current rates prevailing over the relevant averaging period represent the best available estimate of those parameters for the four years of the regulatory period.

Figure 1: Cross-industry<sup>34</sup> WACC comparisons (post tax nominal)



Indeed, the QRC's proposal is only around 65 basis points above what could otherwise be earned by placing the funds available for investment in a term deposit.<sup>35</sup>

One of the main arguments submitted by the QRC is that Aurizon Network's proposal does not reflect the gradual 'de-risking' of Aurizon Network that is seen to have occurred over past regulatory periods. These views do not consider the materiality of the changes or their relative efficiency compared to alternative approaches to managing or compensating for those risks (if feasible).

Many of the changes are also related to asymmetric and uncompensated risks that are not within the control of Aurizon Network management. It also continues to misclassify risks as systematic that are not reflected in the WACC, such as asset stranding risk.<sup>36</sup> In support of its position, the QRC submits a report by Castalia, which analyses Aurizon Network's risks and compares it to other regulated businesses.

Aurizon Network considers that there are a number of material factual errors in Castalia's analysis and it is currently preparing a further submission in response. It has also commissioned another independent expert report from SFG Consulting in response to the McKenzie and Partington report submitted by the QRC. In submitting this additional material, consideration also needs to be given to the implications of the QCA's Cost of Capital Methodology review, which is discussed below.

<sup>34</sup> Key: TPI – The Pilbara Infrastructure, HVCN – ARTC's Hunter Valley Coal Network, DBCT – Dalrymple Bay Coal Terminal, RBP – Roma to Brisbane Pipeline, SDP – Sydney Desalination Plant.

<sup>35</sup> Based on the best available rate (5.01%) for a \$250,000 investment for 60 months, as at the 12<sup>th</sup> of November 2013. Sourced from: [www.canstar.com.au](http://www.canstar.com.au)

<sup>36</sup> As stated in Aurizon Network's UT4 proposal, the QCA has previously acknowledged that the Capital Asset Pricing Model does not compensate the firm for asymmetric risk. Refer: Queensland Competition Authority (2010). Draft Decision, Aurizon Network's 2010 DAU – Tariffs and Schedule F, June, p.48.

### 5.1.2 The QCA's Cost of Capital Methodology review

The consideration of Aurizon Network's proposal is occurring in parallel with the QCA's Cost of Capital Methodology review, noting that details of the full scope, timing and final outputs of this process remain unknown. As part of this review, the QCA published a number of further methodology papers on 25 October 2013. This includes its own Discussion Paper on the risk free rate and the market risk premium and three papers prepared by external advisors (Martin Lally and PwC). It subsequently released a further paper on gamma on the 26 November. Submissions on these papers are due by 6 January 2014.

There are two issues that Aurizon Network would like to raise regarding this review. The first is its implications for the QCA's consideration of Aurizon Network's proposal and its obligations under the Act. Aurizon Network notes that, unlike other regulatory regimes, the QCA's Cost of Capital Methodology review is neither mandated nor regulated by statute in Queensland.<sup>37</sup> While Aurizon Network acknowledges that the QCA is entitled to develop and use its Cost of Capital Methodology to guide the exercise of its discretionary powers under the Act, the QCA is required to have regard to the specific circumstances relevant to Aurizon Network when applying its Cost of Capital Methodology to matters that directly affect Aurizon Network.

When the QCA is determining the rate of return to apply to Aurizon Network's asset base, Aurizon Network expects that the QCA will provide it with an opportunity to make specific submissions in relation to the appropriate rate of return that applies to it.

The second issue relates to management of the process and timeframes. As part of its consultation on the Cost of Capital Methodology review, the QCA has scheduled a workshop on 13 December. This is intended to cover issues that have arisen in the context of the QCA's Cost of Capital Methodology review "as well as a number of specific issues that are relevant to the QCA's consideration of Aurizon Network's 2013 DAU."<sup>38</sup>

The QCA has also flagged that it will be releasing "a number of additional papers" in late November that will address specifics of Aurizon Network's UT4 proposal (one of which has now been released). These papers are also expected to form part of the December workshop and further submissions will be invited. However, the timing of the submission on these additional papers raises some concerns. If the intention is to align the lodgement date with the current 6 January deadline, then this will not provide Aurizon Network with sufficient time to prepare an adequate response, particularly if the content of those papers is highly technical.

While Aurizon Network is committed to actively engage in the consultation as part of the QCA's Cost of Capital Methodology review, it is uncertain as to what the likely implications of this will be for the QCA's consideration of Aurizon Network's UT4 proposal. Accordingly, Aurizon Network is not proposing to lodge a more detailed response to the QRC's submission at this point. Aurizon Network considers that it is most efficient to submit one further comprehensive response, addressing the issues raised in the QRC's submission, any other issues emanating from the December 13 workshop and the additional papers that are yet to be released by the QCA. The timing of this further response will depend on the QCA's final lodgement date for submissions under its Cost of Capital Methodology review.

<sup>37</sup> See for example, the National Electricity Rules and the Railways (Access) Code 2000 (WA).

<sup>38</sup> Queensland Competition Authority. <http://www.qca.org.au/rail/Qrnetwork2013DAU/CostofCapital>

## 5.2 Operating expenditure

As stated above, Aurizon Network's proposed operating expenditure allowance for the UT4 period is currently being reviewed in detail by the QCA and its consultants. Aurizon Network is not proposing to repeat its explanation of the methodology used in developing its UT4 allowance here. However, it would like to clarify some of the comments made in the industry submissions.

### 5.2.1 Clarification of 'stand alone' cost methodology

It has been commented that Aurizon Network has used "stand alone cost allocators" in its corporate cost build-up.<sup>39</sup> This is then seen to lead to an over-allocation of Aurizon's corporate costs to Aurizon Network, which will also provide the above rail business with an unfair advantage relative to its competitors.

Section 10.2.4 in Volume 3 of Aurizon Network's UT4 proposal sets out the process that was used to allocate corporate overhead costs. As outlined in that document, one of the reasons why Aurizon Network's corporate overhead allowance was understated in UT3 was because:

- it was based on a standard ratio of corporate overheads charged to each business unit via intercompany charges (of 4.5%): and
- there were corporate overhead costs that were not reflected in the intercompany charge, and therefore were not allocated to the business units, that would be incurred by a stand alone below coal network business.

The approach taken in UT4 involved identifying all of the corporate overhead activities that would typically be incurred by a stand alone below rail coal network business. An appropriate portion of the costs relating to these corporate overhead activities actually incurred by the Aurizon Group was then allocated to Aurizon Network using causal and blended allocators, as explained in Volume 3 of the UT4 proposal and the report from Ernst and Young presented in Annex G to that proposal. Allocation percentages were based on data for the 2012/13 budget and the allocators were applied to forecast costs.

There is an important distinction between the activities that are reflected the corporate cost allowance and the measurement of those costs. In constructing the corporate overhead allowance, Aurizon Network has sought to identify all of the activities and functions that would be incurred by a publicly listed, stand alone, below rail coal network business of commensurate scale, some of which were not included in the UT3 allowance.

Once the activities have been identified, they need to be costed. The UT4 allowance is estimated by allocating a percentage of Aurizon Holdings Limited's forecast costs. This means that to the extent that there are economies of scale benefits within the Aurizon group, an appropriate share of these benefits is reflected in Aurizon Network's proposed corporate overhead allowance for UT4.

### 5.2.2 Benchmarking

Aurizon Network understands the importance of benchmarking in assessing the reasonableness of its proposed cost allowances and accordingly submitted a benchmarking analysis undertaken by Ernst and Young as part of its UT4 proposal.

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<sup>39</sup> Asciano (2013). p.47.

One of the concerns often expressed in undertaking this form of analysis is the unique nature of Aurizon Network's central Queensland coal network and the difficulties in finding appropriate comparators. Even where such comparators are found, adjustments then need to be made to reflect differences in factors such as ownership structure, the scale and scope of activities, environment and operations. This is relevant when benchmarking costs as well as identifying and analysing efficiencies.

This is particularly the case when comparing Aurizon Network against ARTC and its Hunter Valley coal network, as advocated by the QRC.<sup>40</sup> ARTC owns and manages some 8,500 km of track in five states, moving a range of commodities (including coal) and general freight. It therefore has a considerably broader asset base to allocate costs such as train control, which means that these costs could be expected to be considerably lower than Aurizon Network's costs. Publicly available numbers would need to be appropriately adjusted for such differences to ensure like for like comparisons can be made.

The efficient costs associated with the benchmark firm must be reviewed from the perspective of the stand alone provision of below rail services specific to that market and scale of operations. Aurizon Network considers its proposed operating costs, including corporate overhead allocations, are well inside this envelope.

Aurizon Network does also not agree with the QRC's proposition that Aurizon Network's business is relatively simple, being "regulated, self-contained and geographically concentrated".<sup>41</sup> On the contrary, as highlighted in the UT4 proposal, the management of the CQCN has become an increasingly complex task, with multiple systems (some of which are connected) and port destinations, compared with a single trunk network and port precinct in the Hunter Valley.

Aurizon Network also highlights the role of the Hunter Valley Coal Chain Coordinator (HVCCC), which is responsible for day to day planning and scheduling and long term capacity planning. It is therefore expected that the HVCCC would be incurring at least some of the costs that ARTC would otherwise incur in its absence. This contrasts with the situation in the CQCR, where Aurizon Network retains full responsibility for these activities and costs, at least as they relate to the below rail network. It is not possible to assess how these costs might be allocated in the Hunter Valley, as very limited information is published on the ACCC's website (with the most relevant regulatory process being the annual compliance review). No cost information is publicly available for the HVCCC.

Finally, it is noted that the QRC was critical of the making of comparisons based on train kilometres.<sup>42</sup> Aurizon Network notes that ARTC uses train kilometres as an allocator of certain costs, including train control and corporate overhead.<sup>43</sup> Given the scale and geography of non-coal operations on the broader ARTC network, the use of train kilometres will substantially reduce cost allocations to coal carrying train services within the Hunter Valley.

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<sup>40</sup> Queensland Resources Council (2013). Pricing Part 4, Operating Expenditure.

<sup>41</sup> Queensland Resources Council (2013). Pricing Part 4, Operating Expenditure, p.1.

<sup>42</sup> Queensland Resources Council (2013). Pricing Part 4, Operating Expenditure, p.6.

<sup>43</sup> Australian Rail Track Corporation (2013). 1 January to 31 December 2012 Submission to Australian Competition and Consumer Commission in respect of Hunter Valley Access Undertaking, Roll Forward Asset Base Ceiling Test Unders and Overs Account, pp.22-23.



## Annexure A – Detailed response to undertaking and schedules (Volume 1)

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
<b>Intent and Scope [Part 2]</b>					
1.	Statement of intent in relation to non-discriminatory treatment	2.2	It has been submitted that the removal of clause 2.2 from Part 2 of the 2010 Access Undertaking (AU) is seen as substantially weakening Aurizon Network's commitment to non-discriminatory treatment.	Aurizon Network has no intention to weaken the commitment to non-discrimination in Part 2 (or any other part) of the 2013 Draft Access Undertaking (DAU). The concept of non-discriminatory treatment is expressed in clause 2.2(b)(i) and (e)(iii) in the 2013 DAU. A clear statement of the principles of non-discrimination remains in Part 3.  Aurizon Network will, nevertheless, include an additional clause in Part 2 to reinforce this point.	Amend clause 2.2 to include two new provisions which specify that the intent of the 2013 DAU is to:  (a) ensure Aurizon Network acts in a manner that is consistent with the unfair differentiation obligations under sections 100(2) and (3) and 168C of the <i>Queensland Competition Authority Act 1997</i> (QCA Act); and  (b) ensure Aurizon Network will apply the provisions of the 2013 DAU consistently to all Access Seekers, Access Holders, Train Operators, Access Applications and negotiations for Access, except where there is an express provision in the 2013 DAU to the contrary.
2.	Commercial negotiation	2.2(a)	It has been requested that the word "commercial" be removed from "commercial negotiation".	Aurizon Network considers there is no apparent difference between a 'negotiation' and a 'commercial negotiation'.	Aurizon Network will delete the word "commercial" from clause 2.2(a).
3.	Removal of the ultimate holding company deed from Part 2	n/a	Feedback received is that removal of the ultimate holding company deed from Part 2 to Part 3 of the 2013 DAU could suggest that this Deed is specific to ring-fencing and does not have broader application (and indeed the Deed has been drafted in a manner that reflects this narrower intention).	Whilst Part 3 is titled 'Ringfencing' it also includes the general non-discrimination provisions. Under the ultimate holding company deed, Aurizon Holdings commits, amongst other matters, to the entirety of Part 3. The ultimate holding company deed has a wider application than solely ringfencing matters.	No change is proposed based on the further information provided by Aurizon Network to assist the review of the 2013 DAU.
4.	Principles in relation to coal supply chains	2.2	Aurizon Network has not included the provisions from the 2010 Access Undertaking (AU) in the 2013 DAU, which required	Part 2 of the 2013 DAU only covers the intent and objective of the 2013 DAU. The objective of supply chain cooperation and performance is included in clause 2.2(e)(iv). As such, Part 2 does not include provisions	No change is proposed based on the further information provided by Aurizon Network to assist the review of the

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
			<p>Aurizon Network to:</p> <ul style="list-style-type: none"> <li>- establish principles and processes to guide cooperation of all elements of coal supply chains (in respect of which access forms a part) in order to seek to maximize the performance of those supply chains; and</li> <li>- do so on an annualised basis.</li> </ul> <p>Feedback received is that these provisions should not have been removed.</p>	that involve establishing actual processes – it is the remainder of the 2013 DAU which includes the operative provisions. Aurizon Network considers that it is appropriate for matters in relation to the participation in the coal supply chain to be dealt with in Part 8 of the 2013 DAU (clause 8.8).	2013 DAU.
5.	Core Access related functions narrows scope of Undertaking	2.3	Feedback received is that the approach of Aurizon Network in seeking to limit the scope of the 2013 DAU to 'Core-Access-related functions' is unacceptable as it narrows the scope of the 2013 DAU.	<p>'Core access related functions' is a term used in Part 3. It is used in provisions that give effect to Aurizon Network's functional separation from the Aurizon Group. It is not relevant to the scope of the 2013 DAU.</p> <p>Rather, the 2013 DAU applies to the negotiation and provision of Access (clause 2.3(a)) which is defined as "the non-exclusive utilisation of a specified section of Rail Infrastructure...". Rail Infrastructure is then defined with reference to both the <i>Transport Infrastructure Act 1994</i> and the QCA Act, such that the scope of the 2013 DAU mirrors the declaration itself.</p>	No change is proposed based on the further information provided by Aurizon Network to assist the review of the 2013 DAU.
6.	Associated Services	2.3(a)	<p>Feedback received is that the 2013 DAU should include a definition of 'Associated Services', which identifies ancillary matters that are practicable only for Aurizon Network to provide. 'Associated Services' should include:</p> <ul style="list-style-type: none"> <li>- RIM and train control for all rail spurs;</li> <li>- Level and other crossing services;</li> <li>- Leasing to Customers of corridor land and land owned by Aurizon Network;</li> <li>- Payment for Associated Services.</li> </ul>	The 2013 DAU applies only to the negotiation and provision of Access to the declared service, and is not applicable to the negotiation or provision of services other than Access (other than clause 2.4 in relation to the supply of electric energy).	Aurizon Network considers the request is outside of the scope of the regulatory regime. Aurizon Network will continue discussions with customers on this issue, and remains willing to discuss with customers the commercial model for the provision of these services.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
7.	Review relevant parts of Private Infrastructure Compliance with Standards	2.3(a)	It has been suggested that Aurizon Network should be required to provide as part of Associated Services, assurance work regarding the compliance of private infrastructure with standards.	Whilst Aurizon Network requires that relevant parts of the Private Infrastructure have been designed and constructed in line with standards, these assurance works need not be undertaken by Aurizon Network.	As with associated services, this is beyond the scope of the regulatory regime. No change is proposed based on the further information provided by Aurizon Network to assist the review of the 2013 DAU.
8.	Notification of ownership of land	2.3(b)(ii)	It is suggested that Aurizon Network be required to advise access holders promptly if Aurizon Network does not own or have a legal right to allow access holders to access land on which Rail Infrastructure is situated.	Aurizon Network has retained the obligation from the 2010 AU to provide access seekers with information regarding access to land that is not within Aurizon Network's control. This information is provided during the negotiation period. (see clause 4.9.2(a)(ii) and Sch A, clause 2).	No change is proposed based on the further information provided by Aurizon Network to assist the review of the 2013 DAU.
9.	Uncapitalised term: 'train operations agreement'	2.3(d)	Feedback received is that it is not clear what the uncapitalised term "train operations agreement" means in clause 2.3(d). This clause already provides for the inclusion of a "Train Operations Agreement" as defined.	The use of "train operations agreement" in clause 2.3(d) was intended to refer to a Train Operations Access Agreement entered into under the 2010 AU. This was drafted prior to the QCA's approval of the alternate form of access agreement. The references to "train operations agreement" can now be deleted.	Aurizon Network will remove reference to the uncapitalised 'train operations agreement'.
10.	Obligation to supply electric energy	2.4	There is no specific obligation on Aurizon Network not to refuse to sell or supply electric energy and there is no right to go to dispute resolution in relation to any dispute. This is not seen as acceptable.	Whilst electricity supply is not included as part of Access, Aurizon Network <u>will</u> be obliged to supply electric energy under clause 2.4 of the 2013 DAU. This commitment is provided regardless of whether Aurizon Network supplies electric energy to a related party operator or not.	Aurizon Network considers the obligation to supply electric energy provides greater certainty to customers than the 2010 AU drafting.  No change is proposed based on the further information provided by Aurizon Network to assist the review of the 2013 DAU.
11.	Cost of supply of electric energy	2.4(a)(ii) and 2.4(b)(i)	It has been commented that the inclusion of the words "except to the extent that any Reference Tariff includes EC" creates uncertainty as to what is governed and not governed in relation to Aurizon Network's supply of electric energy. For example it should be clarified how the AT <sub>5</sub> tariff would be treated.	Through the approval of the AT <sub>5</sub> tariff, the QCA has oversight of the cost to access the electric traction infrastructure.  Aurizon Network recovers its costs associated with the on-selling of electric energy to access holders and train operators through EC, which is subject to review by the QCA.	Aurizon Network will: <ul style="list-style-type: none"> <li>- delete clause 2.4(a)(ii) of the 2013 DAU; and</li> <li>- clarify that EC will be based on Aurizon Network's costs associated with the on-selling of electricity.</li> </ul>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
12.	Reference to Schedule G	2.4(c)	It is suggested that the reference to Schedule G should be removed as it assumes that the principles for pricing electric traction services in the Blackwater system is approved.	Aurizon Network acknowledges that the principles for pricing electric traction services in the Blackwater system are not yet approved. These provisions were included in the 2013 DAU to reflect Aurizon Network's current proposal in relation to the pricing of electric traction services.	Aurizon Network will reflect in the 2013 DAU the provisions approved by the QCA in relation to the pricing of electric traction services in the Blackwater system.

### Ringfencing [Part 3]

13.	Primary function of Aurizon Network	3.1(c)	It is proposed that clause 3.1(c) should be amended so that the primary function of Aurizon Network is to manage the provision of below rail services.	The intent of clause 3.1(c) is to provide context in relation to what the provisions in Part 3 are seeking to address, in particular, to clarify that Aurizon Network provides both regulated and non-regulated services. The primary function of Aurizon Network, in relation to the regulated services is addressed in clause 3.4.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
14.	Purpose of Part 3	3.1(h)	Industry has requested the reinstatement of the provision in UT3 that Aurizon Network is to be managed independently of the provision of above rail services.	Aurizon Network will amend this clause to clarify the purpose of Part 3.	Aurizon Network will amend clause 3.1(h) to include that the purpose of Part 3 includes regulating the provision of Access by Aurizon Network to ensure it is managed, and supplied, independently from other members of the Aurizon Group who compete in the upstream and downstream markets that depend on access to the declared service.
15.	Non discrimination of services competing in market	3.2	<p>Feedback received is that the non-discrimination principles should :</p> <ul style="list-style-type: none"> <li>- refer (not only to) related operators but also Aurizon Network itself and any other related party;</li> <li>- extend to ports in Qld and any railways in QLD (other than CQCN);</li> <li>- clarify that related entities includes one that represents a port or non-CQCN railway in which any part of the Aurizon Group holds a direct or indirect interest.</li> </ul>	<p>Aurizon Network acknowledges the comments made by customers and has agreed to extend Part 3 to cover the interests of the Aurizon Group in port investments.</p> <p>It should be noted that the non-discrimination provisions in the QCA Act (168A(c)), preventing or hindering access (s.100(2), 104 &amp; 125) and unfair differentiation (s.168C) are in relation to parties who are seeking access to the declared service and are competing in a market with the access provider or related body corporate of the access provider.</p>	Aurizon Network will amend clause 3.2 to extend the non-discrimination prohibition to ports which are owned or operated by a member of the Aurizon Group, and where the relevant port is connected to the Rail Infrastructure.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
16.	Aurizon Group non-discrimination	3.2	<p>Similar to the issues raised in relation to Part 2 of the 2013 DAU ,comments have been made in relation to the amendments to the non-discrimination principles. They are seen to have been reduced in scope to apply only to Aurizon Network, with the removal of wording requiring Aurizon Network to procure that its related parties do not engage in discrimination (similarly to the changes to Part 2 of the 2013 DAU).</p> <p>Examples are provided of non-discriminatory conduct that could occur, for example: fast tracking capacity investment to the benefit of the related party operator; less frequent or inferior maintenance of third party operator dominated spurs; and providing more favourable access prices for a mine that also secured its haulage services with a related operator.</p>	<p>Aurizon Network would have committed a serious breach of the undertaking and the QCA Act if it engaged in the type of conduct referred to here – it does not have the ability or intent to engage in such conduct.</p> <p>The inclusion of the general non-discriminatory provisions in Part 3 of the undertaking (rather than as previously in part 2.2 and 3.2) ensures that, as per the ultimate holding company deed, the Aurizon Group must not act in a way that will constitute a breach of Aurizon Network's obligations in relation to the non-discrimination. It is therefore incorrect to say that only Aurizon Network is bound by these provisions.</p>	No change is proposed based on the further information provided by Aurizon Network to assist the review of the 2013 DAU.
17.	Provision of ultimate holding company deed	3.3 and Sch D	The 2010 AU provided for Aurizon Network to procure a deed from the ultimate holding company. Feedback received is that it is insufficient for the 2013 DAU to only provide for Aurizon Network to request the provision of the deed.	<p>Recital C in the ultimate holding company deed of the 2013 DAU states that Aurizon Network will request, and that Aurizon Holdings has agreed to provide, the ultimate holding company deed as a result of the QCA's decision to approve the Access Undertaking.</p> <p>Aurizon Network (a subsidiary company) cannot legally compel the management or Boards of related bodies corporate to do or not do anything, hence the removal of the term 'procure'. However the intent and consequence is the same, that is, if Aurizon Holdings Limited does not execute the deed in favour of the QCA, and if Protected Information is provided to Aurizon Holdings, Aurizon Network will be in breach of the undertaking. This is equivalent to the position in the 2010 DAU.</p>	No change is proposed based on the further information provided by Aurizon Network to assist the review of the 2013 DAU.
18.	General obligation of Aurizon Parties	3.1	The 2010 AU provided for a deed which had a general obligation upon the ultimate holding company to ensure that all Aurizon Parties would take such actions as are necessary to enable Aurizon Network to comply with its	Whilst Aurizon Holdings Limited is not regulated, it is recognised that this is a significant issue for customers.	Aurizon Network will include a new provision (clause 3.1(c)) in the ultimate holding company deed which provides for a general obligation for Aurizon Holdings to not take any action that

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
			obligations under the undertaking where it is relevant for an Aurizon Party to do so. It has been highlighted that there is no such general obligation in the deed provided in the 2013 DAU.		would cause Aurizon Network to be in breach of its obligations under the Access Undertaking.
19.	Failure to comply with the ultimate holding company deed	3.3	Comments have been made that the consequences of the failure to provide, or comply with, the terms of the deed by the ultimate holding company are very weak and do not provide a serious incentive on Aurizon Network or its ultimate holding company to comply with these terms.	<p>The requirement that Protected Information will not be disclosed to any person outside of Aurizon Network, if the ultimate holding company deed is not provided or complied with, is the same as the provisions in the 2010 AU.</p> <p>The maintenance of the voluntary ultimate holding company deed reflects Aurizon Holdings' commitment to a robust access regime. The consequence for not providing the deed is equivalent to the provisions in the 2010 AU.</p>	No change is proposed based on the further information provided by Aurizon Network to assist the review of the 2013 DAU.
20.	Aurizon Network primary functions	3.4	It is suggested that the definition of 'core access related functions' should be broadened to cover the 'primary functions' identified in the 2013 DAU.	The core access related functions are intended to reflect the functional separation model in UT3. Aurizon Network is aligned with industry in ensuring (at a minimum) there are no fewer functions included in UT4 than was the case in UT3.	<p>Aurizon Network agrees to amend clause 3.4(b) to make the core access-related functions consistent with clause 3.4(a), namely, the provision and management of Rail Infrastructure in a manner consistent with its role as a Rail Infrastructure Manager under the Rail Safety Act, and to provide and manage Access to the Rail Infrastructure.</p> <p>For the avoidance of doubt, it is also proposed to amend clause 3.4(b) to include the administration of the process for network development, planning, studies and expansion contained in Part 8.</p>
21.	Transfer of Rail Infrastructure	n/a	Comments have been made questioning the removal of clause 3.8.2 from the 2010 AU, which provided an obligation on Aurizon Network to take over rail infrastructure owned by other Aurizon parties if it is proven to form	In the event another Aurizon Party owns Rail Infrastructure, the QCA may require that party (not Aurizon Network) to provide an undertaking in relation to that declared service if necessary. This is because the terms of s 250 of the QCA Act would apply to automatically declare that asset. The QCA has no power	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 AU.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
			part of the declared service.	to require the divestment of assets from one entity to another, nor is it considered appropriate for the QCA to be able to compel this.	
22.	Rail Transport Infrastructure Definition	3.4(a)	<p>Key comments made in relation to this clause include:</p> <ul style="list-style-type: none"> <li>- given the ambiguities around the definition of 'rail transport infrastructure', the 2013 DAU should retain an assurance that line diagrams 'red track' reflects all transport infrastructure;</li> <li>- the QCA should retain independent oversight of changes to the line diagrams. The 2013 DAU should provide an opportunity to seek conversion of incorrectly allocated 'blue track' to 'red track'.</li> </ul>	<p>In the 2013 AU line diagrams are still required to be provided and are included in the preliminary information that is publicly available on Aurizon Network's website (clause 4.2 and Sch A). The line diagrams identify rail transport infrastructure that is managed by Aurizon Network, consistent with both the <i>Transport Infrastructure Act 1994</i> and the QCA Act, and other rail infrastructure.</p> <p>To the extent a party considers that parts of the rail network identified as 'other rail infrastructure' should be 'red track', a complaint can be made through the complaints handling process for non-compliance with the undertaking. Alternatively, a determination can be sought under the QCA Act to have the infrastructure included as part of the declared service. These mechanisms ensure there is QCA oversight of the line diagrams.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 AU.
23.	Access-related Functions	3.4(b)	It has been suggested that "Core Access-related Functions" should be termed "Access-related Functions".	Aurizon Network is indifferent to the name of the term.	Aurizon Network will amend 'Core Access-related Functions' to 'Access-related Functions'.
24.	Functions performed by Aurizon Network	3.4(b)	It has been suggested that other parts of Aurizon Holdings, including any part of it that has a direct commercial interest in restricting competition in the above rail market, could undertake Core Access-related Functions.	It is not Aurizon Network's intention for the Core-Access-related Functions to be performed by any other party other than Aurizon Network (see clause 3.5(a)). It is acknowledged that this could be clarified by minor amendments to clause 3.4(b).	In addition to the amendments in item 20 above, Aurizon Network will amend 3.4(b) to clarify that it is only Aurizon Network that will perform the Core Access-related Functions identified.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
25.	Unregulated services	3.6(b)(v) and 3.7	<p>Comments have been made regarding the provision of unregulated services, including:</p> <ul style="list-style-type: none"> <li>- if other services are going to be referred to in the 2013 DAU and/ or Aurizon Network no longer has as its primary function the management of the provision of below rail services, then much more detail is needed in respect of those unregulated services;</li> <li>- Aurizon Network is seeking to conduct other activities that are not regulated. Any unregulated activities should be scrutinised by the QCA;</li> </ul> <p>to aid in the prevention of discrimination, Aurizon Network staff should be prevented from undertaking non core access activities.</p>	<p>Examples of unregulated services in competitive markets include:</p> <ul style="list-style-type: none"> <li>- construction of mine specific rail infrastructure or private rail infrastructure</li> <li>- maintenance of rail infrastructure that is not Rail Infrastructure.</li> </ul> <p>This is further discussed in Part 1 in relation to Associated Services .</p> <p>It is reiterated that it is the declared service that is provided by Aurizon Network that is regulated, not Aurizon Network. The accounting separation requirements specify how these services 'interface' with the declared service. The QCA has no power to regulate unregulated services.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
26.	Provision of operation or marketing of Train Services in respect of Core Access- related Functions	3.5(b)	<p>It is questioned how the operation or marketing of Train Services could be required in respect of a Core Access related function.</p>	<p>This clause does not operate to allow Aurizon Network to compete in the above rail services market it is only intended to facilitate:</p> <ul style="list-style-type: none"> <li>- the operation of work trains in relation to the maintenance of the Rail Infrastructure;</li> <li>- the operation or marketing of maintenance services (for example plant or work trains) on private infrastructure.</li> </ul>	<p>AN will include:</p> <p>"nothing in this clause 3.5(b) allows Aurizon Network to compete with above rail operators in the market for Above Rail Services on the Rail Infrastructure."</p>
27.	Staffing of Aurizon Network	3.6	<p>This clause includes the term 'primarily' in the context of duties undertaken by employees.</p> <p>It has been questioned what "primarily" means. Further, it is suggested that the implications of the reference to employees whose duties "primarily" involve the performance of Core Access-related Functions, means that:</p> <ul style="list-style-type: none"> <li>- there is no obligation on Aurizon Network in relation to employees who perform core access-related functions as part of</li> </ul>	<p>The use of the term 'primarily' is intended to indicate that there are some circumstances where Aurizon Network employees may undertake activities that are not core access-related functions. These employees remain subject to the prohibition on taking directions from a related operator.</p> <p>The structure of this clause comes from Telstra's Structural Separation Undertaking, which has been approved by the ACCC. In that clause, the term 'principally' is used in place of 'primarily'. Aurizon Network is indifferent between these two terms.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.



Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
			<p>their role, but they do not do so primarily;</p> <ul style="list-style-type: none"> <li>- such employees could work for an Aurizon Party and could take direction from Aurizon Network's related operator at the same time.</li> </ul>		
28.	Secondment of Aurizon Network employees	3.6(b)(ii) and (iii)	<p>Feedback provided was that much stricter criteria should be included in clause 3.6(b)(ii) and (iii) in relation to secondments of employees.</p> <p>For example, clause 3.4.3(c) of the 2010 AU stated that if activities affect or could affect the access of third party access holders or seekers, then Aurizon Network must ensure no Aurizon Network employees were transferred to Aurizon Network's related operator or a working group whose members include employees of a related operator. It was proposed that as a minimum, these provisions should be reinstated and should also apply in the reverse situation where employees of an Aurizon Network related operator are transferred to Aurizon Network.</p> <p>It was also submitted that secondments between Aurizon Network and related parties should be prohibited (unless approved by the QCA), even where such a secondment would be in the course of an employee's duties.</p>	<p>Secondments in a large corporate group such as Aurizon Holdings Limited are commonplace and necessary from time to time. However, in acknowledgement of the feedback received, Aurizon Network agrees to introduce provisions to prevent the short term secondment of employees from 'high risk' areas of Aurizon Network.</p> <p>Aurizon Network emphasises that the 2013 DAU is significantly stricter on employee separation than was the case under the 2010 AU. For example, the vague concept of "working groups" has been replaced with an express prohibition on Aurizon Network employees taking directions from a related operator.</p>	Aurizon Network will amend these provisions to prohibit the short term secondments of employees from high competition risk areas of Aurizon Network, including Aurizon Network management.
29.	Accounting Separation	3.7	<p>While there is support for the proposed framework in the 2013 DAU, it has been suggested that consequential amendments to the QCA approved Costing Manual will be required given Aurizon's increasingly varied interests in up and downstream markets, as well as the recent changes in Aurizon's structure.</p>	<p>A Costing Manual for Aurizon Network was approved by the QCA on 24 October 2013. It is also noted that the QCA has a power under the QCA Act to prepare a Costing Manual where Aurizon Network fails to do so to the QCA's satisfaction (s159).</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
30.	Management of Protected Information	3.11(j)	An issue that has been raised is that an operator would need assurance that an end user would only be provided information related to that particular end user's access rights in an operator's Train Operations Agreement.	The inclusion of the term "relevant" end user is intended to ensure that the terms of the Train Operations Agreement would be provided to the end user to whom they relate.	Aurizon Network acknowledges this feedback and will review the drafting to align with this intent.
31.	Definition of Protected Information	3.11	It has been proposed that Protected Information should be a subset of Confidential Information, which should include a broader range of information (being communications, documents and information held, obtained or created by Aurizon Network regarding any access-related function).	The term 'Protected Information' should be retained for the reasons given in the Aurizon Network explanatory material accompanying the UT4 proposal. In particular, it is considered necessary to distinguish information which is protected by the undertaking as distinct from information that is confidential for another reason (which is important for compliance purposes). Aurizon Network is agreeable to amending the definition of Protected Information to broaden it, as requested.	Aurizon Network will amend the definition of Protected Information to include a broader range of information such as, communications, documents and information held, obtained or created by Aurizon Network regarding any [Core] Access-related Function.
32.	Confidentiality Deed.	n/a	It has been requested that the standard form Confidentiality Deed be retained in 2013 DAU.	<p>Aurizon Network is mindful of the number of standard agreements that form part of the undertaking (amounting to some 1,600 pages). It is also noted that operators and customers regularly negotiate confidentiality arrangements (on non-standard terms) with Aurizon Network without issue, including in relation to non-access related matters.</p> <p>It is therefore proposed to provide a standard form Confidentiality Deed as part of the preliminary information. To the extent that agreement cannot be reached as to the terms of the Confidentiality Deed, the dispute resolution provisions in the undertaking would apply.</p>	Aurizon Network will include an obligation to publish a standard form Confidentiality Deed as part of preliminary information.
33.	Aggregation of protected information	Section D – Protected information, clause 3.15 – 3.18	Feedback received regarding the disclosure of aggregated information is that this should only be disclosed with permission from the providers of the information.	Aggregated information is provided as a means of balancing the need for publicly available information with the need to keep commercially sensitive information confidential. The purpose of aggregation is to de-identify information so that it cannot be attributed to an individual third party access seeker, holder or operator.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.

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34.	Audit of Protected Information Register	3.19	It has been suggested that clause 3.19(d) should include a process where the QCA audits the Protected Information Register as part of its annual audit process to ensure Aurizon Network has complied with its obligations in relation to the handling of Protected Information.	There is considerable flexibility in the audit provisions in the 2013 DAU. The QCA is able to include the Protected Information Register in the scope of the Audit under clause 10.7 if it chooses to do so.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
35.	Details to be included in Protected Information Register	3.19	It has been suggested that this register must contain details of all disclosures and dates for access to be reviewed.	The date of review and expiry for authorisation to access Protected Information is included in the Protected Information Register (clause 3.17(f)).	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
36.	Mandatory Protected Information Training and Exit Certificates	3.20	Feedback received is that exit certificates and debriefing sessions should also be undertaken for all employees ceasing employment with Aurizon Network (not just those going to work for another business unit in the Aurizon Group).	Aurizon Network recognises the importance of ensuring that its employees remain aware of their obligations in relation to Protected Information.	Aurizon Network will expand the requirement for exit certificates and debriefing sessions to be undertaken for all Aurizon Network employees that have access to Protected Information ceasing employment with Aurizon Network.
37.	Mandatory training	3.20	It has been commented that the mandatory minimum training requirements in the 2013 DAU are too narrow and should apply to all staff, with more detailed training for staff in [Core] access-related functions or who have access to confidential information.	Aurizon is prepared to expand the training program. However, it is not necessary to train all employees in the Group (totalling around 8,000 people), noting the majority are operational employees, and many are not in coal or Queensland business units.	Aurizon Network will expand the minimum training requirements to not only include people who have access to Protected Information but to people in 'high risk' areas, such as employees in the Marketing Division (excluding non-coal), Legal, Risk and Audit and Policy.
38.	Infringement penalty regime	3.22	Feedback received is that there are no meaningful consequences should Aurizon Network breach the undertaking. This means that there is no meaningful incentive on Aurizon Network to comply and there will be no genuine compliance culture within the business.	It is not accepted that there are no meaningful penalties for non-compliance. Under the QCA Act, a court can order the payment of compensation (s.153 and s 158A). These amounts could be substantial.  The QCA Act does not provide for the ability to impose an infringement penalty regime. In any case, it is noted that the decision to issue an infringement notice is not a decision to impose a penalty, as it is not a determination of substantive rights. Recourse to judicial power would still be necessary, as per the current QCA Act.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
39.	Breach of ultimate holding company deed complaint	3.22	It has been suggested that the complaints regime should be expanded to allow access seekers/holders and operators the ability to lodge a complaint regarding a breach of the ultimate holding company deed.	<p>Aurizon Network considers the consequences of the ultimate holding company failing to comply with the ultimate holding company support deed are significant as “the Undertaking will cease to authorise the disclosure of Protected Information to any person or entity outside Aurizon Network.” (clause 3.3(b)) This would therefore include not only employees of the ultimate holding company providing support or governance services to Aurizon Network but also external consultants and contractors.</p> <p>To the extent that a party considers the ultimate holding company has breached its obligations, that party can make a complaint under clause 3.22 in relation to whether Aurizon Network has complied with the requirement to not disclose the Protected Information as per clause 3.3(b).</p> <p>Enforcement options are also available under the QCA Act (Div 8, Part 5) in relation to a failure by Aurizon Network to comply with clause 3.3(b).</p> <p>In addition, there is nothing to prevent the party from notifying the QCA of concerns in relation to Aurizon Network’s compliance with clause 3.3(b) and for the QCA to consider the need for, and where appropriate request, a compliance audit under clause 10.7.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
40.	Waiver by the QCA	3.23	It has been stated that as long as Aurizon Network remains vertically integrated, ringfencing obligations should apply at all times for Aurizon Network. There should be no ability for Aurizon Network to have its ring fencing obligations waived.	Waiver provisions are part of many ringfencing regimes, notably, those administered by the Australian Energy Regulator. In the past, the QCA also administered a Ringfencing Guideline that included waiver provisions (and considered applications made by Distribution Network Service Providers under its jurisdiction). It is important to note that waiver is only granted by the QCA.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
<b>Negotiation Framework [Part 4]</b>					
41.	Process overview	4.1	It is suggested that this clause is unnecessary.	<p>Providing a clear access application and negotiation process is considered one of the key roles of the undertaking.</p> <p>The clause has been included to provide an overview of key aspects the negotiation process. It was included to assist the reader's high level understanding of the process under Part 4 before plunging into the detailed provisions.</p> <p>Aurizon Network also intends to include flow chart diagrams in Part 4 of the 2013 DAU to illustrate the process for applying for and negotiating access.</p>	Aurizon Network to amend Part 4 to include flow charts.
42.	Confidentiality of capacity information	4.2(c)	This clause states that prospective access seekers may lodge a request for capacity information with Aurizon Network and that Aurizon Network will respond within 10 business days. It has been expressed that as there are currently only two above rail coal haulage operators on the network, either rail operator could deduce the access rights the other operator holds. It is therefore necessary to consider whether the provision of capacity information may raise confidentiality issues.	Aurizon Network will review the drafting of clause 3 of Schedule A to provide that capacity information will not be provided if the access rights of an operator could be deduced and it would give rise to a breach of confidentiality or ringfencing obligations.	Similar to item 163, Aurizon Network will revise the drafting to clarify that capacity information will only be provided to access seekers to the extent it will not be a breach of either Aurizon Network's ringfencing obligations in the undertaking or the confidentiality provisions in an access agreement.
43.	Access application	4.3(b)	<p>It has been proposed that clause 4.3(b) should be amended. This clause allows Aurizon Network to cease negotiations for access if an access seeker has materially failed to comply with the provisions of the undertaking.</p> <p>However, clause 4.3(b) also expressly states that any cessation of negotiations would be <i>"without prejudice to any other rights [Aurizon Network] may have"</i>. That reservation of rights is not dealt with in clause 4.11 which is limited to circumstances in which negotiations can be terminated.</p>	The objective of this provision is to clarify that by lodging an access application, the access seeker agrees to be bound by the provisions of the undertaking that apply to access seekers. Provided that objective is still met by the provision, Aurizon Network will amend the clause to address the matter.	Aurizon Network agrees to delete <i>"without prejudice to any other rights [Aurizon Network] may have"</i> from clause 4.3(b).

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
44.	Incomplete access application	4.3(c)	It has been proposed that Aurizon Network should be obligated to notify an access seeker if their access application is incomplete, and specify what further information is required to make the application complete and compliant. This must be notified within 10 business days after receipt of the access application.	Aurizon Network accepts that a mandatory obligation to notify access seekers of any deficiencies in an access application is reasonable.	Aurizon Network agrees to amend this provision to include an obligation to notify an access seeker if its access application is incomplete, and specify what information is required to make it complete and compliant.
	Limited information request	4.3(c)	It has been proposed that the additional evidence or information that Aurizon Network can seek about an access application be limited, including information about the access seeker's ability to fully utilise the requested access rights.  It has been suggested that this right be limited by restricting Aurizon Network's right to seek information so that it applies <u>only</u> to information about the matters in clause 4.11(c).	Aurizon Network understands customers would like greater certainty on the information that Aurizon Network may request in respect of an access application.  Given the case by case nature of access applications Aurizon Network does not consider it appropriate to limit the information to be requested only to the matters listed.  To address this matter, Aurizon Network will clarify that the additional information requested by Aurizon Network must be required for the purpose of preparing an indicative access proposal.	Aurizon Network will add an additional restriction similar to the 2010 DAU, such that the information must be reasonably required to prepare and issue an indicative access proposal.
	Provision of reasons for suspending negotiations	4.4(c)	It has been proposed that Aurizon Network should be required to give reasons for suspending access negotiations where access rights cannot be provided in the absence of an expansion or customer specific branch line.	Aurizon Network agrees to include the reason for a suspension when notifying an access seeker of that suspension under clause 4.4(c).	Amend clause 4.4(c) to provide that Aurizon Network will provide reasons for suspending access negotiations where access rights cannot be provided in the absence of an expansion or customer specific branch line.
	Non-discrimination on funding	4.4(c)	It has been proposed that an obligation be included preventing Aurizon Network from discriminating between a proposed user funded project and an expansion proposed to be funded by Aurizon Network.	The general non-discrimination provisions in Part 3 apply across all aspects of the undertaking. While it is arguable that the existing provisions cover the circumstances referred to here in relation to funding, Aurizon Network agrees to amend the undertaking to clarify that there can be no discrimination between a user funded project and an Aurizon Network funded project.	Aurizon Network will amend Part 3 to introduce a prohibition on discriminating on the basis of the source of funding of an expansion (i.e. user funding versus Aurizon Network funding).
	Lodgement date of access request	4.4(b)	It has been proposed that the acknowledgement notice will be issued when the access request is deemed to have been received, where Aurizon Network	The intention of this provision is to encourage access seekers to only lodge an application when it is complete. This will allow Aurizon Network to improve the quality and timeliness of the indicative access	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
			believes sufficient information has been provided. It has been proposed that the drafting reverts to the treatment in the 2010 AU, which is that the lodgement date of an access request is deemed to be the date of receipt of that access request.	proposals it develops and establish a stronger and more workable basis for commencing formal negotiations. With the removal of the queuing framework, the incentive for access seekers to submit an access application as early as possible in order to secure a position in the queue has been removed.	
	Six month confirmation	4.4(c), (f) & (g)	The obligation on an access seeker to re-confirm its access requirements every six months following the suspension of negotiations is seen as problematic. Particularly, given Aurizon Network's ability to issue a negotiation cessation notice if this doesn't occur.	If a negotiation has been suspended, the requirement for an access seeker to re-confirm its capacity requirements every six months is important as it provides Aurizon Network with timely and accurate information to assess whether sufficient demand exists for an expansion.  Aurizon Network considers that as access seekers have an incentive to maintain the currency of their request that this obligation would not be an unreasonable burden.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU
	Time period for lodgement of access applications	4.4(e)	Industry participants have requested an extension to the time period for access applications from three years to five years prior to the access rights commencing. This accommodates long lead times in mine assessment and development.	Aurizon Network understands that there are long lead times in mine development and that one of the criteria for a company to approve a new mine is likely to be whether they can secure rail access.  Aurizon Network also recognises that the replacement of the queue with capacity allocation criteria, reduces the incentive to lodge access applications on a more 'speculative' basis. Subject to certain criteria, Aurizon Network will provide for the ability to make an access application up to five years prior to when the access rights are expected to be used.	Aurizon Network proposes to amend the clause to allow access applications that meet certain criteria to be made up to five years prior to the access rights commencing. The relevant criteria could include matters such as whether the access application is for access rights required for the development of a new mine or new terminal developments.
	Renewal of access information	4.4(f)(iii)	An item identified in submissions is the requirement to demonstrate the ability to utilise access rights, suggesting that the evidence should be based on a reasonable likelihood of being able to use the access rights at the proposed commencement date.		Aurizon Network will amend this clause to reflect that the evidence needs to be based on the reasonable likelihood of being able to use the access rights at the proposed commencement date.
	Acknowledgement of access application	4.4(g)	It has been requested that an amendment be made to clarify that Aurizon Network will act reasonably where it determines that a negotiation cessation notice should be issued to a customer.		Aurizon Network will review clause 4.11 to create a closer linkage with clause 4.4(g) including applying relevant reasonableness requirements along similar lines to those in clause 4.11.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
	Revision of access application	4.5	It has been proposed the provisions in the 2010 AU, which allowed an access seeker to vary or revise an application between the issue of the acknowledgement notice and the indicative access proposal, be reinstated. Provided that the revision to the application does not seek an increase in capacity or a shorter term of access and does not otherwise substantially alter the nature of the access rights sought.	While Aurizon Network agrees with the inclusion of such a right in principle, it is important that it be clear in what circumstances a revision would be permitted. For example, a revision should not result in a material alteration to the requested access rights.	Aurizon Network to reinstate an ability for access seekers to revise an access application prior to the issuance of an indicative access proposal in specified circumstances.
	Waiver of capacity assessment	4.5(b)(iii)	It has been proposed that Aurizon Network's ability to waive its requirement to complete an initial capacity assessment under the circumstances set out in this clause should be removed.	The position in clause 4.5(b)(iii) of the 2013 DAU is the same as clause 4.3(c)(iii) of the 2010 AU.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU
	Notification of timeframe for expansions	4.5(b)	It has been proposed to include a new obligation to include in an indicative access proposal an estimated timeframe for capacity to be made available where an expansion is required, as well as information on the process.	The estimated timeframe within which capacity is anticipated to be created where an expansion is required is dependent on a number of factors. Part 8 provides some context to this – for example, in relation to the sequential nature of expansions.  On this basis Aurizon Network will include in an indicative access proposal information in relation to a relevant expansion that is reasonably available	Aurizon Network agrees to amend this clause to provide information about a required expansion where such information is reasonably available in the circumstances
	Access charge estimate	4.5(b)(v)	It has been proposed that this provision be amended to require Aurizon Network to provide details in the indicative access proposal of the relevant factors that have been taken into account when advising of the initial estimate of the access charge.	Aurizon Network agrees in principle to providing information in the indicative access proposal of the matters considered in developing the initial estimate of the access charge. Aurizon Network will give consideration to the appropriate matters that must be advised.	Aurizon Network, having regard to industry submissions, will include amendments referring to the specific information that Aurizon Network will provide when advising of the initial estimate of the access charge as part of an indicative access proposal.
	Alignment of timeframe with 2010 AU	4.5(d)	It has been proposed to seek to re-align the timeframe before notification of an extension to the period within which an indicative access proposal must be given with the timeframe in the 2010 AU.	The 2013 DAU proposes a period of 20 business days. The proposed amendment is to reduce this to 15 business days. This would align with the current 20 (calendar) days in the 2010 AU.	Aurizon Network agrees to make this amendment.



Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
	Extending life of indicative access proposal by agreement	4.5(e)	It has been suggested that the indicative access proposal expiry date be amended so that it is 60 Business Days after provision of the indicative access proposal, “ <i>unless otherwise agreed</i> ”.	Aurizon Network agrees that the amendment to extend the validity of the indicative access proposal on agreement would reflect current practice. It also considers that the introduction of criteria to agree to a longer period would minimise the likelihood of dispute.	Aurizon Network agrees to amend this clause to make it clear that the indicative access proposal expiry date could be altered by agreement. It will propose criteria for agreeing a longer period.
	Criteria for revising an indicative access proposal	4.5(g)	It has been proposed to strengthen Aurizon Network’s obligation to review and issue a revised indicative access proposal where the access seeker raises concerns about whether the indicative access proposal has been developed in accordance with the undertaking.	Industry have indicated a preference to remove Aurizon Network’s discretion with regard to the requirement for additional time to review and revise an indicative access proposal.	Aurizon Network agrees to strengthen the obligation.
	Access Seeker’s right to suspend negotiations	4.4(c)	It has been proposed that access seekers should have a corresponding right to suspend negotiation for access rights where an expansion or customer specific branch line is required. Aurizon Network has that right under clause 4.4(c).	Aurizon Network agrees to provide a mutual ability of Aurizon Network and access seekers to suspend negotiations where an expansion or customer specific branch line is required.	Aurizon Network will include a right for access seekers to suspend negotiations where an expansion or customer specific branch line is required and will review the need for any qualifications or criteria to give effect to the amendment.
	Nomination of operator as “agent” for negotiations	4.7(a)(i)	It has been proposed that where there are multiple access applications and one is from the end user, that end user should be able to nominate an operator to be involved in the negotiations.	It is not Aurizon Network’s intention to limit the ability of the end user to nominate an operator as its agent for negotiating access or to assist the end user in negotiations.	Aurizon Network will amend this clause to clarify that an end user can nominate an operator to negotiate access on its behalf or to otherwise assist it in negotiations.
	Nomination of operator to proceed to negotiations in multiple applications for the same access	4.7(a)(ii)	The 2013 DAU proposes to ensure that Aurizon Network is not required to negotiate with more than one operator for the same access rights. Customers have questioned why the access application is not just processed as usual and an indicative access proposal issued to both (or all) rail operators. Aurizon Network’s proposed drafting is seen as limiting above rail competition if the access request is submitted before the above rail tender is complete.	This provision relates to proceeding with the negotiation of an access agreement with the preferred operator after the issue of an indicative access proposal. It is intended that the negotiation for access rights with the preferred operator(s), would follow the above rail tender process.	Aurizon Network will clarify in the drafting that clause 4.7(a)(ii) does not alter Aurizon Network’s obligations to prepare indicative access proposals in respect of each operator’s access application unless the customer has nominated one of the operators. If the customer nominates an operator prior to Aurizon Network providing indicative access proposals, then Aurizon Network will only issue an indicative access proposal to the operator nominated by the customer.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
	Agreement to extend time for negotiation	4.9.1(c)(iv)(B)	It has been proposed that a new provision be included to clarify that when a dispute arises, the negotiation period can be extended where the parties agree or as determined during the dispute resolution process.	Aurizon Network agrees it is appropriate for the negotiation period to take into consideration any adjustments to the negotiation period resulting from the resolution of a dispute.	Aurizon Network will amend this clause to allow for an extension of the negotiation period where a dispute arises where the parties agree or as determined during the dispute resolution process.
	Negotiation process where available capacity is reduced	4.9.1(c)(v)	Where Aurizon Network proposes to discuss with the access seeker alternative means to provide the access rights sought, in the event of a reduction in available capacity is seen as too vague. It has therefore been suggested that this be replaced with a more prescriptive process.	The appropriate solution to address a reduction in available capacity in the context of an access negotiation will vary from case to case.  Accordingly, it is considered that the situation is typically and best resolved as part of the negotiations between Aurizon Network and the access seeker as proposed. It is possible that those negotiations may relate to the need for an expansion. If so, the 2013 DAU has provisions that relate specifically to expansions.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU
	Other terms to be addressed during negotiation	4.9.2(a)(viii)	It is proposed the inclusion of a right to provide details of "other terms and conditions comprising of the access agreement" during the negotiation process be replaced with a clause that provides that, unless otherwise agreed, the terms and conditions comprising the access agreement are to be those in the standard access agreement.	This provision does not affect the role of the standard access agreement as "the safety net" in negotiations. Aurizon Network cannot impose any new or alternative terms and conditions without agreement by the access seeker. As per clause 5.1(d), if agreement cannot be reached, the standard access agreement remains the fallback.  Aurizon Network's intention in including this provision was to clarify that where other terms and conditions are considered appropriate for the requested access rights, they are to be provided by Aurizon Network.  It also addresses any circumstance where the access agreement is to be completed based on a standard access agreement and some aspect of that standard access agreement is to be completed by Aurizon Network but is not specifically listed in clause 4.9.2(a).  An ability to propose alternative terms and conditions is consistent with the QCA Act.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU

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	"Non-Standard" modes of operation	4.9.2(c)	Clarity has been sought as to what mode of train operation will be considered "non-standard" and trigger an interface risk assessment. It has been suggested that this be done by reference to differences in the scope and standard of existing rail operations on the network.		Aurizon Network will amend the provision to include differences in the scope and standard of existing rail operations on the network as "non-standard".
	Further evidence and information regarding utilisation of requested access rights	4.9.2(d)	It has been suggested Aurizon Network's ability to seek additional evidence or information about an access seeker's ability to utilise the requested access rights, should be limited.	It is considered reasonable to limit the additional information that Aurizon Network can request to what is reasonably required to finalise access agreements taking into consideration the matters in clauses 4.9.2 and 4.11(c).	Aurizon Network will amend this clause to reflect that the additional information is reasonably required in relation to the matters to be addressed during negotiation (clause 4.9.2);
	Revision of access application	4.9.2(e)	It has been proposed that amendments are made to allow an access seeker to review and revise their access application "on a good faith basis and for bona fide reasons", provided that the access seeker cannot request an increase in capacity, a shorter term access agreement or substantially alter the nature of the access rights sought. It is also proposed to be clear on what will be considered reasonable and not a substantial alteration.	Aurizon Network considers it appropriate to provide transparency on the matters that will be considered a substantial alteration of the nature of the access rights.	Aurizon Network to consider appropriate amendments to clause 4.9.2(e) to clarify the circumstances under which an access seeker could (or could not) review and revise its access application during the negotiation period.
	Right to levy a charge	4.9.2(f)	It has been expressed that Aurizon Network's proposal to include a right to levy an appropriate charge for the provision for further information to cover the cost of preparing and supplying that information as part of a negotiation process, should be removed. It is argued that these costs are already reflected in the access charge.	This clause reflects a similar provision in the 2010 DAU and is designed to cover additional or incremental costs that are not already included in the cost allocations to access charges.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU
	Further information to be developed during negotiations	4.9.2(g) (iii)	This clause contained some examples of what the parties may agree to include in a list of matters to be further developed during the negotiation phase. It has been proposed that the reference to the mechanisms in an access agreement or train operations agreement to address any subsequent cost or operating impacts arising in connection	This provision is on terms consistent with the 2010 AU. The 2001 Access Undertaking and 2006 Access Undertaking also included related provisions.  Aurizon Network considers that this clause provides transparency in relation to the rights of access seekers and Aurizon Network to finalise certain matters after the execution of the access agreement and the matters that	Aurizon Network will amend clause 4.9.2(g)(iii) to clarify that for matters that are to be finalised after the execution of the access agreement, the parties may agree to include mechanisms to address any subsequent cost or operating impacts that have not been considered as part

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
			with the specified matters be deleted.	must be considered to give that effect.  It is only intended that the access charge would be varied in the circumstances to compensate for any increased cost or risk to Aurizon Network or any increased utilisation of capacity as compared to a reference train service. The deletion of the clause may result in all matters that could potentially have cost or operating impacts needing to be addressed prior to execution of an access agreement.	of the reference train service or the original proposal.
	Right of end user to participate in negotiations	4.10(a)(ii)	It has been proposed that an end user should have the right to require Aurizon Network to permit the end user's train operator to participate in (and not just to be present at) all negotiations between Aurizon Network and the end user for access rights proposed to be utilised by that train operator.		Aurizon Network will amend the drafting so that an end user can require a train operator to participate in all negotiations with Aurizon Network in relation to the access rights to be utilised by that train operator.
	Grounds for cessation of negotiations	4.11(a)	It has been proposed that Aurizon Network's assessment that might lead to the cessation of an access negotiation should be based on a more objective test.	The onus is on Aurizon Network to demonstrate that it has reasonable grounds. This is effectively an objective test.	Aurizon Network will review the wording of this clause as to whether a more objective test is required.
	Timeframe to issue a negotiation cessation notice	4.11	A concern has been raised regarding the timeframe in which Aurizon Network can issue a negotiation cessation notice.	Timeframes for negotiation and consequently for cessation of negotiation are subject to the "Negotiation Period" (nominally 9 months unless the parties agree to extend the period or negotiations are ceased for reasons set out in this clause 4.11).	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU
	Deletion of right to charge reasonable costs when negotiations cease	4.11(e)	It has been proposed that Aurizon Network's right to charge reasonable costs incurred in negotiations where it ceases negotiations (as permitted by clause 4.11) be deleted. This clause also acknowledges that the costs could include Aurizon Network's payments to third parties engaged in assessing the relevant access application and scoping and preparing for the provision of the requested Access.	Clause 4.11(e) of the 2013 DAU reflects the provision in the 2010 AU and seeks to provide a disincentive for parties making non-genuine access applications, the costs of which would otherwise be borne by all access holders. To the extent the access seeker does not consider the costs reasonable the matter can be referred to dispute resolution.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
<b>Access Agreement [Part 5]</b>					
45.	Standard Access Agreement as safety net	5.1 (d)	It has been requested that, where a dispute arises in relation to the negotiation of terms and conditions that vary from the Standard Access Agreement, the QCA, or an expert, should resolve the dispute (instead of it being resolved under the terms of the Standard Access Agreement).	<p>Consistent with the provisions of the QCA Act, Aurizon Network's approach has always been that Aurizon Network and an access seeker should be able to negotiate an access agreement. If the parties do not agree different terms, then the Standard Access Agreement is the safe harbour for both the access seeker and Aurizon Network</p> <p>Industry's suggestion, however, would result in an expert or the QCA determining the provisions of non-standard access agreements, thereby effectively removing the safe harbour of the Standard Access Agreement if either party thought they may be able to do better through a third party dispute resolution process.</p> <p>Aurizon Network suggests that the most appropriate way to address this issue is to:</p> <p>confirm in the undertaking Aurizon Network's obligation to act in good faith in negotiating access agreements, including non-standard access agreements; and</p> <p>allow access seekers an express right to challenge Aurizon Network's conduct directly with the QCA under Part 11 of 2013 DAU, if Aurizon Network has failed to meet the 'good faith' standard in seeking to negotiate access agreements</p>	Aurizon Network will amend the drafting to clarify that Aurizon Network will act in good faith in the relevant negotiations and will review the drafting to identify the circumstances where it is appropriate to act reasonably.
46.	Access Seeker's assurance that negotiations will not result in terms less favourable	5.1(d)	It has been suggested that where during negotiations, Aurizon Network and the access seeker cannot agree terms that are in variation to the Standard Access Agreement, the QCA or an expert should have regard to the terms Aurizon Network is offering to other access seekers and those terms should not be more favourable than those offered in the disputed agreement.	<p>The non-discrimination obligations in the undertaking and the QCA Act limit the ability of Aurizon Network and an access seeker to negotiate as flexibly as they might otherwise do in an unregulated environment.</p> <p>The QCA has audit / reporting powers to monitor Aurizon Network's compliance with its non-discrimination obligations to ensure that it is not offering terms to access seekers that unfairly differentiate between access seekers. To facilitate this, access agreements will be provided to the QCA under clause 10.3.1 of 2013 DAU. In addition, the QCA has the ability to require the provision of these agreements in any case.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.

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47.	Intention of 5.2(a) and (b)	5.2, 5.2 (b)	Industry has questioned the rationale for the inclusion of clause 5.2(a) and 5.2(b).	<p>Clause 5.2(a) is intended to be a clarification provision to ensure that:</p> <p>there is a link between train service entitlement in the undertaking (and non-UT4 access agreements) and train services described in the 2013 DAU; and</p> <p>access agreements under the 2013 DAU are consistent with the common approach of including in a single access agreement a range of different “train service types” (i.e. trains with different origin/destinations or other characteristics).</p> <p>Clause 5.2(b) refers to access charges for train services and clarifies that access charges may be calculated by reference to each type of train service.</p> <p>The definitions of train service entitlement and train service in the 2013 DAU are consistent with the provisions in the 2010 AU. The concept of train service type (which appears in agreements) was not introduced into the text of the undertaking as Aurizon Network considered this was unnecessary.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
48.	Impact of introduction of train service type	5.2	<p>Feedback raised regarding the introduction of the train service type is that it:</p> <p>will diminish the flexibility of access rights for an access holder;</p> <p>allows Aurizon Network to control train operations; and</p> <p>will impose additional cost on operators (e.g. variations to an interface risk management plan with each train service type).</p>	<p>The introduction of train service types does not change the way access rights are contracted. Access rights have always been granted for an origin-destination haul with a specified train service description, such as loading and unloading times, distance, dwell times etc. The use of “Train Service Types” does not include additional information to that previously required under a train service description.</p> <p>Pre-2013 DAU standard access agreements have been drafted on the assumption that only one train service from a single origin–destination haul would be included, and that new access agreements would be entered into each time an access holder wanted a new origin–destination haul. That assumption is not consistent with many access agreements actually entered into. The definition of train service type is intended to correct this situation going forward so as to be consistent with actual practice and to avoid contractual uncertainty.</p>	The train service type concept is discussed in more detail in section 4.13 of the main submission.

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49.	Negotiations with Related Operator	n/a	Issues have been raised with the removal of clause 5.3 from the 2010 AU. It is requested that it be reinstated to ensure Aurizon Network cannot negotiate more favourable terms with its related operator.	Aurizon Network has extensive non-discrimination obligations both under the QCA Act and Part 3 of the 2013 DAU. Hence, clause 5.3 of the 2010 AU is considered superfluous, as it simply duplicates what appeared in Part 3.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
50.	Publication of Access Agreements	n/a	Issues have been raised with the proposed removal of clause 5.4 of the 2010 AU. It is requested that it be reinstated to ensure that Aurizon Network cannot negotiate more favourable terms with its related operator.	The access agreements are still confidentially provided to the QCA under clause 10.3.1 of the 2013 DAU.	Further matters identified in relation to the publication of access agreements are discussed at item 185.
51.	Differences between 2010 AU and 2013 DAU alternate form of access	n/a	Clarification is required about how the alternate form of access in the 2010 AU interacts with the provisions in the 2013 DAU.	As with other standard agreements, the approved alternate form of access for the relevant current undertaking is the standard agreement that access seekers should consider during access negotiations. The alternate form of access agreements executed under the 2010 AU are binding until their expiry or termination.	Aurizon Network has provided in Annexure B a comparison of changes in the alternate form of access between the 2010 AU and the 2013 DAU.
52.	Removal of IRMP and EMP provisions from the 2013 DAU	n/a	Issues have been raised regarding the removal of the principles relating to the development and management of the Interface Risk Management Plan and Environmental Investigation and Risk Management Report. This is seen to increase the risk of inconsistent application and discrimination.	<p>The standard access agreements set out the principles relating to the development and management of the Interface Risk Management Plan, which is proposed to cover both interface and environmental risks. These provisions assume that the Interface Risk Management Plan will be completed after execution of the access agreement.</p> <p>It is open to Aurizon Network and an access seeker to agree something that departs from the provisions in the standard access agreements in respect of Interface Risk Management Plans. However, Aurizon Network's ability to do so is limited by its non-discrimination obligations, and obligations to adhere to legislative and accreditation requirements.</p> <p>New clauses 4.9.2(b)-(c) have been included in the 2013 DAU in recognition of the fact that some access seekers may wish/need to commence the interface risk assessment process prior to the execution of an access agreement. This provides flexibility for access seekers who need to resolve these matters as part of the negotiation process prior to execution of an access</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.

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				agreement and reflects practically what occurs under the 2010 AU.	
<b>Pricing Principles [Part 6]</b>					
53.	Limits on price differentiation	6.2	Concerns have been expressed regarding the removal of restrictions on price discrimination, including for aggrieved access holders and related operators (clause 6.1.2 and 6.1.3 of the 2010AU).	<p>The 2013 DAU seeks to recast Aurizon Network's rights and obligations in relation to price differentiation in more positive language than that used in the 2010 AU. However, the intent of the drafting has not changed.</p> <p>In respect of clause 6.1.2 in the 2010 AU, this is a matter between Aurizon Network and an access holder and should be addressed in the relevant access agreement. The standard access agreements include a 'most favoured nation' clause which addresses this issue.</p> <p>In respect of clause 6.1.3 in the 2010 AU, the QCA Act sets out Aurizon Network's obligations in relation to preventing or hindering access to the service.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
54.	Capacity multiplier	6.2.2(d)	Some submissions support a multiplier based on train performance, but did not agree to its "blanket application". Aurizon Network's calculations of the relevant multipliers and the basis for the line sections selected should be justified.	<p>In the 2013 DAU, Aurizon Network has proposed to introduce an additional 'performance multiplier' to supplement the capacity multiplier.</p> <p>The capacity multiplier will continue to be determined based on the expected difference between the reference train section run times and the scheduled section run times. It is not calculated with respect to actual train performance.</p> <p>The performance multiplier is levied only under the strict circumstance where an actual train service has failed to meet critical operational performance levels that would have the effect of reducing system capacity. The performance multiplier is a predetermined value based on relevant system capacity assumptions.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
55.	Price differentiation	6.2.3(b)	It has been proposed that a 'Change in Market Circumstances' should be removed as a basis for price discrimination for new reference tariffs.	<p>It is not clear why a change in market circumstances is not an appropriate basis for price discrimination (as it could lead to a change in risk profile) and Aurizon Network would welcome further feedback on this matter.</p> <p>The intent of the drafting in the 2013 DAU is unchanged</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.



Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				from the 2010 AU, which is to ensure Aurizon Network is able to price discriminate if the existing reference tariff would have a material effect on an access holder's ability to pay access charges.	
56.	QCA approval of reference tariff for every expansion	6.2.4(a)(i) to (iii)	It is proposed that Aurizon Network must seek QCA approval of a new reference tariff for every expansion.	<p>Combined with proposed pricing objectives (refer below), the effect of this proposal is to require a new reference tariff to either 'average up or average down' based on the costs of the expansion. Application of the existing reference tariff to an expansion would have to be considered on a case by case basis.</p> <p>This matter has been discussed with the QRC and it has been agreed that a specific submission to the QCA should not be required for averaging down. Accordingly, the use of "may" in the 2013 DAU is appropriate.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
57.	Vote of industry participants to approve costing methodology	6.2.4(a)(iv) (also Sch E clause 2.1)	Concerns have been expressed regarding Aurizon Network's proposal to allow the cost allocation methodology for an expansion to be put to a customer vote. Some customers do not support the concept. Others do, but consider that this should occur via a different process. It has also been suggested that interested participants should include train operators.	The purpose of the proposal is to provide industry with the earliest opportunity to provide input into the pricing methodology for an expansion. Recognising the concerns expressed in the submissions, Aurizon Network remains of the view that some sort of pre-approval option is needed to provide certainty for existing and new users as to the pricing methodology. For example, this could alternatively be sought via the QCA.	Aurizon Network will review these provisions following discussions with the QRC.
58.	Reference tariff for customer specific branch lines and private connections	6.2.5	Concerns have been raised regarding consistency of the application of the pricing rules for owners of private infrastructure.	<p>The purpose of the new provisions is to provide an alternative pricing methodology that is consistent between branch lines and private connections (strict interpretation of the 2010 AU results in an inequitable outcome for owners of private infrastructure).</p> <p>Aurizon Network would be willing to discuss specific concerns regarding application of this clause with customers and the QCA.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.

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59.	Minimum revenue contribution (MRC) and distance discount	6.2.4, 6.2.5, Part 12: Definitions	<p>Feedback received is that the drafting of this section is unclear and should be amended.</p> <p>A number of matters are raised concerning the application of clause 6.2.4 and 6.2.5 and the definitions of minimum revenue contribution and the distance discount.</p>	<p>Aurizon Network acknowledges the concerns regarding the drafting and improvements will be made for clarity. In addition, reference is made to the example calculations for mines of varying distances in section 9.7 of Volume 2 of the UT4 proposal.</p>	<p>Aurizon Network will review these provisions following discussions with the QRC.</p>
60.	Reference tariff reference point	6.2.5	<p>Clarification has been requested to ensure that the 'existing' reference tariff is the highest reference tariff for an equivalent train service.</p>	<p>This proposal is based on the 'averaging up' principle proposed by the QRC.</p> <p>Aurizon Network has been reviewing the practical application of clause 6.2.4 and 6.2.5 with the QRC and the final drafting will reflect the outcome of these discussions.</p>	<p>Aurizon Network will review these provisions following discussions with the QRC.</p>
61.	QCA consideration of costing methodology (Pricing objectives)	6.2.6(b)	<p>It is proposed to include a set of "key propositions" with respect to the QCA's acceptance of a new Reference Tariff. These propositions would:</p> <p>not allow increases in Reference Tariffs for existing users ('averaging up');</p> <p>cover temporary impacts (such as ramp-up volumes) and special risks (such as greenfield development risks);</p> <p>allocate costs associated with the benefits accruing to existing users.</p> <p>It has also been suggested that this should be subject to:</p> <p>the acceptance of immaterial increases in reference tariffs, with the QCA to determine the threshold; and</p> <p>that the methodology for allocating costs between expansion users and existing users be fully disclosed to the relevant industry participants.</p>	<p>Aurizon Network considers that a more prescriptive set of principles to those provided in clause 6.2.6(b) should not be necessary. Rather, a case-by-case approach to expansion pricing, including averaging up, is appropriate subject to a vote of Interested Participants on, or QCA approval of, the cost allocation methodology based on prudence requirements.</p> <p>However, Aurizon Network is prepared to work with industry to develop a set of principles which:</p> <p>protect users from being materially worse off;</p> <p>align long run access prices for similar services;</p> <p>allocate costs associated with benefits accruing to existing users; and</p> <p>does not limit the QCA's ability to assess any application in accordance with the QCA Act.</p>	<p>Aurizon Network will review these provisions following discussions with the QRC.</p>
62.	Development of Reference Tariffs	6.2.6 (also Sch F)	<p>It is suggested that the removal of the obligation for Aurizon Network to submit a</p>	<p>The drafting in the 2010 AU reflected the circumstances of the 'old' Queensland Rail network, which included</p>	<p>No change is proposed based on the further information provided by</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
		– clause 5.1)	Reference Tariff variation if requested by the QCA, is problematic.	<p>non-coal sections not subject to a reference tariff. This drafting has been removed reflecting the constriction of the 2013 AU to coal sections.</p> <p>Reference tariffs are not necessary for non-coal traffic on coal sections on the basis that:</p> <p>it would not be in the public interest as revenues are immaterial; and</p> <p>Aurizon Network must still negotiate access charges in accordance with Part 6. The QCA would continue to have oversight.</p>	Aurizon Network to assist in the review of the 2013 DAU.
63.	Pricing limits for individual train services	6.3.3(e)	An objection has been made to the use of Depreciated Optimised Replacement Cost (DORC) as the basis for a price ceiling for any coal carrying train service.	<p>Under the 2013 DAU the RAB value will continue to form the basis of calculating the Maximum Allowable Revenue (MAR) for an individual coal system. The provisions do not allow for revaluation of the RAB and Aurizon Network's total allowable revenue will not exceed the amount applicable to the aggregate CQCR RAB value.</p> <p>It is noted that any new reference tariff must be still be approved by the QCA having regard to the matters in the QCA Act. The objective of this proposal is to provide the QCA broader discretion in approving a variation to a tariff which requires a MAR that is higher than an individual coal system's RAB value, if this is necessary to meet the objects of the QCA Act.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
64.	Rail infrastructure utilisation	6.4.1	The requirement in clause 6.3.1(b) of the 2010 AU for Aurizon Network to conduct an assessment of network utilisation before applying the Maximum Access Charge should be reinstated.	Aurizon Network confirms that there is no change to the intent of the drafting between the 2010 AU and the 2013 DAU. It would still assess whether available capacity is sufficient to meet an access request.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
65.	Negotiations of non-standard arrangements (Commercial Terms)	6.9	Concerns have been expressed regarding the inclusion of an explicit provision allowing Aurizon Network to negotiate 'Commercial Terms' in relation to access rights that require an expansion or a customer specific branch line. Issues have also been identified with the lack of prescription and transparency.	<p>Aurizon Network and access seekers are permitted to negotiate non-standard arrangements and this is included in the revenue Aurizon Network is entitled to earn for the purpose of the revenue cap.</p> <p>Aurizon Network is prevented from treating access seekers inconsistently due to the price discrimination provisions in Part 6. Aurizon Network also has obligations prohibiting unfair discrimination. Relevant non-standard arrangements would be subject to</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				<p>negotiation and agreement with the relevant customer.</p> <p>Aurizon Network would also not be permitted to allocate capacity to an access seeker based on the willingness of that access seeker to agree to standard or non-standard terms.</p> <p>On the issue of transparency, this could serve as a disincentive for customers to seek non-standard terms and conditions where those arrangements are then made known to other users. Full transparency would, however, be afforded to the QCA.</p>	
66.	Negotiations of non-standard arrangements (Commercial Terms)	6.9(b)	<p>Further to Item 65 above, while some support is also provided for the concept, it was proposed that amendments be made to prevent Aurizon Network from agreeing Commercial Terms:</p> <p>where an Expansion is funded by Aurizon Network;</p> <p>it involves Aurizon Network funding a Pre-Feasibility or Feasibility Study; or</p> <p>it requires that a Related Party receives a haulage or port agreement.</p>	<p>The 2013 DAU does not include an obligation to fund expansions. This is a matter that remains subject to negotiation with customers. This is similarly the case in relation to the second point regarding the funding of a pre-feasibility or feasibility study. This is an important part of the expansion process, which is also currently being developed with customers. The final drafting of the 2013 DAU will be aligned with the outcomes of the discussions on these two matters. Aurizon Network agrees with the third point in principle.</p>	<p>Aurizon Network will review these provisions pending the outcomes of current discussions with customers.</p>
<b>Regulatory Asset Base [Schedule E]</b>					
67.	RAB adjustment – acceptance by QCA	1.1(b)	<p>Questions have been raised regarding the inclusion of a provision which requires that the QCA is bound to accept the amount which Aurizon Network proposes to deduct from the RAB based on the net proceeds of a disposal.</p>	<p>It is not Aurizon Network's intention to limit the QCA's approval of deductions from the RAB.</p> <p>Aurizon Network has reviewed clause 1.1(b) and is satisfied that the drafting does not affect the QCA's ability to accept (or reject) the values determined so long as it is done so in accordance with clause 1.1(a).</p>	<p>No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.</p>
68.	RAB adjustment – write-downs of assets (demand and bypass)	1.2(c) and (d)	<p>Aurizon Network has re-drafted the provisions that limit the QCA's optimisation of the RAB to certain circumstances. It removed the circumstances where demand has deteriorated to such an extent that pricing on an un-optimised asset would result in a further decline in demand, and where there is a possibility of actual by-</p>	<p>The intent of the drafting in the 2013 DAU has not changed from the 2010 AU. The QCA must still approve variations in Reference Tariffs via the annual reset process in Schedule F. Relevant parties can comment on these matters including the extent to which access charges should be amended.</p> <p>As reference tariffs are approved for the term of the</p>	<p>No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
			pass. There has been opposition to the removal of these circumstances.	access undertaking any reduction in the RAB value would occur in the approval of the undertaking and not during its term. The provisions also did not describe what would happen to the assets once removed, when they could be reinstated and at what value.	
69.	RAB adjustment – write-downs of assets (Condition Based Assessments)		Aurizon Network has not included the obligations from the 2010 AU relating to the Condition Based Assessments in the 2013 DAU. Some customers have requested that this be reinstated.	<p>Aurizon Network has made a commitment to industry to enhance the transparency on performance. As such, Aurizon Network will periodically provide a report on the condition of the asset, providing it is not linked to the RAB value, and the costs of the report are included in the reference tariff .</p> <p>Aurizon Network considers transparency on the condition and performance of the asset is part of a wider discussion in relation to the Draft Incentive Mechanism and provisions in the contracts in relation to contracted service levels.</p>	Aurizon Network will provide transparency on the asset condition provided it is not linked to the RAB value (or has any other financial impact on the business).
70.	Capital expenditure report - timing	1.3	<p>It is considered that the proposed timeframe for submission of the capital expenditure report (within four months from the end of the relevant year) is too short.</p> <p>This was not raised in the customer submissions but in a QCA working group session held following the lodgement of the UT4 proposal.</p>	To allow for audit of the capex report and approval by the QCA Board, the QCA have suggested that a six month timeframe may be more appropriate than the current four months.	Aurizon Network will amend the timeframe for lodgement of the capital expenditure report to be within six months of the relevant year.
71.	Capital Expenditure - definitions	1.3	<p>It has been suggested that the terms of reference for the review of the annual capex report would be streamlined if the undertaking included definitions of capex and asset renewal.</p> <p>This was not raised in the customer submissions but in a QCA working group session held following the lodgement of the UT4 proposal.</p>		Aurizon Network will include a definition of capital expenditure in the 2013 DAU.
72.	RAB reporting	1.3(a)	It has been suggested that the capital expenditure report distinguishes between user funded and Aurizon Network funded expenditure.		Aurizon Network will amend this provision to distinguish between capital expenditure funded by Aurizon Network and capital expenditure funded by users.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
73.	RAB adjustment – equity raising costs	1.2(b) and 1.5	There is some support in principle for Aurizon Network’s proposed recovery of equity raising costs in the RAB, subject to a review of prudence by the QCA. It has also been proposed that a clear allocation should be made between “each Reference Tariff, each User Funded Project and for any relevant group of Access Holder paying a premium...”.	Aurizon Network is willing to explore the specific concerns raised here with customers and/or the QCA and review the drafting accordingly.	Aurizon Network will amend this provision to make it clear that the QCA must review and approve the proposed costs. Further amendments to reflect any specific concerns will be further investigated.
74.	RAB roll forward report	1.4(a)	It has been proposed that:  the timeframe required for submission of the RAB roll forward report should be removed; and  the report should not only be for each Coal System, but for “each Reference Tariff, each User Funded Project and for any relevant group of Access Holder paying a premium”.	While the removal of the time period for providing the roll-forward report to the QCA may create some uncertainty about timing, this is acceptable to Aurizon Network.  Some further granularity of reporting can be provided, as in certain circumstances duplicate RABs will be required. These changes can be effected through the RAB roll-forward report without further amendments to the 2013 DAU.	Aurizon Network will amend this clause to remove the time period for providing the roll-forward report to the QCA.
75.	Maintenance Standards		Aurizon Network has not retained clause 1.5, Schedule A of the 2010 AU in the 2013 DAU, which required it to “maintain the Rail Infrastructure in a condition which is fit for the purpose of provision of contracted Train Service Entitlements to Access Holders.” Some customers have requested the re-instatement of this clause in the 2013 DAU.	Aurizon Network has removed this clause from the 2010 AU as it is included in the standard access agreements. Aurizon Network believes that the appropriate place for this obligation is those agreements, as remedies are available to access holders in the event of a breach.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
76.	Prudence tests – vote on standard of works	2.1(c) and (d)	It has been suggested that it is not appropriate to extend the scope of the customer vote to the standard of works.	Whilst Aurizon Network believes that it would be more appropriate for industry to have a say on such matters, to the extent this is not supported by industry, Aurizon Network will amend the 2013 DAU accordingly.	Aurizon Network will amend this clause to remove the standard of works from the scope of the customer vote.
77.	Prudence tests – QCA acceptance	2.1(c), 3.2(b), 4.2(a) and 5.3(e)	It has been proposed that Aurizon Network <u>must</u> seek QCA approval of prudence of scope, standard and cost.	The reason for the requested change is unclear.  This clause does not alter the treatment between the 2010 AU and the 2013 DAU, in that Aurizon Network may seek the QCA’s approval.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
78.	Acceptance of expenditure on Studies	2.2(b)(i)(B)	It is proposed to qualify the drafting of this clause so that the QCA will accept expenditure on a concept, pre-feasibility or feasibility study if it is prudent.	It would be reasonable to expect that any expenditure would be prudently incurred. Aurizon Network is therefore willing to review the drafting to reflect this intent.	Aurizon Network will amend this clause to include a requirement for this expenditure to be prudent.
79.	Acceptance of capital expenditure	2.2(f) and 2.3(a)(i)(C)	It is proposed to include an additional provision in this clause providing that nothing should prevent the QCA from holding a public consultation process on any decision, and the QCA should consider the information obtained during such a process.	It would be reasonable to expect that the QCA would consult on any significant issues and take reasonable comments into account. However, where the matter before the QCA is a matter that has been the subject of successful vote by interested participants, it is not considered reasonable for further consultation with a view to re-opening those matters.	Aurizon Network will amend the drafting to provide that nothing in this clause should prevent the QCA from holding a public consultation process on any decision, unless it has been the subject of a successful vote by interested participants. If consultation is undertaken the QCA should consider the information obtained during such a process.
80.	Acceptance of capital expenditure	2.2(i)	This provision addresses circumstances under which the QCA's acceptance of a change is sought in relation to expenditure that has already been accepted by the QCA or customers (via a customer vote). It is proposed to amend 'material change' to make it clear that this includes a change in scope or standards.	While Aurizon Network considers that a change in scope or standard is already accommodated under this provision, it will make this clarification.	Aurizon Network will amend this clause to make clear that material change includes a change in scope or standard.
81.	Assessing prudence of capital expenditure	Sch E clause 2.3(a)(i)(B)	It is proposed that the words "as soon as reasonably practicable" be removed from the requirement for the QCA to provide advice from independent experts prior to any decision on prudence.	It is not considered in line with the principles of natural justice for industry to require that the QCA withhold expert advice from Aurizon Network until after it has made its determination,	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
82.	Assessing prudence of capital expenditure	2.3(b), 2.3(d), 2.4(e)(iii) and 6.1(f)(i) and (iii)	The 2013 DAU includes specified time limits for the QCA to respond to various requests by Aurizon Network. It has also proposed that acceptance of a proposal by Aurizon Network is deemed to have occurred if a response is not provided within a certain timeframe. There has been some opposition to the inclusion of these timeframes.	Aurizon Network's rationale for including these timeframes was provided in the UT4 proposal. Delays in the decision making process may result in delays in infrastructure investment or the ability to achieve a return on that investment.  Aurizon Network will discuss with the QCA a reasonable application of timeframes.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
83.	Prudence tests – Asset Management Plan	2, 3 and 4	The 2013 DAU provides that the QCA must accept the scope, cost and standard of asset replacement expenditure as prudent if consistent with an approved asset management plan. It has been proposed	The purpose of this drafting is to replace a general set of criteria in the 2010 AU which can be consolidated within the asset management plan.  As the QCA continues to approve both the asset	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
			that this should be deleted.	management plan itself – subject to a decision by Aurizon Network to lodge an asset management plan - and that the expenditure is consistent with the asset management plan, the intent of the drafting in the 2013 DAU should be consistent with the 2010 AU.	
84.	Asset Management Plan	2.4	<p>A number of amendments have been proposed to the provisions in the 2013 DAU addressing the asset management plan, including:</p> <p>Aurizon Network must submit an asset management plan;</p> <p>Aurizon Network must update the plan annually and have the update approved by the QCA;</p> <p>nothing limits the QCA from holding a public consultation on the asset management plan.</p>	<p>The asset management plan is designed to improve the process for the QCA's acceptance of asset renewal expenditure. It is a voluntary obligation, as is the case in the 2010 AU. Aurizon Network is incentivised to have an asset management plan approved as it reduces investment risks. However, it does not accept that this should be a mandatory obligation.</p> <p>Aurizon Network will discuss the development of an asset management plan framework with the QCA.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
85.	General process for acceptance of works – Safety Management System	4.2(c)(v)	As currently drafted this clause provides that the QCA must have regard to whether Aurizon Network's design standards are contained within the Safety Management System in determining whether the standard of works is prudent. It has been proposed that this should be amended to state that the Safety Management System must have been accepted by the Safety Regulator.	Under the <i>Transport (Rail Safety) Act 2010 (Qld)</i> it is not clear that a Safety Management System is "accepted", or indeed that any amendments from time to time to that Safety Management System are "accepted" by the Safety Regulator. Accordingly, the proposed amendment could result in Aurizon Network's Safety Management System not being a relevant factor to be considered by the QCA, notwithstanding that the Safety Management System is closely linked to Aurizon Network's accreditation. It is therefore not considered appropriate to make this amendment.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
86.	General process for acceptance of prudence of costs – procurement strategy	5.2(b)	This clause lists the factors that would require the QCA to accept costs as prudent where there is an accepted procurement strategy, if certified as such by the auditor. It is proposed to include an additional requirement that the auditor certifies that Aurizon Network has complied with the relevant provisions of the contract.	<p>Aurizon Network's concern with this proposal is that even a trivial or minor non-compliance, or a non-compliance that is rectified or that does not result in any additional capital expenditure by Aurizon Network, may cause Aurizon Network to fail to comply with this requirement. This seems too harsh an outcome and may create enough uncertainty to render a procurement strategy approach to capital expenditure unworkable.</p> <p>However, Aurizon Network will consider drafting which addresses the intent of the proposal but is consistent with the other tests in clause 5.2(b).</p>	Aurizon Network will give further consideration to the proposed drafting in relation to compliance with contract provisions, in the context of assessments of prudence of costs where there is an approved procurement strategy.



Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
87.	Procurement strategy	6.1(b)(i)	<p>Amendments have been proposed to the requirements that if satisfied, would require the QCA to accept a procurement strategy proposed by Aurizon Network. These are:</p> <p>Aurizon Network's procurement strategy be approved by the QCA if "comprehensive".</p> <p>the QCA appoints an auditor to assess compliance.</p>	<p>The requirement for a strategy to be 'comprehensive' was not required in the 2010 AU. It is not clear what "comprehensive" means in respect of a procurement strategy.</p> <p>In relation to the second point, Aurizon Network undertakes an audit as part of its annual capital expenditure claim submitted to the QCA. Aurizon Network notes that the QCA also approves its own auditor to review this claim.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.

### Reference Tariffs [Schedule F]

88.	Reference Trains – capital costs	1.3(b)(vii)	Feedback received is that there is a lack of clarity around the treatment of capital costs in the operational characteristics of reference services.	The drafting in the 2013 DAU addresses an error in the 2010 AU with respect to the inclusion of capital costs associated with new expenditure. There is no change in the intent or the practical application of the principles contained in the 2010 AU. However, Aurizon Network will amend the drafting if it is seen as unclear.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
89.	Electric Charge (EC)	2.2 (and removal of Endorsed Variation Event)	Concerns have been expressed around the lack of transparency regarding the setting of EC.	<p>The proposed EC rate will be based on Aurizon Network recovering all relevant costs associated with on-selling of electricity as per its exemption under s.20Q of the <i>Electricity Act 1994</i>.</p> <p>The QCA continues to have oversight through the audit processes to ensure:</p> <p>Aurizon Network is recovering only those costs associated with procurement and on-selling of electricity;</p> <p>Aurizon Network has not breached its non-discrimination obligations to charge the same EC rate to related and non-related operators under the same circumstances; and</p> <p>the environmental competitive neutrality amounts included in AT2-4 reflect those costs passed on by an electricity retailer.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
90.	Reference tariffs - components	2.1 and 2.2	Concerns have been raised regarding a lack of alignment between the 2013 AU and the standard access agreement regarding the application of reference tariff parameters (gtk, rtp, ntk, egtk).	The drafting in the 2013 DAA is unchanged from the 2010 AU and is not as prescriptive as the standard access agreement with respect to gtk, egtk and nts where a trade certified weighbridge is not available (such that nominal weights are required).  Additional drafting can be included to address this situation.	Aurizon Network will revise the drafting to clarify the distinction between actual and nominal weights, as per the standard access agreement.
91.	Cross System Traffic	2.3	Aurizon Network has revised the drafting for the pricing of cross-system traffics. It has been requested that Aurizon Network clarifies:  that it does not result in cross subsidies; and  how the proportion of distance the cross system service travels on a system is taken into account.	The intent of this clause has not changed since UT3. Neither of the methodologies in the 2010 AU or 2013 DAA result in cross-subsidies between systems.  As per the 2010 AU, the distance is by reference from the origin to the system boundary, and from the system boundary to the destination. Proportions are not required as information is available from the billing system to apply the actual distance travelled.  Aurizon Network would be willing to discuss these issues with the QCA and customers if requested.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAA.
92.	Cross-system traffic – AT5	2.3(a)(v)	Aurizon Network has proposed to change the allocation of AT5 from being based on the egtk in each system to the destination system.	The impact of this change is not material. Aurizon Network is therefore willing to revert to the treatment in the 2010 AU.	Aurizon Network will amend this clause so that the allocation of AT5 for a cross-system service will be based on the egtk attributable to the origin and destination system.
93.	Capital expenditure carryover account adjustment	3	This clause is a provisional clause to allow for an adjustment to be made for finalisation of the capital expenditure carryover account balance for the period ending 30 June 2013. It is requested that this clause be deleted if the adjustment is finalised prior to the approval date for UT4.	Aurizon Network agrees that any provisions that are not required should be removed.	Aurizon Network will remove clause 3 if the capital expenditure carryover account balance can be finalised prior to the UT4 approval date.
94.	Annual Review of Reference Tariffs	4, Sch E – clause 7	It is proposed to change the smoothed approach to the derivation of reference tariffs. Specifically, that there is an annual reset of not only volumes but also capital and maintenance allowances.	The drafting of the 2013 DAA is consistent with the 2010 AU, other than for the short run marginal cost (SRMC) adjustment.  Aurizon Network does not support an annual reference tariff variation process which includes matters other than volumes (which includes SRMC). The annual review needs to be able to occur in a timely manner.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAA.

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95.	Short Run Marginal Cost (SRMC) adjustment	4.1(b)(iii) and (viii) and 4.3(b)(viii)	<p>There is opposition to the SRMC adjustment as the existing treatment (loosely) provides a volume incentive, as well as an incentive to reduce costs.</p> <p>It has also been queried as to whether the adjustment is the wrong way around in the drafting of clause 4.1(b)(iii).</p>	<p>This proposal more closely aligns to changes in Aurizon Network's maintenance costs for changes in network utilisation. As AT1 is explicitly linked to the maintenance allowance, Aurizon Network does not consider the arrangements promote efficiency as forecast AT1 revenue changes may be reflected in maintenance planning.</p> <p>The intent of the drafting is for SAR to be increased if the revised system forecast is above the approved forecast (reflecting the increase in maintenance costs for the higher volumes based on the SRMC rate) and vice versa.</p>	Aurizon Network will amend this clause to make it clear that SAR will be increased if the revised system forecast is above the approved forecast and vice versa.
96.	System Allowable Revenue – Cross System Traffics	4.2(b)	Questions have been raised regarding alignment between cross-system pricing rules and determination of SAR.	<p>Aurizon Network has reviewed the consistency between SAR and TAR associated with cross-system traffics.</p> <p>It agrees that the drafting of clause 4.2(b)(i)(A) is inconsistent in that it reflects the minimum contribution to common costs (as per the 2010 AU) rather than the minimum revenue contribution.</p>	Aurizon Network will revise the drafting to reflect the minimum revenue contribution relevant to the destination system.
97.	SAR adjustments – environmental compliance charges	4.3(b)(iii)	<p>Aurizon Network has proposed an annual adjustment to SAR for the recovery of charges incurred by Aurizon Network from electricity retailers in relation to compliance with environmental initiatives.</p> <p>Instead, feedback provided is that these costs should be included within EC.</p>	The recovery of charges for environmental compliance through AT1-4 (previously recovered via EC) reflects that they are a general overhead cost. They are not directly related to EC consumption. It is therefore not considered appropriate to recover these costs via EC.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
98.	SAR adjustments – audit costs	4.3(b)(v)	Some customers have opposed Aurizon Network's inclusion of an adjustment to SAR for the difference between actual and forecast audit costs. It was also suggested that these costs be borne by the QCA.	Aurizon Network is unable to reasonably control total audit costs. The nature and extent of the scope is related to the audit scope approved by the QCA, and in some cases requested by the QCA.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
99.	Calculation of total actual revenue (TAR)	4.3(c)	It has been proposed that TAR is determined as per the relevant standard access agreement to ensure tonnages reflect billing arrangements.	TAR (i.e. billings) is in accordance with the relevant standard access agreement unless where specified in the revenue cap submission. Whilst, the intent of the drafting has not changed from the 2010 AU, Aurizon Network will amend the drafting to clarify this.	Aurizon Network will revise the drafting to clarify the distinction between actual and nominal weights as per the standard access agreement.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
100.	Calculation of TAR	4.3(c)	Feedback received has requested the inclusion of (1) overload charges, and (2) ancillary revenues, within TAR.	<p>While Aurizon Network does manage safety risks in relation to overloads, for practical reasons, Aurizon Network does not currently apply overload charges in the CQCN (even though it retains the ability to do so). In future, any overload charges are expected to be immaterial.</p> <p>Ancillary revenues relating to the maintenance connections to private infrastructure have traditionally been immaterial. The associated maintenance costs have been excluded from the UT4 maintenance forecast.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
101.	Approval of revenue adjustment amounts	4.3(g)	It is proposed that TAR should be reconciled to Aurizon Network's actual revenue.	<p>The QCA can request reconciliations of billing and actual revenues via its review of the billing models supporting TAR.</p> <p>It should be noted that any reconciliation via the revenue cap submission (which is made public) would potentially include matters not subject to regulation and which accordingly cannot be disclosed.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
102.	Approval of revenue adjustment amounts	4.3(k)(ii)	Concerns have been expressed with the proposal to limit consultation on revenue adjustment amounts and increments to access holders and access seekers.	<p>The intent of the drafting between the 2010 AU and the 2013 DAU has not changed.</p> <p>The intent is that the consultation is focussed upon those parties affected by the Reference Tariff variation. This should include current and potential customers of access holders and access seekers. Aurizon Network will restore the drafting from the 2010 AU to confirm this.</p>	Aurizon Network will amend the drafting to allow the QCA to invite and consider comments from relevant industry participants regarding the revenue adjustment amounts and increments.
103.	Performance incentives/draft incentive mechanism	4.4	<p>There is consistent support for some form of incentive mechanism. A range of comments were including:</p> <ul style="list-style-type: none"> <li>- should exclude SRMC/ AT1 adjustment in the revenue cap;</li> <li>- rejection of the increment and supply chain performance incentive as per Aurizon Network's May 2012 submission;</li> <li>- support for a transparent incentive-</li> </ul>	<p>The May 2012 submission made by Aurizon Network proposed three mechanisms:</p> <ul style="list-style-type: none"> <li>a symmetrical service quality regime with up to 1% of allowable revenue 'at risk'; and</li> <li>two positive incentives to improve supply chain performance.</li> </ul> <p>Aurizon Network has only proposed the two positive increments. The first was withdrawn subject to the QCA's decision on this submission.</p>	No further change has been proposed at this stage, pending further discussions with industry regarding transparency and the QCA's decision on the May 2012 submission.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
			<p>based mechanism similar to the electricity transmission and distribution industries;</p> <ul style="list-style-type: none"> <li>- support for a symmetrical incentive framework to align Aurizon Network with industry's performance metrics;</li> <li>- support for a symmetrical mechanism linked to performance, contract entitlements and regulatory outcomes.</li> </ul>	Breach and negligence provisions continue to apply to Aurizon Network's revenue cap.	
104.	Recovery of revenue adjustment amounts	4.5	It has been proposed to accelerate the recovery of revenue adjustment amounts via an adjustment charge, providing for an immediate adjustment instead of the current two year lag.	Aurizon Network recognises the benefits for both customers and Aurizon Network and is prepared to implement a more immediate adjustment.	Following further discussions with the QRC, Aurizon Network will propose revised drafting to allow for the more immediate recovery of revenue adjustment amounts.
105.	Review event – requirement to submit application	5.1(b)	It is proposed that the QCA should be able to direct Aurizon Network to submit a review event application, in addition to an endorsed variation event.	<p>Aurizon Network considers that for most of the matters covered by a review event, it is incentivised to submit its own application (unlike Endorsed Variation Events).</p> <p>Notwithstanding, Aurizon Network will amend the 2013 DAU to implement this proposal.</p>	Following further discussions with the QRC, Aurizon Network will propose revised drafting to allow the QCA to direct Aurizon Network to submit a review event application, in addition to an endorsed variation event.
106.	Review event – maintenance costs	5.3(b) and (c)	<p>Two review events that were included in the 2013 DAU related to adjustments for changes to maintenance costs (subject to a 2.5% threshold), arising from:</p> <ul style="list-style-type: none"> <li>- a change in maintenance practices reasonably requested by an access holder or customer;</li> <li>- the engagement by competitive tender of a third party, or an Aurizon party on arms length terms, and the costs will exceed the approved allowance.</li> <li>- It is proposed that these be deleted. Questions have also been raised as to how the 2.5% is applied.</li> </ul>	<p>The 2.5% threshold applies to the maintenance cost impact where the base cost for non-electric is net of AT1 for the relevant system. Electric does not require an equivalent deduction as such the threshold is 2.5% of the base cost for electric. The drafting can be reviewed to confirm these principles.</p> <p>Clauses 5.1(a) to (c) may cover the same events, Aurizon Network will consider revised drafting which combines them.</p>	Aurizon Network will revise the drafting of this clause to combine the maintenance cost review events (no change to threshold) and to clarify application.
107.	Review event force majeure	5.3(e)	<p>Submissions have highlighted issues with regard to:</p> <ul style="list-style-type: none"> <li>- the definition of Incremental Costs (the</li> </ul>	Aurizon Network agrees that the use of incremental costs (as defined) may not be appropriate for the relevant review event. Aurizon Network is prepared to	Aurizon Network will review the drafting of the review event provisions relating to force majeure following

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
			<p>bring forward of costs from future years);</p> <ul style="list-style-type: none"> <li>- “act of God” (it has been suggested that paragraph (e) of the definition of Force Majeure be deleted); and</li> <li>- insurance.</li> </ul>	<p>consider revised drafting to confirm that the costs allowed cannot otherwise be included in an approved reference tariff.</p> <p>For review events associated with a force majeure event, the definition should be aligned with the standard access agreement. “Act of God” is a general catch-all provision and is not unusual to be included in an agreement alongside related, defined events.</p> <p>Aurizon Network will discuss with customers an alternative application of review events that are wholly or partly covered by insurance, and whether insurance arrangements can be changed.</p>	<p>further discussions with customers.</p>
108.	Approval process for proposed reference tariff variation	5.5(c)	<p>It is suggested that this clause should be amended to make it clear that the list of matters to be considered by the QCA in approving a proposed reference tariff variation should not be exhaustive.</p>	<p>The intent of the drafting in the 2013 DAU is unchanged from the 2010 AU. The matters under this section, including the QCA’s consideration under the QCA Act, are not exhaustive. Aurizon Network is willing to amend this provision to make this clear.</p>	<p>Aurizon Network will amend this clause to make it clear that the list of matters to be considered by the QCA in approving a proposed reference tariff variation is not exhaustive.</p>
109.	Adjustment Charges	6.1(a)(ii) and 6.3(c)(i)	<p>It is suggested that amendments are required to clarify QCA approval of a reference tariff which has a past application date.</p>	<p>The intent of the drafting in the 2013 DAU is unchanged from the 2010 AU.</p> <p>Aurizon Network is willing to amend the drafting to clarify the QCA approval of a reference tariff which has a past application date in the context of adjustment charges.</p>	<p>Aurizon Network will amend the 2013 DAU to make it clear that an adjustment charge could be applied where the QCA approves a variation of a reference tariff in accordance with clause 5 and that variation applies or takes effect on a date prior to the date on which the QCA approves the variation.</p>
110.	Reference trains - electric	7 and 8	<p>Industry has suggested that it is inappropriate for the specification of the reference train in Blackwater and Goonyella to be only electric, rather than either diesel or electric.</p>	<p>Aurizon Network’s proposal is consistent with:</p> <ul style="list-style-type: none"> <li>- tariff modelling; and</li> <li>- section run times associated with the reference train,</li> <li>- in place for the 2010 AU.</li> </ul> <p>Notwithstanding, specification of a diesel or electric consist is not necessary for pricing purposes (for tariff modelling a predominant consist is still required). Accordingly, the drafting from the 2010 AU can be restored.</p>	<p>Aurizon Network will amend the reference train characteristics for the Blackwater and Goonyella systems to be either diesel or electric.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
111.	Reference tariffs - Newlands BRTT	10.1(c)	Concerns have been raised regarding the increase in the below rail transit time in Newlands from 124% to 160%.	The drafting reflects the DAAU for GAPE approved by the QCA in September 2013.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
112.	AT2	7, 8, 9 and 10	<p>The following matters have been raised regarding the proposed changes to AT2:</p> <ul style="list-style-type: none"> <li>- the size of the relative impact for Stanwell;</li> <li>- the “rebalancing”, concern around the impact of the increase in AT2 on take or pay;</li> <li>- the size of the increase.</li> </ul>	<p>Aurizon Network has proposed an increase in AT2 associated with higher expansion costs, offset by a decrease as follows:</p> <ul style="list-style-type: none"> <li>- for Newlands, AT4; and</li> <li>- for all other systems, 50% allocated between AT3 and AT4.</li> </ul> <p>There is no impact on the revenue that Aurizon Network is entitled to earn from each system (only an impact on relativity between mines due to the distance taper).</p> <p>Stanwell continues to receive a significant discount to the Blackwater reference tariff in UT4. Aurizon Network would be willing to consider a higher discount subject to acceptance by other access holders in Blackwater and approval by the QCA.</p> <p>With respect to take or pay, Aurizon Network recognises that an unintended consequence of the AT2 proposal is that, relative to UT3, an access holder's exposure to UT1 take or pay will reduce relative to other access holders. However, any effect is currently insignificant, and in future negligible, as most of the remaining UT1 access agreements will expire during the UT4 period.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.
113.	Nominal payloads	7, 8 and 10	It has been requested that Aurizon Network provides clarity as to how the nominal payloads are prescribed.	<p>Aurizon Network proposes nominal payloads (in tonnes) for each system.</p> <p>Tonnages are based on the reference train configuration for each system inclusive of a 98% loading efficiency. These tonnages are aligned with the assumptions supporting the tariff modelling.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
<b>Available Capacity Allocation and Management [Part 7]</b>					
114.	Provision of mechanism for short term transfers	n/a	Customers want more flexibility to manage contracted capacity through a mechanism for short term transfers that allow for some transfers to be approved within 48 hours. The mechanism should allow an access holder to schedule train paths in excess of contract where traded capacity is available.	Aurizon Network is proposing to introduce a short term swapping mechanism to provide access holders with more flexibility in managing their short term capacity requirements.	<p>Aurizon Network will amend the drafting to include a short term swapping mechanism that includes features such as:</p> <ul style="list-style-type: none"> <li>- transfer requests of up to 12 months which can be submitted in conjunction with train orders for an intermediate train plan;</li> <li>- a requirement that no other access holder or Aurizon Network is made worse off;</li> <li>- a requirement for confirmation from relevant service providers in the supply chain that the transfer can be accommodated; and</li> <li>- no requirement for Aurizon Network to perform a capacity analysis.</li> </ul>
115.	Demonstration of the utilisation of access rights	7.1(a)(i)	It is suggested that the 2013 DAU include an obligation for Aurizon Network to act reasonably when deciding to refuse access rights where they cannot be fully utilised.	The intention of clause 7.1(a) is to list up front, the matters and the associated clauses dealt with in Part 7. The substance of the matters is included in those clauses.	Aurizon Network will amend the drafting of clause 7.1(a)(i) to reflect the obligation in clause 7.2.
116.	Allocation of capacity must be independent of funding arrangements	7.1(a)(v)	It has requested that clarification be provided to confirm that priority in allocating capacity is independent of how an expansion will be funded.	Industry has raised similar concerns in relation to Part 4 and Part 8.	<p>Aurizon Network will include a general obligation in the 2013 DAU that it will not have regard to whether any relevant expansion is, or may be, user funded or funded by Aurizon Network when:</p> <ul style="list-style-type: none"> <li>- negotiating or entering into an access agreement;</li> </ul>



Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
					<ul style="list-style-type: none"> <li>- allocating available capacity under Part 7; or</li> <li>- granting a provisional capacity allocation under clause 8.6(o).</li> </ul>
117.	Subjective nature of matters to be assessed to demonstrate full utilisation of access rights	7.2	Feedback received is that the principles around Aurizon Network's ability to refuse access rights if certain conditions (such as supply chain rights, a contract for rail haulage, and sufficient facilities) are not met are subjective and potentially allows for discrimination.	Clause 7.2 is an objective test. Aurizon Network must act reasonably in deciding whether it is satisfied the access seeker can fully utilise the relevant access rights. Whether the access seeker can fully utilise the relevant access rights will largely be a question of fact and can ultimately be disputed if necessary.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
118.	Inclusive versus determinative list of matters covering whether an access seeker can fully utilise access.	7.2	It has been suggested that the inclusive list of factors which Aurizon Network could take into account when deciding whether an access seeker can fully utilise requested access rights, should be a determinative and exhaustive list.	Aurizon Network agrees in principle with the proposed amendment.	Aurizon Network will amend the drafting of clause 7.2 to make it a determinative and exhaustive list, subject to a review of the matters included.
119.	Requirement to demonstrate 'reasonable likelihood' in demonstrating ability to use requested access.	7.2	It has been requested that an amendment be made to acknowledge that at the time of allocating available capacity, an access seeker must demonstrate a reasonable likelihood of satisfying the requirements listed in clause 7.2 by the time the access rights are to commence.	<p>The 2013 DAU includes a "reasonable likelihood" criteria for supply chain rights and a rail haulage provider in Schedule B.</p> <p>Aurizon Network agrees that the consideration of the matters in 7.2 should be in relation to the reasonable likelihood of the access seeker satisfying the matters listed, at the time the access rights are expected to be used.</p>	Aurizon Network will amend the drafting to confirm that the consideration of matters in clause 7.2 will be based on the reasonable likelihood of utilisation at the time the access rights are expected to be used.
120.	Matters duplicated in definition of supply chain rights	7.2	It has been submitted that the criterion in clause 7.2(a) regarding the ability to load and unload train services and the criterion regarding sufficient facilities (clause 7.2(d)) are encompassed within the definition of supply chain rights and are therefore unnecessary.	<p>It is not explicit that the definition of supply chain rights contemplates the existence of the right to load and unload train services and the availability of rollingstock and other facilities necessary to run trains.</p> <p>Aurizon Network agrees to amend the definition of supply chain rights to ensure these matters are expressly included.</p>	Aurizon Network will review clause 7.2 and the definition of supply chain rights to remove any duplication.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
121.	Reinstate the replacement mine concept	7.3(a)	It has been requested that the replacement mine concept from the 2010 AU be reinstated for renewals.	Aurizon Network agrees to reinstate the 2010 AU drafting in relation to replacement mine. However the definition of replacement mine needs to be refined to reflect the intention that a replacement mine is a new mine that utilises the same capacity as the existing mine.	Aurizon Network will reinstate the 2010 AU replacement mine concept but will refine the definition to reflect the intention that it must be a new mine utilising the same capacity as the existing mine (that is, branch line and main line path).
122.	Requirement that Aurizon Network negotiate renewals promptly	7.3(c) and (d)	It has been requested that Aurizon Network be required to promptly negotiate with a renewing access seeker given the renewal needs to be finalised by a fixed date.	Aurizon Network considers it cannot, without failing to comply with the undertaking or the QCA Act, maliciously or recklessly delay negotiations in respect of a renewal, with the result that an access agreement for a renewal is not executed at least 12 months prior to the expiry of the access rights being renewed.  Aurizon Network will amend the drafting to clarify this in relation to access applications for renewals.	Aurizon Network will amend the drafting to expressly reinforce its negotiation obligations in respect of access applications for renewals.
123.	Priority for renewing access seekers	7.3(e)	A new clause has been requested which seeks to give renewing access seekers priority by expressly stating that they have a right to receive access “without re-submitting an Access Application or joining a queue”.	Clause 7.3 provides a renewing access seeker an express priority in relation to their proposed renewal.  The access application is the mechanism that gives rise to the provisions of the negotiation framework under Part 4 of the undertaking. This existing process ensures that sufficient information is provided to Aurizon Network to negotiate an access agreement for a renewal.  The obligations under 7.3 and the negotiation framework balance Aurizon Network’s requirement for current information to assess a renewing access application, whilst providing greater certainty that access rights will be available for the life of mine.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
124.	Sunset clause on priority of renewals	7.3(f)	It has been suggested that the requirement for a renewal application to be at least 12 months prior to the expiry of the relevant Access Rights be removed.	Aurizon Network must balance the needs of existing access holders (ability to renew) with that of new access holders (request for new access rights). The removal of the deadline for renewal applications could affect the ability of other access seekers to contract for the access rights.  In addition, if capacity is uncontracted when it is available either Aurizon Network will not earn a return or, where the revenue cap applies, existing access holders may be	No proposed change. Aurizon Network considers the obligations under clause 7.3 achieve an appropriate balance in respect of the relevant competing interests.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				<p>faced with increases in access charges.</p> <p>The 12 month period is a reasonable compromise in relation to all of the relevant competing interests.</p>	
125.	Expedited transfer arrangements	n/a	Feedback received is that there is a need to include an obligation for Aurizon Network to expeditiously complete the negotiation process for transfers, and in particular to use an abbreviated Part 4 process for short term transfers.	Aurizon Network currently provides responses well within the regulatory timeframes. It is willing to make an amendment to report its performance in this area.	Aurizon Network will include an obligation in the compliance report in Part 10 to report on the average negotiation period for transfers.
126.	Other works required for access rights	7.5.2(b)(iii)	It is suggested that the wording of this clause, in relation to which mutually exclusive access applications Aurizon Network will enter into negotiations with, is too broad. It is suggested that the exclusion of access applications that are subject to “ <i>other works or expenditure by Aurizon Network relating to the Rail Infrastructure</i> ”, is removed.	The 2013 DAU drafting intended that access negotiations would proceed except in the case were the access rights would be subject to activities such as expansions and Customer Specific Branch Lines, as well as other activities that will impact on capacity. An example of this is, operational changes that do not require capital expenditure.	Aurizon Network will amend the clause to include other works or activities required to enhance capacity.
127.	Consideration of Aurizon Network’s legitimate business interests	7.5.2(d)	<p>It is requested that the criteria for determining how to allocate capacity be changed by removing the reference to Aurizon Network’s legitimate business interest, revenue adequacy and the ability to allocate capacity to the highest marginal value.</p> <p>In addition, it is sought to restrict Aurizon Network to specified criteria in clause 7.5.2(d) by making it an exhaustive, rather than an inclusive list.</p>	<p>The pricing principles in s 168A of the QCA Act include a requirement for revenue adequacy, which is reflected in the pricing principles in Part 6 of the 2013 DAU. As revenue adequacy is a fundamental element of the regulatory regime, Aurizon Network does not agree to its removal.</p> <p>Aurizon Network agrees to remove the reference to legitimate business interests, which results in the matters to be considered becoming an exhaustive list.</p>	<p>Aurizon Network will amend this clause to remove the reference to legitimate business interests and will consider whether any more matters are required to be listed for an exhaustive list.</p> <p>Aurizon also agrees to remove the reference to the highest marginal value.</p>
128.	Mandatory priority of coal train services	7.5.2(d)	It has been requested that a mandatory obligation be imposed on Aurizon Network to treat a proposed access agreement for coal carrying train services as having a higher priority than for non-coal carrying train services.	<p>Clause 7.5.2(d)(ii) in effect acknowledges the price differential between coal and non-coal services, and allows Aurizon Network to use a simple test, that is whether the service is a coal or non-coal service, to streamline capacity allocation process where appropriate.</p> <p>Aurizon Network considers it appropriate to be able to distinguish between coal and non-coal services but not to</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				mandate one type of service over the other.	
129.	Capacity allocation – date of acknowledgement	7.5.2(f)(iv)	It has been requested that the 3 year criterion for determining date priority for access applications be removed.	In determining the date priority, Aurizon Network agrees to amendments to require it to act reasonably in forming its opinion as to whether or not it is practical to determine the priority between two or more competing applications. In doing so, Aurizon Network considers the date priority should reflect the provisions in Part 4 in relation to its obligation to negotiate access agreements.	Aurizon Network will make amendments to require it to act reasonably.
130.	Agreements to be executed	7.5.2.(f)(ii)	It has been suggested that the removal of the reference to a user funding agreement be removed, as, the execution of an access agreement in this circumstance is covered in Part 8.	The reference to a user funding agreement was included to provide an example of the types of agreements that the parties must be willing to execute in order to be allocated capacity under the date order test.	Aurizon Network will remove reference to a user funding agreement.
131.	Removal of queue	7.5.2	It has been suggested that the capacity queue should be reinstated on the basis that removal of the queue reduces the objectivity around capacity management, and may lead to discrimination. Reinstatement of queuing provisions as per section 7.3.3 and 7.3.4 of the 2010 AU is requested.	The queue was removed on the basis that it did not promote the optimal allocation of scarce capacity. Practically, if capacity becomes available, the framework allowed the queue to be re-ordered and provided to the party ready to execute an agreement. The revised process now provides 'yes/' 'no' tests and is considered a more efficient allocation of resources. Access Seekers have the ability to utilise the dispute mechanism if they disagree with the application of the criteria.  Aurizon Network proposes to include diagrams in the undertaking to make this process clear.	Aurizon Network will prepare process diagrams for inclusion in the undertaking to aid understanding of the process for allocating capacity.
132.	Compliance with network management principles	7.6.1(a)	It is considered that the undertaking should impose an obligation on Aurizon Network to comply with the network management principles and that the QCA should ensure such compliance.	The obligation to comply with the network management principles is included in the access agreement. The QCA does not have the power under the QCA Act to interpret and enforce common law contracts..  However, the facts giving rise to the dispute in question may offend a provision in either the QCA Act or the undertaking over which the QCA does have power - thus, triggering a separate dispute process. For example, if there is a breach of the NMP that involves disclosure of protected information to the marketing division, then Aurizon Network offends against multiple obligations (the contract, the undertaking and the QCA Act), each with	No change is proposed. Aurizon Network considers the obligation to comply with the NMP rightly sits in the Access Agreement. However, Aurizon Network will review the drafting of the undertaking to ensure that access holders are able to access the complaints handling (clause 3.22) and audit process (clause 10.7 and 10.8) in relation to Aurizon Network's obligations under Part 3, for example the protected information obligations of

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				their own enforcement requirements.	the undertaking.
133.	Initial System Rules	7.6.3	It is been requested that mandatory System Rules be developed for every system.	Aurizon Network agrees with industry views and has submitted draft System Rules to the QCA for Northern Bowen Basin (GAPE, Newlands and Goonyella) and Capricornia (Moura and Blackwater).	Aurizon Network will amend the drafting to require each system to have System Rules.
134.	Annual review of System Rules	7.6.4	<p>Feedback received is that Aurizon Network should be obliged to review the System Rules at least annually or in certain circumstances such as where:</p> <p>there is an increase of least 30% of the GTKs in that system;</p> <p>a new coal basin is connected to the system;</p> <p>a new unloading terminal is developed;</p> <p>a change in the System Operating Assumptions occurs; or</p> <p>at least 60% of access holders in the system request it.</p>	<p>Aurizon Network has committed in the Capricornia and Northern Bowen Basin System Rules to an annual review of the System Rules and will amend the 2013 DAU to reflect this.</p> <p>In addition, it is appropriate to review the System Rules in the event there is a greater than 30% change in GTKs over a relevant period.</p>	Aurizon Network will include a commitment to conduct a review of the System Rules at least annually and in the event of a greater than 30% change in GTKs.

### Network Management Principles [Schedule H]

135.	Master train plan	3.1	It has been requested <b>that</b> more transparency of information in the master train plan be provided. In addition, each train path in the master train plan must be practically achievable, taking into account headways. The maximum number of usable round trips must not exceed the practical utilisation ceiling of any track sections.	The intention is that the master train plan must demonstrate Aurizon Network's ability to meet contractual commitments, taking into account planned possessions, known outages and other network traffic. In practice, this is achieved through train diagrams of system paths (specific origin to port).	<p>Aurizon Network will amend the network management principles to better describe the relationship between the master train plan, intermediate train plan and daily train plan.</p> <p>Aurizon Network will amend the provisions to clarify that the master train plan will include train service entitlements for up to 2 years.</p> <p>Aurizon Network will revise the drafting in clause 3.2 (b) of Schedule H to clarify that Aurizon Network can only provide the master train plan to access holders to the extent it can do so while</p>
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Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
					not breaching its ring fencing obligations.
136.	Infrastructure Service Providers	n/a	It is suggested that the network management principles require Aurizon Network to notify or consult with adjacent network providers in relation to amendments to the master train plan, intermediate train plan and daily train plan.	This is considered reasonable.	Aurizon Network will amend the drafting to include an obligation for notification and consultation with adjacent network providers where relevant.
137.	Master train plan	3.3 (b) (iii) and 6.3	It is considered that Aurizon Network's ability to alter the master train plan without consultation should mean that existing access holders are able to obtain sufficient train service entitlements under their agreements. This provision should be subject to any changes not being allowed unilaterally where there is any possibility that another access holder is materially disadvantaged.	For cyclic traffic, the master train plan's starting point is train service entitlements contracted under access agreements. Consequently, an ability to alter the Master Train Plan to obtain sufficient train service entitlements is not considered necessary.  The 2013 DAU restricts Aurizon Network's ability to alter the intermediate train plan for new or additional train service entitlements without consultation when train services have been scheduled.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
138.	Daily train plan	Schedule H	Industry considers planning arrangements should include a lock down 48 hour plan that is scheduled at least one business day prior to the day of which the daily train plan relates. A default 48 hour lock down period should be the shortest possible timeframe, with provision for a longer period by agreement.	Aurizon Network acknowledges discussions with industry on this issue in relation to the System Rules. It will amend the network management principles to include a 'lock down period' as per the System Rules or in the absence of the System Rules, then 48 hours prior to day of operation.	Aurizon Network will amend the network management principles to include a 'lock down period' as per the System Rules or in the absence of the System Rules, then 48 hours prior to day of operation. In addition, Aurizon Network will change the references to Business Days in scheduling to 'days'.  Aurizon Network will also correct a drafting error in clauses 5.3 (b) (ii) and 5.4 (a) (i) of Schedule H to ensure that additional train service cannot result in any Access Holder's scheduled Train Services not being met.
139.	Incident management	7.4 (c)	Feedback received is that there should be a limit on Aurizon Network's ability to depart from the traffic management decision making	The 2013 DAU drafting includes a 'reasonable endeavours' obligation to return to normal train control procedures as soon as reasonably practical. In practice it	Aurizon Network will include an obligation to keep the relevant access holder informed of the progress to

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
			matrix following an incident to situations where there is no other choice. There needs to be a maximum time period that departure from the schedule can occur.	would be difficult to apply a maximum limit that would apply in all circumstances given that it will depend on the nature and effects of the incident or force majeure event.	remove the incident or force majeure event and the return to normal train control procedures.
140.	Contested Train Path – objective to maximise system throughput.	8.1 & 8.2	Feedback received is that another objective should be included for the Contested Train Path decision making process, namely to maximise the capacity and throughput of each coal system. In addition, the objectives should be ranked.	<p>The objectives of the contested train path decision making process are outlined in clause 8.1 of Schedule H. The contested train path decision making process is fundamentally about meeting contractual entitlements and providing a transparent process for differentiating between access holders in respect of the use of those entitlements.</p> <p>The NMP will indirectly assist in achieving the maximisation of system performance by establishing a process to meet contractual entitlements in a transparent, consistent and fair manner.</p>	No change is proposed The objective of maximising system performance in relation to the contested train path decision making process is indirectly met through the objective of meeting Aurizon Network's contractual obligations in a transparent, consistent and fair manner.
141.	TSE reconciliation reporting	8.2	<p>Feedback received has included that:</p> <p>there is a need for more robust and transparent access services and operational performance data;</p> <p>there should be a requirement in Schedule H for Aurizon Network to report on train service entitlement allocation and consumption, including Aurizon Network's non-performance; and</p> <p>the TSE Reconciliation Report should detail the cause for non-performance including aggregated and individual information.</p>	The drafting of Schedule H in the 2013 DAU includes an obligation to provide a TSE reconciliation report to access holders. There is a separate process for recording and communicating cancellation cause identification, which is made available to access holders under their access agreement.	Aurizon Network will review the reports provided to access holders with a view to consolidating and making them available in the secure customer portal to increase transparency.
142.	Contracting for zero train services	8.2	It has been suggested that the contracting regime should allow for zero train service entitlements to allow for allocation to any origin.	<p>Current arrangements do not preclude ad hoc services from operating. However, these services have a lesser priority for path allocation. In the event of a contested path, contracted train service entitlements will be given preference over ad hoc services.</p> <p>Aurizon Network considers ad hoc services provide the flexibility sought by customers.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
143.	Contested Train Path Process	8.3	Industry is seeking greater flexibility. This includes through allocation of contested paths on an access holder's portfolio of total access rights rather than origin/destination pairings and a wider ability to substitute train entitlements.	<p>The contested train path decision process in the 2013 DAU is intended to provide increased flexibility for access holders taking into consideration contractual obligations.</p> <p>Aurizon Network's view is that the priority should be contractual obligations in terms of an individual train path, followed by an ability to mitigate Aurizon Network Cause. This is followed by three rules designed to provide greater flexibility for access holders to manage their portfolio of access rights. The remaining rules are then intended to allow access holders to 'catch up' previous underutilisations of their access rights.</p> <p>It is Aurizon Network's understanding that concerns in respect of the limitations on flexible management of access rights relate to the clause 8.3(a)(vii) and (viii) (for which the equivalent provisions under the 2010 AU were not entirely clear). This is now clarified as relating to individual train paths for an origin-destination-D pair.</p> <p>Whilst Aurizon Network is prepared to consider widening this to a portfolio of train paths (i.e. going beyond an origin-destination pair) it should be made clear that access holders will retain contractual obligations in relation to underutilisation of train paths and take or pay.</p>	Aurizon Network will review clauses 8.3(a)(vii) and (viii) to assess whether an appropriate test under the Contested Train Path process is who is the most behind on the basis of a portfolio of train paths.
144.	Clarification of Pooling of entitlements	8.2 (c) (iii) and 8.3 (iv)	It has been requested that further clarification be provided on what pooling of entitlements entails.	<p>Aurizon Network considers the pooling of entitlements, occurs based on the following principles:</p> <ul style="list-style-type: none"> <li>a pool consists of contracted access rights of an access holder;</li> <li>there is a separate pool relating to each relevant system;</li> <li>the pool relates to the access rights for mainline paths in the relevant system;</li> </ul>	Aurizon Network will review the drafting to clarify that the Pooled Entitlement concept is the portfolio or aggregate of total access rights.
145.	Calculation of train service entitlement	2	It has been suggested that Schedule H include how train service entitlements are calculated, taking into account the expected availability and capacity of the network for planned and unplanned maintenance,	<p>Aurizon Network recognises that industry is seeking greater information in relation as to how train service entitlements are calculated and how capacity is impacted by planned and unplanned maintenance.</p> <p>The train service entitlement calculation is currently</p>	Aurizon Network will amend the preliminary information to include an information sheet or manual on the calculation of train service entitlements and capacity generally and remove



Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
			outages, variability and speed restrictions	included in the draft Northern Bowen Basin and Capricornia System Rules. Rather than including this information in the network management principles, it may be appropriate for an information sheet to be publicly available on the website as part of preliminary information.	information from System Rules.
146.	Reference Train Service		Some industry participants want the definition of a reference train to reflect monthly railings not weekly.	The intention in the 2013 DAU is for the reference train service to be based on 'even railings' over the year.	Aurizon Network will delete reference to a weekly period in the reference train service definition.
<b>Coal Supply Chain Coordination, Network Development Plan and Voting Process [Part 8]</b>					
147.	Objective in relation to supply chains	8.8.1	It has been requested that a provision be included requiring Aurizon Network to use reasonable endeavours to maximise throughput in each supply chain.	<p>Clause 2.2(e)(iv) of the 2013 DAU refers to the intent of UT4 being, amongst other things, to achieve an appropriate balance between various specified matters. One of those matters is: "cooperation between all elements of coal supply chains (in respect of which Access forms a part) to seek to maximise the performance of those supply chains".</p> <p>Aurizon Network considers that the provisions in the 2013 DAU are consistent with the intent set out in clause 2.2.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
148.	Principles in relation to coal supply chains	2.2	<p>Aurizon Network has removed a specific requirement present in the 2010 AU to establish principles and processes to guide cooperation of all elements of coal supply chains on an annualised basis.</p> <p>Given that take or pay commitments are assessed annually, feedback received is that it is considered appropriate for the requirement to establish principles and processes to guide cooperation of the coal supply chain be on an annualised basis.</p>	<p>The intent of this part of the 2013 DAU is to set the objectives of the undertaking. The remainder of the undertaking relates to the operative provisions.</p> <p>Aurizon Network considers the timeframes in relation to the participation in the coal supply chain is appropriately dealt with in Part 8.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
149.	Aurizon Network as central co-ordinator	8.8	Issues have been raised with Aurizon Network having a central co-ordinating role in the coal supply chain.	<p>Aurizon Network does not intend that the 2013 DAU provide it with a central coordinating role in the supply chain.</p> <p>Aurizon Network has an appropriate role in relation to (including the network management principles and System Rules, the contractual obligations in the access agreements, obligations in the capacity negotiation process set out in Part 4 of UT4, and in obligations around the capacity allocation processes in Part 7. It is not reasonable or practical to suggest that Aurizon Network not have a key role in each of these areas. The basis of industry's concern is also not articulated.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
150.	Alignment of supply chain obligations with objectives of the QCA Act	8.8.1	<p>Comments have been made regarding Aurizon Network's interpretation of the object of Part 5 of the QCA Act. It has been submitted that the "economically efficient operation of, use of and investment" in the CQCN cannot be isolated from the efficiency of the wider coal chain.</p> <p>It is also stated that Aurizon Network must be prevented from using its position to prevent industry participants from developing arrangements that deliver greater flexibility and efficiency across the supply chain. Clause 8.8.1 of the 2013 DAU is not seen as promoting economically efficient operation of, use or investment in, Aurizon Network's network.</p>	<p>Clause 8.8.1 outlines Aurizon Network's commitment to participate in supply chain coordination in the context of meeting the object of Part 5 of the QCA Act in promoting the efficient use of, and investment in, significant infrastructure with the effect of promoting effective competition in related markets.</p> <p>Fundamentally, the access framework is directed at improving the efficient use of the below rail asset by ensuring that dependent markets (particularly the above rail market) are contestable. The 2013 DAU does not (and cannot) aim to provide a framework for control of the entire supply chain.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
151.	No obligation to make binding commitment as a result of participation in supply chain group	8.8.1(b) -	This clause clarifies that Aurizon Network is not obliged to make any binding commitment or take any action as a result of participation in a supply chain group. It is requested that this be removed.	<p>Consistent with Aurizon Network's responsibility as a network/infrastructure manager to make its own decisions, Aurizon Network cannot accept any binding obligation in the 2013 DAU to take any action based on the decisions of a Supply chain group or other participants in the supply chain.</p> <p>However, nothing prevents Aurizon Network from agreeing to a particular action which may be developed in consultation with supply chain participants.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
152.	Parties who can make submissions on system operating assumptions	8.8.2 (a)(i)&(ii)	In reviewing the system operating assumptions for a coal system, it has been suggested that Aurizon Network should be required to notify (in addition to the applicable supply chain group) the QCA and relevant access holders. It must consider submissions from access holders (in addition to the applicable supply chain group).	The terms in the 2013 DAU are similar to the 2010 AU. However, Aurizon Network is willing to notify access holders of a review of the system operating assumptions and consider submissions from them.  Likewise in item 174 Aurizon Network has agreed to notify private infrastructure owners that connect to the rail infrastructure.	Aurizon Network will amend this clause to provide that, in addition to notifying the Supply Chain Group, Access Holders are also notified of a review of the System Operating Assumptions. Aurizon Network will consider submissions of the Supply Chain Group and Access Holders when reviewing the System Operating Assumptions.
153.	Objective of system operating assumptions	8.8.2(a) & (b)	It has been commented that the provisions in clause 8.8.2 effectively result in the system operating assumptions for a coal system are being effectively determined by Aurizon Network. While there is input from other parties there is no obligation on Aurizon Network to incorporate the views of these other parties.	Aurizon Network will develop system operating assumptions for each coal system in consultation with relevant supply chain groups. This is consistent with Aurizon Network's responsibility as a network/infrastructure manager to make its own decisions regarding system operating assumptions for its network. While the views of industry participants will be taken into account, there is no (and should be no) obligation on Aurizon Network to vary the system operating assumptions based on the submissions received.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
154.	QCA approval of changes to system operating assumptions	8.8.2	It is suggested that a new provision be included in this clause providing that any amendment or change to system operating assumptions must be approved by the QCA. It has also been suggested that independent oversight is required for system operating assumptions.	In the 2013 DAU the system operating assumptions are not approved by the QCA. This is consistent with the position in the 2010 AU.  However, Aurizon Network does consider it appropriate that system operating assumptions be required to reflect good engineering practices.	Aurizon Network will include an obligation for the system operating assumptions to reflect good engineering practices.
155.	Annual capacity reviews	8.8.3 (a)	The 2013 DAU provides Aurizon Network with discretion as to when it undertakes a capacity review. Feedback received is that capacity reviews should be undertaken no less than annually.	Aurizon Network acknowledges that capacity reviews completed at least annually will provide greater the certainty to sought by industry.	Aurizon Network will amend this provision to require it to undertake a capacity review at no more than 12 monthly intervals.
156.	Consultation on capacity reviews	8.8.3	It has been suggested that Aurizon Network should be obligated to consult on capacity reviews for the system, including with access	The 2013 DAU proposes that capacity reviews will be undertaken when necessary. No provision for consultation with access holders, or the use of an	Aurizon Network will amend this clause to include an obligation that it must use reasonable endeavours to consult with access holders in undertaking a

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
			holders, and involve an independent expert.	independent expert, has been included.  However, Aurizon Network acknowledges the concerns raised by industry participants in not having the opportunity to have input into such a review, and is therefore willing to amend this clause to allow for consultation.	capacity review.
157.	Consideration of certain factors in undertaking a capacity review	8.8.3	It is suggested that in undertaking a capacity review, Aurizon Network must have regard to good engineering practices, the goal of achieving reasonable maximum capacity, access agreements and interfaces with other facilities.	Aurizon Network is willing to consider whether amendments can be made to include factors that Aurizon Network must have regard to in undertaking a capacity review. Aurizon Network does not consider the matters proposed by industry participants are entirely relevant to a capacity review and so will consult further with industry participants on this matter.	Aurizon Network will consider appropriate amendments regarding relevant factors that it must have regard to in undertaking a capacity review after further consultation with industry participants.
158.	Independent expert review of Capacity Review	8.8.3	It has been submitted that Aurizon Network must be required to provide its capacity review, and reasonable reasons for its capacity review (supported by the opinion of an independent expert) to the QCA, all relevant access holders and their customers and access seekers.  It has also been suggested that Aurizon Network should be obliged to engage an independent expert to assess capacity and provide a copy of that expert's report to access holders and access seekers.	Aurizon Network may engage an independent expert to peer review the capacity review as a part of the process. However, Aurizon Network does not consider it necessary to prescribe an independent expert review process in the 2013 DAU.  However, Aurizon Network is willing to make an amendment to make the outcomes of the capacity review available to relevant parties.	Aurizon Network will amend this clause to provide it to make the outcome of a capacity review available to access holders, access seekers and customers.
159.	Greater prescription of content and form for network development plan	8.9	While there has been support from industry participants of the concept of the network development plan, it has been commented that the network development plan should be more prescribed in both content and form. In addition a number of suggestions were made with regard to what the network development plan should include.	Aurizon Network is willing to continue to discuss the requirements of customers further with them.	Aurizon Network will continue discussions with industry participants and give further consideration to amendments to the 2013 DAU regarding the form and content of the network development plan.
160.	Frequency and public availability of network	8.9	It is noted that Aurizon Network need only use "reasonable endeavours" to keep its most	Aurizon Network acknowledges the importance of keeping customers and other relevant industry	Aurizon Network will amend clause 8.9(a) by deleting the reference

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
	development plan		recent version of the Network Development Plan available. It is commented that a stronger obligation is needed.	participants informed of the current outlook for capacity in each system. It is therefore willing to remove the reference to 'reasonable endeavours' in committing to make the most current Network Development Plan available on its website.	to 'reasonable endeavours' in respect of keeping the most current Network Development Plan available on its website.
161.	Expanding the scope of user voting	8.10.1(a)	<p>Comments on the scope of the voting process have been mixed. On one hand, it has been suggested that it should be restricted only to assessing the scope of a project.</p> <p>On the other hand, it has been suggested that a vote must relate to <u>all</u> of scope, standard and cost allocation – it is not appropriate for Aurizon Network to be able to 'cherry pick'. Including the additional matters would require another level of detail to be considered by users, resulting in further complexity in the voting process.</p>	<p>Reference is made to Volume 2 of the UT4 proposal for an explanation of Aurizon Network's objectives in relation to the voting process and how it intends it to operate.</p> <p>As outlined in the comments on Part 6, Aurizon Network is reviewing the provision in relation to the proposal to put the cost allocation methodology for an expansion to a vote.</p> <p>Reference is also made to Aurizon Network's comments on the role of the vote in prudence tests under Schedule E.</p>	Refer to item 57 for Aurizon Network's response on the voting process for a cost allocation methodology.
162.	QCA Involvement in voting process	8.10.3	<p>Some industry participants have expressed concerns with the removal of the QCA's involvement in deciding whether a user is entitled to vote in the case of a disagreement.</p> <p>In particular, issues have been raised with the proposal in the 2013 DAU to provide that a party that has been excluded from participating in a vote on a capital expansion and believes it is entitled to participate, may request participation from Aurizon Network, which will use 'reasonable endeavours' to accommodate that party. It has been submitted that this allows Aurizon Network an unchecked ability to exclude certain persons from the voting process and that this is unreasonable and could provide Aurizon Network with the ability to manipulate user voting.</p>	<p>Clause 8.10.7 of 2013 DAU is a detailed compliance provision that, amongst other things:</p> <ul style="list-style-type: none"> <li>allows Interested Participants or persons entitled to be an Interested Participant to notify Aurizon Network of concerns regarding compliance with clause 8.10;</li> <li>Aurizon Network may take whatever action is reasonably required to address any concerns to achieve substantial compliance;</li> <li>Aurizon Network must procure an audit of its compliance with clause 8.10 in respect of the vote;</li> <li>if the auditor identifies flaws in the calculation of Access Train Paths, Aurizon Network may recalculate the Access Train Paths consistent with the auditor's findings and recount the vote;</li> <li>the auditor must prepare an audit certificate;</li> <li>Aurizon Network must, where it is relying on a vote under clause 8.10 for prudence of scope or standard, provide to</li> </ul>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.

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				<p>the QCA in the relevant capital expenditure report under clause 1.3, Schedule E of the 2013 DAU an audit certificate that indicates that the conduct of the vote was in all material respects compliant with clause 8.10.</p> <p>Aurizon Network believes its proposed compliance regime is sound. It does not allow Aurizon Network an unchecked ability to exclude persons from voting or to manipulate voting.</p> <p>Comments made in the context of Part 10 include that the auditor must be 'independent'. Any changes made to the audit requirements in this Part in relation to the independence of the auditor will be mirrored here.</p>	
163.	QCA Involvement in voting process	8.10.3	<p>It has been suggested that the requirement for QCA pre-approval following a successful user vote should be reinstated. Although the audit (clause 8.10.7) is stated to be 'independent', Aurizon Network has a significant involvement. For example, where a user has a concern regarding the voting process, this concern must be reported to Aurizon Network who is then required to communicate that concern to the auditor.</p> <p>It has also been suggested that the 2010 AU provision in relation to the exclusion of votes should be reinstated (which only allowed a vote to be excluded following QCA approval). On this basis that this provides a more reasonable safeguard.</p>	<p>Reference is made to Volume 2 of the UT4 proposal for more information regarding the rationale and operation of this process. In particular, the proposed new audit obligation is seen as reducing the need for QCA involvement in the voting process, which should allow the process to be completed more efficiently and in a shorter timeframe (which is important in the context of a project development path).</p> <p>Aurizon Network is obliged under clause 8.10.7(d)(i) to provide to the auditor copies of all concerns notified to Aurizon Network under clause 8.10.7(c). Aurizon Network will be obliged to provide directly to the auditor a copy of the actual notice, letter or other document provided by the relevant person under clause 8.10.7(a). It therefore cannot somehow dilute or vet the contents of a concern.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
164.	Operator involvement in voting provisions	8.10.3	<p>It has been requested that operators are included as "Interested Participants" on the basis that they too are impacted by capital expenditure projects. Although operators may not be funding a capital expenditure project, their operations and business model may be impacted by the capital expenditure. In such instances the operator should have at least a right to put their views forward to the voters.</p>	<p>Aurizon Network acknowledges these concerns and is willing to amend this clause to allow for the participation of operators in the voting process.</p>	Aurizon Network will amend the provisions to provide for circumstances where operators can be involved in the voting process.

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165.	Treatment of “No” votes	8.10.5	<p>There has been some support for the proposed requirement for a user to provide reasons as to why a project is not supported – as this will equip Aurizon Network with information allowing it to address user concerns in relation to a specific project. However, it is not considered that the requirement to provide reasons supporting a ‘no’ vote should impact the validity of that vote.</p> <p>Other concerns have been expressed regarding the discretion that Aurizon Network has in the ability to exclude a ‘no’ vote. There must be no limitation on the reasons for a ‘no’ vote and no discretion for Aurizon Network to determine which votes are counted.</p> <p>Issues have also been raised with the position that the abstinence of a vote is deemed to be a ‘yes’ vote, particularly in circumstances where there is insufficient information, as a user may be reluctant to actually vote no.</p> <p>It is also suggested that any failure to vote should be treated as an abstention (neither ‘yes’ or ‘no’), and any uncertainty should be deemed to be a ‘no’ vote. This is considered justified given that Aurizon Network retains the right to seek QCA approval irrespective of the outcome.</p>	<p>While Aurizon Network has acknowledged the need to provide sufficient information and detail to users for the purposes of the user vote process, Aurizon Network considers there is also an opportunity for users to improve the quality and detail of information they provide, particularly in the event of a ‘no’ vote. Specifically, if a user votes no they should be required to provide information on their reasons for not supporting the project. If a vote from an interested participant is not received, Aurizon Network’s intent in deeming it a ‘yes vote’ is to encourage the lodgement of a vote either way.</p> <p>As outlined above, the audit process is intended to provide a protection mechanism for customers as to the integrity of the voting process and Aurizon Network’s compliance with its obligations as set out in this Part.</p> <p>Interested participants are protected by this provision, but are not subject to the constraints of the undertaking or to the audit. Consequently, Aurizon Network must ensure that interested participants cannot block approval through lack of consideration of the issues or through intentionally or unintentionally seeking to restrict growth of competing coal developments.</p> <p>However, Aurizon Network is willing to review the drafting of this clause, with a view to providing further clarity on the reasons for exclusion.</p>	<p>Aurizon Network will review this clause to provide greater clarity as to the circumstances under which it will exclude a vote from the process.</p>
166.	Improving the level of information provided to users	8.10.6	<p>It has been submitted that customers should be provided with the ability to request additional information from Aurizon Network during the voting process. This will allow users to obtain all necessary information to facilitate informed decision making.</p> <p>It has also been suggested that if a majority of interested participants wish to have the vote postponed to allow them to take further</p>	<p>The intention as set out in clause 8.10.6 is for Aurizon Network to provide a range of ways for interested participants to obtain information about the relevant capital expenditure, including via peer review of Aurizon Network’s capacity planning inputs and processes and capacity models (subject to appropriate confidentiality constraints). Aurizon Network has also committed to develop working papers to inform a customer vote.</p>	<p>Aurizon Network will amend this clause to include an ability for interested participants to request further information from Aurizon Network that is relevant to the vote. It will also include an ability for Aurizon Network to extend the voting period if a majority of interested participants (by number) request such an extension.</p>

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			advice on the project, they should be able do so.	Aurizon Network agrees that the most effective outcomes will be achieved under the voting process if its participants are fully informed. It therefore considers it reasonable for interested participants to request more information if it is relevant to the vote. It is also willing to allow for a voting period to be extended if the majority of interested participants request such an extension.	
167.	Compliance with voting process	8.10.7	This provision refers to the term 'substantial compliance' in determining whether Aurizon Network may need to re-do a voting process where issues have been identified in the audit. The use of the term "substantial compliance" has been questioned. It is unclear who decides whether 'substantial compliance' has been achieved or whether remedying a flaw would be expected to change the outcome of the vote.	Aurizon Network acknowledges the concerns that have been raised regarding the use of the term 'substantial compliance'. It is therefore proposed to make an amendment to clarify this.	Aurizon Network will amend this clause to clarify what is meant by "substantial compliance".

### Connecting Infrastructure [Part 9]

168.	Parties who can connect private infrastructure	9.1	<p>Part 9 only permits a private infrastructure owner to connect private infrastructure to the Rail Infrastructure where the private infrastructure owner is an access seeker.</p> <p>Concerns have been expressed that this is an unnecessary restriction and that any party that meets certain requirements and is willing to comply with the standard rail connection agreement, should be permitted to connect.</p>	<p>Part 9 only addresses the situation where an access seeker proposes to construct and own private infrastructure which will connect to the Rail Infrastructure, in order to allow the access seeker's train services to exit and enter the Rail Infrastructure.</p> <p>The equivalent provision under the 2010 AU applies to access seekers and also access holders. The reference to access holders was not included in the 2013 DAU as the connection arrangements should have been entered into contemporaneously with the relevant access agreement.</p> <p>However, Aurizon Network will amend the drafting to broaden the reference from access seeker to anyone that proposes to connect to the network in order to enable access to the declared service.</p>	Aurizon Network will amend this clause so that the term 'Access Seeker' is replaced with: any party that owns, or proposes to develop and ultimately own, private infrastructure, and which is seeking to connect to the rail infrastructure so that the users of the private infrastructure obtaining access to the declared service.
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Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
169.	Obligation to enter Standard Rail Connection Agreement	9.1(a)	<p>It has been suggested that the reference to 'a consent to connection' be framed as an obligation on Aurizon Network to negotiate.</p> <p>It is noted that the form of Aurizon Network's consent in respect of a connection is not specified and therefore is open to interpretation including the requirements for agreements (which is not defined). It is submitted that consent should be in the form of a standard rail connection agreement and a construction agreement.</p>	<p>Aurizon Network has adopted the approach from the 2010 AU which refers to "consent". That being said, Aurizon Network will amend this provision to clarify that it will "permit" a connection subject to the agreed conditions.</p> <p>It is noted that clause 9.1(a)(viii) addresses the requirement for the negotiation of a rail connection agreement with the standard rail connection agreement acting as a safety net. An executed connection agreement is a right to connect and the form of consent for the connection. Inclusion of an additional form of consent is unwarranted and unnecessarily adds complexity to the undertaking.</p>	Aurizon Network will amend the drafting to replace "consent" with "permit".
170.	Duplication of conditions to be met	9.1(a)	It has been highlighted that a number of conditions which can give rise to Aurizon Network refusing consent are matters already covered by the standard rail connection agreement. Accordingly, it is proposed that the list of these conditions can be substantially reduced.	The purpose of these provisions is to allow Aurizon Network to either not enter into, or cease, negotiations with a party (subject to dispute resolution) where the conditions are not met, regardless of whether that party wishes to contract on the standard terms or not.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
171.	Expert Determination of whether criteria has been met	9.1	<p>It is suggested that provisions should be included which oblige Aurizon Network to notify the QCA and the relevant access seeker the reasons as to why Aurizon Network believes it is not obliged to negotiate with an access seeker or a third party for rail connection in accordance with the requirements of clause 9.1(a).</p> <p>If the parties cannot reach agreement on a rail connection agreement and relevant construction agreement, either party may refer the matter to an expert for determination.</p>	Aurizon Network will agree to notify the relevant access seeker or third party as to the decision, and to provide that party with written reasons for the decision.	Aurizon Network will amend this clause to provide notice to an access seeker or third party that Aurizon Network does not believe that the conditions in clause 9.1(a) have been complied with.

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172.	Delays entering a Connecting Infrastructure Agreement	9.1	It has been submitted that Aurizon Network should be responsible for any loss suffered by a party where Aurizon Network unreasonably delays entering into a rail connection agreement.	<p>It is necessary to differentiate between delays in entering a rail connection agreement and delays associated with Aurizon Network's obligations under an executed agreement.</p> <p>The 2010 AU incorporated a requirement that where connecting infrastructure is constructed by an access seeker or access holder, Aurizon Network must do all things necessary, and in a timely manner, to ensure that the connecting infrastructure is physically connected to the rail infrastructure and to facilitate movement of trains between the connecting infrastructure and the Rail Infrastructure (clause 8.3(b)(i)).</p> <p>It is appropriate that the access agreement addresses any delays once an agreement is executed.</p> <p>Aurizon Network considers that the delay issues sought to be addressed in the 2010 AU are mitigated as a result of the inclusion of a standard rail connection agreement. If access seekers consider Aurizon Network has unreasonably hindered access, remedies are available through the undertaking or the QCA Act.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
173.	Delays developing connecting infrastructure	9.1	Feedback received is that Aurizon Network should be responsible for any loss suffered by a party where Aurizon Network unreasonably delays the development of connecting infrastructure.	<p>The 2010 AU includes a provision that, subject to the terms and conditions of any agreement, where Aurizon Network constructs the connecting infrastructure, the access seeker or access holder must pay the reasonable costs incurred by Aurizon Network. This is providing that Aurizon Network would pay the reasonable costs (excluding consequential loss) incurred by the access seeker or access holder where Aurizon Network has unreasonably delayed the development of the connecting infrastructure. (clause 8.3(d)).</p> <p>The standard rail connection agreement that has now been approved by the QCA includes provisions similar to the obligations in the 2010 AU regarding Aurizon Network's liability for its delays once an agreement is executed.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.

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174.	Consultation on changes to system operating parameters	SRCA and 8.8.2	It is suggested that Aurizon Network should be required to consult with a private infrastructure owner where Aurizon Network proposes to modify its rail infrastructure and/or operating rules in a way that may require changes to the private infrastructure.	Aurizon Network has agreed to similar notification requirements in connection negotiations with third parties. Given this is essentially a contractual matter, Aurizon Network does not consider that amending 8.8.2 is warranted. However, Aurizon Network agrees to amend the standard rail connection agreement to include a notice provision in relation to changes to the system operating parameters.	Aurizon Network will amend the drafting of the standard rail connection agreement to include a notice provision in relation to changes to the system operating parameters.

### Reporting and Audit [Part 10]

175.	Reduction in the time to publish details of material error	10.1.2(b) and 10.1.3(d)	Industry has requested a shortening of the time within which Aurizon Network must publish details of any material error in its annual compliance report and annual maintenance cost report. The change proposed is moving from “as soon as practicable, but in no case later than six months after becoming aware of the error”, to simply one month after becoming aware of the error.	<p>The inclusion in the 2013 DAU of the obligation to report material errors as soon as practical, but in no case later than six months after becoming aware of the error, aligns with the obligation in the 2010 AU with regard to the annual maintenance cost report.</p> <p>To account for the circumstances where the identification of a material error may require a further audit of the report, Aurizon Network will require more than a month to publish the details of the material error.</p> <p>Aurizon Network therefore proposes to align the timeframe to publish details of material errors as soon as practical but in no case later than 3 months after becoming aware of the error.</p>	Aurizon Network will amend clause 10.1.2(b) and 10.1.3(d) to require the publication on the website of material errors “as soon as practicable, but in no case later than three months after becoming aware of the error”.
176.	Immediate notification to QCA of errors	10.1.2(b), 10.1.3(d) and 10.1.5(f)	It has been requested that an obligation be imposed on Aurizon Network to immediately notify the QCA of any errors in a number of the reports once it becomes aware of the error.	Aurizon Network accepts as reasonable the desire to reflect in the drafting a requirement to notify the QCA of any errors in a timely manner.	Aurizon Network will amend clause 10.1.2(b), 10.1.3(d) and 10.1.5(f) to include a requirement to notify the QCA “as soon as practicable after Aurizon Network becomes aware of the relevant error”.
177.	Reporting number of breaches of ultimate holding company support deed	10.1.2(d)(xi) and (xii)	It is suggested that Aurizon Network’s the reporting obligations be altered so that they include not just a report of the number of complaints regarding alleged breaches of one or more of the ringfencing obligations in Part 3, but also complaints where the holding company has breached the ultimate holding	<p>The proposed requirement to report breaches of the ultimate holding company support deed is beyond the scope of the QCA Act.</p> <p>Aurizon Network considers that the consequences of the ultimate holding company failing to comply with the ultimate holding company support deed are significant as “the Undertaking will cease to authorise the disclosure of</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.

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			company deed.	<p>Protected Information to any person or entity outside Aurizon Network.” (clause 3.3(b)) This would therefore include not only employees of the ultimate holding company providing support or governance services to Aurizon Network but also external consultants and contractors.</p> <p>To the extent that a party considers the ultimate holding company has breached its obligations, that party can make a complaint under clause 3.22 in relation to whether Aurizon Network has complied with the requirement to not disclose the protected information as per clause 3.3(b).</p> <p>On this basis enforcement options are also available under the QCA Act (Div 8, Part 5) in relation to a failure by Aurizon Network to comply with clause 3.3(b).</p> <p>In addition, there is nothing to prevent the party from notifying the QCA of concerns in relation to Aurizon Network’s compliance with clause 3.3(b) and for the QCA to consider the need for, and where appropriate request, a compliance audit under clause 10.7.</p>	
178.	Reporting number of complaints - confidentiality agreements	10.1.2(d)(xi) and (xii)	It has been suggested that Aurizon Network be required to report the number of complaints with regard to a breach by Aurizon Network of a confidentiality obligation under a separate confidentiality agreement with a customer.	Aurizon Network considers that reporting of the number of complaints or breaches of a confidentiality agreement does not provide any information in relation to Aurizon Network’s compliance with the 2013 DAU. Aurizon Network considers that it is appropriate for a breach of a confidentiality agreement to be addressed as between the parties to the relevant confidentiality agreement.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
179.	Average complaint handling time	10.1.2(d)(xiii)	It has been stated that Aurizon Network should be required to report on the average complaint handling time recorded in days from when a complaint is lodged to when it is resolved.	Aurizon Network does not consider that reporting on the average complaint handling time provides relevant information to assess Aurizon Network’s timely resolution of matters. The time taken to resolve a complaint is dependent on the nature of the complaint and the level of forensic investigation required. However, it will include an obligation to investigate complaints in a timely manner.	Aurizon Network will include an obligation in clause 3.22(d) to investigate complaints in a timely manner.
180.	Reporting on errors in bills	10.1.2(d)(xv)	It has been requested that Aurizon Network be required to report “the number of	The standard access agreement includes the obligations in relation to the resolution of billing errors. The reporting	No change is proposed based on the further information provided by Aurizon

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
			instances in which Aurizon Network made errors in bills, including reasonable details of such errors”.	of errors in bills is not a matter that relates to the regulation of access to a declared service.	Network to assist with the review of the 2013 DAU.
181.	Increased transparency of maintenance costs and impact	10.1.3(b) and 10.1.3(c)	Feedback received is that additional information is sought on the performance of the network, including in relation to maintenance. Including “comprehensive details of the actual scope of maintenance compared to the forecast scope accepted by the QCA for the purpose of determining Reference Tariffs” and a requirement for Aurizon Network to report on “the effect on the completion of planned maintenance work action taken to restore Rail Infrastructure after derailments”.	Aurizon Network has committed to the QRC working group to provide greater transparency and is currently reviewing a range of matters, including reporting formats and information that can be made available to access seekers on the secure customer portal.	Aurizon Network understands the need for and is committed to providing greater transparency in relation to maintenance and performance of the service.
182.	Provision of operational data quarterly	10.1.5	It has been requested that the publication of annual operational data reports revert to quarterly reports as per the 2010 AU.	<p>Industry’s concerns with regard to the change in the frequency of reporting of operational data from quarterly to annually, appear to reflect a desire for greater information regarding contractual performance.</p> <p>Aurizon Network is committed to increasing transparency in relation to performance and is reviewing a range of matters, including the information provided contractually and for each system, and the format of reports. (Refer provisions in relation to incentive mechanism).</p>	<p>In addition to the publication of the annual operational data report, Aurizon Network will provide operational data on a more frequent basis, at least quarterly, to access holders via a secure portal.</p> <p>Aurizon Network will continue to work through the information required with customers.</p>
183.	ASX listing rules exception	10.1.5(a)	It has been submitted that the timing exception to the reporting requirement for the ultimate holding company based on ASX listing rules be removed.	<p>It is recognised in the ASX Listing Rules that the disclosure obligation needs to be balanced against information being provided prematurely or where it would be inappropriate to do so.</p> <p>Aurizon Network considers that both the publication of quarterly performance data and other information prior to publication to security holders may not be representative of actual performance for the entire financial year. Aurizon Network considers it inappropriate for the 2013 DAU to require the publication of information that may be misleading.</p> <p>As noted above, it is looking at improving the provision of</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.

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				operational information to customers on a quarterly basis, but this would be provided confidentially.	
184.	Annual operational data report - safety	10.1.5	It is suggested there is a need for an obligation to report on safety incidents that have been reported to the Safety Regulator.	Aurizon Network considers that this is a reasonable request.	Aurizon Network will include in the annual operational data report the number of major reportable incidents in that year, as reported to the safety regulator.
185.	Requirement to publish 'below rail aspects' of access agreements unless confidentiality claim is approved by the QCA	10.3.1	The 2013 DAU allows Aurizon Network to withhold information contained in the access agreements before it is provided to the QCA. Issues have been raised with this, particularly given that the access agreements will not be published.	<p>The previous obligation for the publication of terms other than "confidential" below rail aspects of access agreements, provides limited benefit to customers in being able to determine whether there has been any discrimination between access seekers and access holders.</p> <p>It is the provision of all of the confidential information to the QCA, together with the audit and information gathering powers, which will provide the assurance to access seekers and access holders that the terms to related parties are not more favourable.</p>	Aurizon Network will amend 10.3.1 to provide the requested executed Access Agreement to the QCA.
186.	Refusal to provide information	10.3.2(b)	It has been commented that Aurizon Network may refuse to provide information requested by the QCA if it has a reasonable excuse for non-compliance.	<p>Clause 10.3.2(b) is consistent with and intended to reflect a position that is repeated several times under the QCA Act.</p> <p>For example, under s150AA, the QCA may, by written notice, require Aurizon Network to give the QCA (within a specified time) information about Aurizon Network's compliance with its approved access undertaking. Under s 150AA(3), Aurizon Network is required to comply with that requirement within the relevant time, unless Aurizon Network has a "reasonable excuse".</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
187.	Compliance Officer obligation	New clause 10.4(a)(iii)	Feedback received is that the obligations of the compliance officer should be expanded to take all steps to ensure Aurizon Network is able to meet any obligation or activity imposed on Aurizon Network by the 2013 DAU.	<p>Aurizon Network recognises the role of the compliance officer in providing confidence in the access regime.</p> <p>Aurizon Network agrees in principle with the inclusion of a provision that recognises that the compliance officer is the single point of contact with responsibility for implementing and maintaining appropriate systems and practices within Aurizon Network's governance</p>	Aurizon Network will replace clause 10.4 with an obligation for Aurizon Network to nominate a compliance officer. This obligation will outline the matters relevant to the compliance officer's ability to ensure Aurizon Network is able to comply with its obligations in the 2013 DAU,

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				framework and to ensure Aurizon Network's compliance with its obligations under the 2013 DAU.	<p>including that:</p> <ul style="list-style-type: none"> <li>the compliance officer will be sufficiently resourced;</li> <li>the compliance officer will be responsible for the management of the governance framework that will include systems and practices reasonably required to ensure Aurizon Network is able to meet its obligation;</li> <li>the governance framework will include the requirement to notify Aurizon Network's Executive Officer of breaches and the remedial action taken or to be taken.</li> </ul> <p>In addition Aurizon Network will include an obligation to notify the QCA of the person nominated as the compliance officer at the commencement of the 2013 DAU and during the term of the 2013 DAU if at any time that nomination changes.</p>
188.	Regulation of internal business practices	10.4	<p>It has been suggested that the following obligations be included:</p> <ul style="list-style-type: none"> <li>- a regular internal audit;</li> <li>- a confidential reporting line (whistleblowers line) available to parties internal and external to the Aurizon group;</li> <li>- an issues register that can be viewed by the auditors and the QCA;</li> <li>- internal compliance declaration from the CEO and all key senior managers across Aurizon.</li> </ul>	<p>The suggestions made by industry refers to examples of some of Aurizon Network's internal business practices for risk management and compliance, which is a natural part of a large business. Despite this, Aurizon Network does not consider sufficient grounds exist to warrant their being hardwired into the 2013 DAU. The fact that Aurizon Network has internal risk management and compliance practices is not of itself a basis for seeking to have those practices prescribed in the 2013 DAU.</p> <p>In addition, Aurizon Network considers that the requirement for additional internal business practices would be identified through the audit process. Should a systemic failure be identified, and if those measures were considered a necessary and proportionate response, it is reasonable to assume that they would be included in the audit recommendation.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
189.	Frequency of report auditing	10.6(a)	It has been requested that the audit of Aurizon Network's compliance with its reporting obligations be conducted annually, and as is otherwise required by the QCA.	Aurizon Network considers it appropriate to limit the number of audits of its reporting obligations to once per year. This is because the reporting obligations are more procedural in nature, with established processes and timeframes.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
190.	Compliance audit of matters prior to current term of undertaking	10.7(a)	The question has been raised that if a compliance audit is required to investigate a matter which occurred prior to the term of the 2013 DAU, would this provision give the power to request an audit.	The audit provision, as drafted, will not extend to the conduct and decisions under past undertakings (except in the limited circumstances where they are deemed to have occurred under the 2013 DAU).  The 2013 DAU is, in this regard, consistent with the approach under past access undertakings and the QCA Act.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
191.	Frequency of compliance Audits	10.7(a)	Comments have been made that the drafting of the 2013 DAU limits the QCA's ability to request an audit and therefore the requirement for an annual compliance audit should be reinstated.	The intention of the 2013 DAU is that the QCA may request a compliance audit at any time provided that the QCA has reasonable grounds to believe the audit is necessary, the QCA advises Aurizon Network of the grounds for the audit and the audit costs over and above what is included in the approved operating cost allowance are recovered through the annual revenue adjustments.	Aurizon Network will review and amend the drafting of the audit provisions to ensure the QCA is not limited in its ability to request an audit.
192.	Recovery of audit costs	10.7(d)	It has been requested that the QCA be required to approve the recovery of audit costs.	A forecast of audit costs will be provided in setting the system allowable revenues. If the actual audit costs differ from the forecast audit costs, this will be reflected in the adjusted system allowable revenue calculated in clause 4.3, Schedule F. The QCA will have regulatory oversight of those revenue cap related adjustments.  Given the audits are conducted by external parties, the cost will reflect the efficient costs of providing the service.  The QCA will have oversight and significant control of the audit costs given they will approve both the auditor (see below) and the audit plan.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
193.	Consultation with above rail operators by auditor	10.8	It is suggested that the prescriptive list of matters that must be audited annually be reinstated in the 2013 DAU to protect against conflicts of interest.	Aurizon Network considers that the flexibility of the QCA to require an audit supports the ability of third parties to engage with the QCA directly on the need for an audit and removes the need for a prescriptive list of matters	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.



Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
			In addition it is suggested that the auditor should be required to consult with all above rail operators in relation to the scope of the audit.	that must be audited annually.	
194.	Review of prior year audit recommendations	10.8	Suggestions have been made that each audit should assess whether the previous year's recommendations have been effectively implemented and require Aurizon Network to address any non-compliances identified.	<p>Aurizon Network has an obligation to implement recommendations by the auditor as soon as reasonably practicable (clause 10.8(j)). The QCA has in the past, included in the scope of the audit the implementation status of the previous year audit recommendations.</p> <p>Aurizon Network anticipates that the QCA will continue to include in the audit plan, Aurizon Network's compliance with previous audit recommendations.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
195.	QCA dissatisfaction with Audit	10.8	It has been requested that a provision be included that allows the QCA to require the audit to be redone if it is not satisfied with the rigour of the audit.	<p>In practice it is preferable for any issues regarding the 'rigour' of the audit to be addressed during the course of the audit. There are two mechanisms that should prevent the need for a second audit. Firstly, prior to commencing the audit, the auditor must agree an audit plan with Aurizon Network and obtain the QCA's approval of that plan. Secondly, every audit plan must provide for the establishment of an audit liaison group, which includes the QCA, to provide a forum for the resolution of any audit issues that arise.</p> <p>Regardless, nothing in clause 10.7 prevents the QCA from requiring another audit if the QCA has reasonable grounds to believe an audit is necessary.</p> <p>This is consistent with the approach taken under UT3.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
196.	Removal of the ability of the QCA to approve auditor	10.8(a)	It is submitted that the 2013 DAU should retain the QCA approval of the auditor due to perceptions of conflict.	Aurizon Network and the QCA have discussed the issues regarding perceived conflicts of interest. Aurizon Network has agreed to reinstate the 2010 AU provision to give the QCA ability to approve the auditor.	Aurizon Network will amend the 2013 DAU to provide that the appointment of an auditor by Aurizon Network is subject to QCA approval.
197.	Obligation to implement the audit recommendations	10.8(j)	It has been suggested that an appropriate remedy for discrimination is an absolute obligation for Aurizon Network to implement the recommendations of the auditor, including amending the undertaking where required.	<p>Under clause 10.8(j) Aurizon Network must use reasonable endeavours to implement any recommendations made by the auditor.</p> <p>To the extent the audit recommendations identify that the undertaking is not consistent with the QCA Act, the QCA</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				has the ability to require an amending access undertaking under s.139 of the QCA Act. It would be outside the QCA's power to require that a provision be included in the 2013 DAU to allow the QCA to amend or require the amendments of an approved undertaking as suggested.	
198.	Provide QCA with expanded powers in the undertaking.	Part 10	It has been recommended that an Infringement Penalty regime operated by the QCA be introduced, similar to that enforced by the ACCC. It is also suggested that the 2013 DAU should include a requirement to comply with a QCA order, including changes to the undertaking and/ or changes to Aurizon's compliance program	Division 8 sets out various provisions for the enforcement of Part 5 of the QCA Act including compliance with approved access undertakings. The QCA has investigation powers and the ability to bring an enforcement proceeding. The QCA does not have powers to issue penalties or to make or enforce an order.  The QCA has very limited powers under the QCA Act to require amendments to an approved undertaking. The circumstances outlined in submissions would not constitute a circumstance where the QCA can require an amendment.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
199.	Information included in Auditor's letter	10.8(i)	It is requested that a summary of issues from the audit is made publicly available. Examples provided as precedent included ARTC's or Queensland Rail's recent audit letters.	Aurizon Network and the QCA have included in the scope of the 2012/13 audit the requirement for a summary audit report that can be made publicly available. The audit plan is considered the best mechanism to continue to ensure this as part of each audit.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.

### Dispute Resolution and Decision Making [Part 11]

200.	Narrowing of availability resolution of disputes	11.1.1(a)	It has been submitted that the 2013 DAU narrows the scope of the dispute resolution procedure. In particular, it is stated that there is no longer a 'umbrella' provision for dispute resolution to apply to any dispute or question in relation to the access undertaking's operation.	Aurizon Network acknowledges the comments made in submissions and considers the availability of an effective and timely dispute process in relation to obligations and decisions included in the undertaking is of significant importance to the operation of the undertaking.  Aurizon Network's intention is that the dispute resolution mechanism will apply to any provision of the undertaking. The drafting of the clause is intended to ensure train operators have access to the dispute resolution process and to give effect to clauses in the undertaking that directly refer matters to expert determination. It is not intended to reduce the range of matters on which access	Aurizon Network will review the 2013 DAU including the drafting of clause 11.1.1 and the related definitions (for example Access Seeker and Access Agreement) with the benefit of the submissions to clarify where necessary the application of the dispute resolution mechanism.
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Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				<p>disputes may be referred to the QCA under the QCA Act.</p> <p>The resolution of disputes is discussed further at section 4.5 in the main submission.</p>	
201.	Parties to a dispute	11.1.1(a)	Industry has sought to expand the list of parties that can dispute matters under the undertaking to Access Holders, and third parties.	<p>The 'umbrella' provision in the dispute mechanism in the 2010 AU effectively provided that any party, regardless of whether they may be affected by a decision in the undertaking could raise a dispute.</p> <p>Aurizon Network acknowledges in certain circumstances it may be appropriate for a customer of an access seeker or access holder to also have certain rights under the undertaking. Aurizon Network has sought to acknowledge these rights within the applicable clauses. For example Part 6 and 8 explicitly refer to customers of access seekers and access holders.</p>	Aurizon Network will review the 2013 DAU to clarify, where necessary, the application of the dispute resolution mechanism and the complaints handling process under the 2013 DAU to parties other than access seekers or train operators.
202.	Access Agreement disputes	11.1.1 (b)	It is suggested that the dispute process outlined in the undertaking should take precedence over the dispute process in any access agreement or SUFA.	<p>As with the 2010 AU, unless otherwise agreed by the parties, disputes in connection with an access agreement or other contract should be dealt with in accordance with the provisions of that agreement.</p> <p>Aurizon Network notes that the facts that give rise to a dispute under the access agreement may potentially give rise to a non-compliance with the undertaking (or the QCA Act), thus triggering a separate dispute or enforcement process. For example, if Aurizon Network breaches a confidentiality agreement, and that breach involves disclosure of protected information to the Marketing Division, then Aurizon Network may potentially have failed to comply with both the confidentiality agreement and the undertaking, each with their own dispute or enforcement requirements.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
203.	Written consent to participate in alternate form of access disputes	11.1.1(c)	It has been suggested that in relation to disputes regarding a Train Operations Agreement or End User Access Agreement, written consent should be given by the party submitting the dispute before details are shared with the corresponding party that is train operator or end user.	<p>It should be noted that where there is a dispute involving a Train Operations Agreement, the other party that is provided with an opportunity to participate does not include any other train operator using the access rights included in the same End User Access Agreement (clause 11.1.1(c)(iii))</p> <p>In any other circumstance, and given the interdependent</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				<p>nature of End User Access Agreements and Train Operations Agreements, it is not expected that industry will support the withholding of information in respect of a dispute where either the end user or train operator may have an interest and could be adversely affected.</p> <p>Aurizon Network proposes to maintain the current position in the 2013 DAU as it aligns to that which the QCA recently approved for the alternate form of access agreement under the 2010 AU.</p>	
204.	Process for mediation	11.1.3	It has been identified that the drafting of the undertaking states that parties “may agree” to mediation whereas the explanatory document states that “if both parties agree” they may go to mediation.	<p>The intention of the 2013 DAU is that mediation and expert review provisions are included in the dispute resolution process as a way to expedite dispute resolution.</p> <p>Under the 2013 DAU, a dispute that is not resolved by CEOs may be referred to mediation by either party to the dispute (unless the dispute is expressly required, or is agreed by the parties, to be referred to an expert). The referral to mediation was drafted this way to be as consistent as possible with the mediation process under the QCA Act.</p> <p>A dispute can only be referred to an expert where the 2013 DAU requires it to be referred to, or the parties agree to refer it to an expert for determination.</p>	Aurizon Network will amend the 2013 DAU such that the referral of a dispute in relation to mediation can only occur by agreement of both parties.
205.	Process for mediation	11.1.3	It is commented that the provisions in relation to mediation seem to bypass the QCA Act and the ability of the QCA to resolve dispute by mediation.	<p>Aurizon Network’s intent was to provide a clear dispute resolution process in that where the parties agree to mediation, this would be considered an attempt to resolve the dispute by mediation for the purposes of the QCA Act (clause 11.1.3).</p> <p>If the dispute is then referred to the QCA, then logically it seems unlikely that the QCA would need to seek a further mediation. It is not Aurizon Network’s intent to limit the application of the legislation, nor the QCA’s powers to resolve disputes.</p>	Aurizon Network will delete clause 11.1.3(a).
206.	Timeframe to resolve dispute by mediation	11.1.3 –	It has been suggested that a provision be included that requires any dispute unresolved by mediation within 5 Business Days to be	Aurizon Network considers that the time limit proposed by Industry may be too short for a mediation depending	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
			referred to the QCA for dispute resolution.	on what is in dispute and inconsistent with the QCA Act.  Aurizon Network considers that the proposal in the 2013 DAU is generally consistent with requirements under the QCA Act. In addition, the timely resolution of disputes is indirectly addressed by amendments discussed above where referral of a dispute to mediation must be agreed by both parties.	2013 DAU.
207.	Administration of mediations	11.1.3	It is suggested that consideration be given to the administration of mediations by the Australian Commercial Dispute Centre (ACDC) in accordance with their current ACDC guidelines.	This proposal is acceptable to Aurizon Network.	Aurizon Network will amend the provisions such that a mediation will be administered by the ACDC in accordance with their current ACDC guidelines.
208.	Confidentiality of communications in disputes	11.1.2 and 11.1.3(e) –	it is has been requested that provisions be included which make communications between the parties as part of an attempt to resolve a dispute, subject to an obligation of confidentiality. The amendments would also expressly state that such communications will be made on a “without prejudice” basis.	The proposed amendments are acceptable to Aurizon Network.	Aurizon Network will amend the dispute provisions to include obligations that communications attempting to resolve a dispute will be confidential and without prejudice.
209.	Process for mediation	11.1.4	Clarification has been requested as to why the chief executive of the Institute of Arbitrators and Mediators (IAMA) will recommend an expert rather than the Institute of Engineers as per the 2010 AU.	Aurizon Network’s advice is that the Institute of Engineers no longer makes these recommendations.  Notwithstanding, Aurizon Network is pleased to consider other bodies. The IAMA has available a range of dispute resolution professionals, from a range of relevant professional backgrounds (law, engineering, etc).	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.
210.	Priority of QCA resolution of disputes	11.1.5	It has been suggested that a QCA determination should have priority over expert determination and mediation	Aurizon Network has clarified its intent that the referral to mediation is by the agreement of both parties. This effectively results in a dispute that is not resolved by CEOs being referred to a QCA determination if both parties do not agree to either a mediation or expert determination, the exception being when the undertaking prescribes that a matter be resolved by expert determination.  The express requirement for resolution by expert determination is in relation to matters that are technical in	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				nature and it is reasonable to rely on an expert determination. The direct referral will then reduce the timeframe to resolve the dispute.	
211.	Determination by QCA in accordance with Act	11.1.5	It has been submitted that a dispute referred to the QCA for determination should reflect the provisions of the 2010 AU, that is Division 5 of Part 5 of the QCA Act shall apply and to the extent of any discrepancy between Part 11 and the QCA Act, the provisions of the QCA Act will prevail.	Aurizon Network agrees to this amendment.	Aurizon Network will include a provision stating that any determination by the QCA will be done in accordance with its obligations under Division 5 of Part 5 of the QCA Act and to the extent of any inconsistency between Part 11 and the QCA Act, the provisions of the QCA Act will prevail.
212.	Time and cost responsibility	11.1.7	It has been requested that a new clause be included which requires the parties to use their reasonable endeavours to resolve a dispute so as to not “impact” a mine project that is likely to be delayed as a result of a dispute.	Aurizon Network considers the obligation on the parties to use reasonable endeavours to resolve a dispute in a timely fashion is independent of whether the dispute will impact on a mine development project.	Aurizon Network will include an obligation on the parties to a dispute to use reasonable endeavours to resolve the dispute in a timely manner.
213.	Rules applied to QCA decisions	11.2	It has been suggested that Aurizon Network delete the list of requirements that replicate provisions that apply in judicial review cases and which applies them to decisions of the QCA under the Undertaking. It is sought to replace the express requirements with a provision that any resolution of the dispute not be inconsistent with the QCA Act, the <i>Judicial Review Act 1991</i> or any common law rules and natural justice requirements “to the extent they apply”.	The <i>Judicial Review Act 1991</i> will not apply to the Undertaking as decisions in relation to the Undertaking are not made “under an enactment”. That is why the drafting in the 2013 DAU spelt out the “rules” that would normally apply under judicial review and expressly applied them to the undertaking.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.

# Annexure B – Detailed response on standard agreements

## B.1 – Standard Access Agreements

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
<b>Detailed Response – Standard Access Agreements</b>					
1.	Nature and Scope of Access Rights	Clause 3.2 of UT4 AHAA Clause 3.2 of UT4 SOAA	The AHAA (and other SAAs) does not expressly acknowledge that AN is required to provide the End User with the benefits, rights, services captured by the UT4 definition of “Access” on the terms of the AHAA.	The SAAs describe the “Access” which AN will provide to an Access Holder in accordance with its obligations under its Access Undertaking and set out all of the terms and conditions on which AN will provide such Access to the Access Holder.  Clause 2(c) of the UT3 AHAA and SOAA was included for the benefit of AN to make clear that AN’s obligation to provide “Access” to the Access Holder does not extend beyond its obligations to the Access Holder under the UT3 AHAA and SOAA.  A similar provision was not included in the UT4 SAAs because AN did not consider that it was necessary. AN is of the view that if AN enters into a UT4 SAA with an Access Holder, AN’s obligation to provide “Access” to the Access Holder will not extend beyond its obligations to the Access Holder under the UT4 SAA.	AN acknowledges stakeholders concerns and provides this further clarification to assist review.
2.	Billing and Payments – the right to set-off	Clause 5.6 of UT4 AHAA Clause 5.6 of UT4 SOAA	The AHAA (and other SAAs) does not have a reciprocal right of set-off. The approach lacks commercial balance and is unreasonable.	It is considered more likely that AN will have the ability to set-off monies owed by the Access Holders under SAAs than the reverse. However, AN agrees that it would be reasonable to have a reciprocal right of set-off and accepts the recommended drafting change.	Accept QRC’s position and amend the set-off clause to make the right of set-off reciprocal.
3.	Security	Clause 6.2 of UT4 AHAA Clause 6.2 of UT4	The Access Holder ceasing to have an Acceptable Credit Rating should be a factor AN can consider when determining if an Access Holder is required to provide Security rather than an arbitrary trigger for	It is very common in commercial agreements for a party to be required to provide security if it no longer has an Acceptable Credit Rating as this is an accepted indicator of a party’s financial standing and ability to meet its financial obligations.	AN acknowledges stakeholders concerns and provides this further clarification to assist review.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
		SOAA	the provision of Security.	AN considers that it should be entitled to require that the Access Holder provides Security if the Access Holder ceases, at any time, to have an Acceptable Credit Rating.	
4.	Supply Chain Rights	Clause 7.4 of UT4 AHAA  Clause 7.5 of UT4 SOAA	Supply Chain Rights provisions are overly prescriptive and onerous.  The requirement that the Access Holder must hold and continue to hold Supply Chain Rights for the term places the Access Holder in an untenable position if other facility providers also impose similar pre-conditions or if Supply Chain Rights are for a lesser term.  If an Access Holder cannot demonstrate Supply Chain Rights, the rights may be resumed, suspended or terminated. This position appears unreasonable.  The Access Holder should only be required to demonstrate it holds or has the reasonable likelihood of obtaining Supply Chain Rights.	This is an extension of a provision included in UT3 (Clause 11.3(a) – Contracting for Capacity in Coal Supply Chains) which requires AN to use reasonable endeavours to contract capacity to access seekers who have secured, or are reasonably likely to secure, the contractual rights required to unload at the destination unloading facility.  With the separation from Queensland Rail and the increasing number of private facilities being built, AN considers it appropriate and reasonable to extend the obligation in UT3 in respect of unloading facility rights to all Supply Chain Rights required by an Access Holder.  However, having regard to industry submissions, AN agrees to revert back to a “reasonably likely” test so that an Access Holder will need to:  - hold, or have the benefit of, Supply Chain Rights; and/or  - be reasonably likely to hold, or have the benefit of, Supply Chain Rights,  for Train Services for the whole of the period during which the Access Holder is granted access rights in respect of the Train Services.	The Supply Chain Rights clause in each SAA to be amended to introduce a “reasonably likely” test to address concerns.
5.	Relationship with Operator	Clause 7.6 of UT4 AHAA	Objection to AN excluding all liability from the Operator.  Unreasonable for AN to require the Operator to give up all rights against AN, particularly where loss or damage is attributable to AN's negligence.	Clause 7.6 of the UT4 AHAA seeks to manage AN's potential liability exposure to an Operator (which is not a party to the AHAA).  To the extent the Access Holder does not want to be liable for the acts and omissions of its nominated Operator, it can enter into an End User Access Agreement under which its nominated Operator is potentially directly liable to AN under a Train Operations Agreement.	AN acknowledges stakeholders concerns and provides this further clarification to assist review.



Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				<p>In response to the QRC's comments in relation to clause 7.6 of the UT4 AHAA, AN notes the following:</p> <ul style="list-style-type: none"> <li>- the Consequential Loss exclusion required by clause 7.6(a)(i) is the same as the Consequential Loss exclusion in clause 2.1 of an Access Interface Deed.</li> <li>- Under clause 7.6(a)(ii) and (d), AN limits its liability for loss or damage suffered or incurred by an Operator to the liability that AN would have had to the End User if the loss or damage had been suffered or incurred by the End User. This ensures that AN's liability to an Operator is subject to the same exclusions and limitations on liability that apply to the End User under the UT4 AHAA.</li> <li>- The deletion of clauses 7.6(a)(i), 7.6(a)(ii), 7.6(a)(iii), 7.6(d), 7.6(e) and 7.6(f) is not accepted on the basis that those clauses manage AN's potential liability exposure to an Operator (which is not party to an AHAA).</li> </ul>	
6.	Resumption of Access Rights	<p>Clause 8 of UT4 AHAA</p> <p>Clause 8 of UT4 SOAA</p>	<p>Resumption provisions are unreasonably harsh and require a more balance approached, particularly:</p> <ul style="list-style-type: none"> <li>- A narrower Underutilisation Event</li> <li>- Imposing obligations of reasonableness on AN in assessing the End User's use of its Access Rights</li> <li>- Specifying time periods under which AN must utilise its resumption rights; and</li> <li>- Clarifying the parties respective notice requirements</li> </ul> <p>Asciano also expressed concerns expressed about reduced ability to access the dispute resolution provisions.</p>	<p><b>Resumption Trigger Event, paragraph (a)</b></p> <p>Under the UT3 SAAs, AN could only resume Access Rights based on past under-utilisation over four consecutive quarters. AN considers that timeframe (four consecutive quarters) to be impractical when administering the access agreements. Consequently, in the UT4 SAAs, AN proposed that it could resume access rights based on past-underutilisation over two out of any three consecutive quarters.</p> <p>Having regard to stakeholder concerns, AN agrees to revert back to the previous timeframe of four consecutive quarters but only on the basis that AN's position in relation to the definition of "Underutilisation Event" and clauses 8.1 and 8.2 is accepted.</p>	<p>Having regard to stakeholder concerns, AN agrees to amend paragraph (a) of the definition of "Resumption Trigger Event" and paragraph (a) of "Underutilised Access Rights" to revert back to the previous timeframe of four consecutive quarters but only on the basis that AN's position in relation to the definition of "Underutilisation Event" and clauses 8.1 and 8.2 is accepted.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				<p><b>Resumption Trigger Event, paragraph (b)</b></p> <p>The concept of “Underutilisation Event” was introduced to address the circumstances in which an event (e.g. a mine closure) will have a sustained and permanent impact on the Access Holder’s ability to utilise those access rights in the future and allows AN to, where there is alternate demand, to relocate those Access Rights.</p>	AN acknowledges stakeholders concerns and provides this further clarification to assist review.
				<p><b>Resumable Access Rights</b></p> <p>AN accepts the QRC’s suggestion that a test of reasonableness apply when assessing the Resumable Access Rights arising due to the occurrence of an Underutilisation Event.</p>	AN accepts the QRC’s suggestion that a test of reasonableness apply when assessing the Resumable Access Rights arising due to the occurrence of an Underutilisation Event.
				<p><b>Disputes relating to Resumable Access Rights</b></p> <p>Having regard to stakeholders comments that the dispute right in clause 8.6 of the UT4 AHAA is too narrow, we note that clause 8.6 of AN’s draft of the UT4 AHAA and SOAA allow the Access Holder to dispute:</p> <ul style="list-style-type: none"> <li>- the existence or extent of Resumable Access Rights; and</li> <li>- the reasonableness of the expectation of sustained alternative demand or AN receiving a commercial benefit.</li> </ul> <p>Having regard to the definition of “Resumable Access Rights”, the ability of the Access Holder to dispute the existence or extent of Resumable Access Rights would allow the Operator to dispute the existence of a Resumption Trigger Event (including, if applicable, the existence of an Underutilisation Event) and the extent of the Underutilised Access Rights.</p>	For clarity, to address stakeholder concerns, AN will include additional drafting which makes it clear that a dispute in relation to existence or extent of Resumable Access Rights includes a dispute in relation to the existence of a Resumption Trigger Event (including, if applicable, the existence of an Underutilisation Event).

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				<p><b>Definition of Underutilisation Event</b></p> <p>The first amendment to “Underutilisation Event” proposed by the QRC (the inclusion of the words “and material adverse”) is acceptable.</p> <p>The second amendment to “Underutilisation Event” proposed by the QRC (in relation to Supply Chain Rights) is not acceptable as it is inconsistent with AN’s current position on Supply Chain Rights (clause 7.4 of the UT4 AHAA and clause 7.5 of the UT4 SOAA).</p>	<p>Accept QRC’s position and amend the definition of “Underutilisation Event” to include the words “and material adverse”.</p>
				<p><b>Underutilised Access Rights</b></p> <p>The amendment in paragraph (b) of the definition of “Underutilised Access Rights” is not acceptable as it creates uncertainty. AN considers that “acting reasonably” is appropriate test in the circumstances.</p>	<p>Accept QRC’s position and amend paragraph (a) of the definition of “Underutilised Access Rights” to revert back to the previous timeframe of four consecutive quarters.</p> <p>It is not intended to change paragraph (b) of the definition of “Underutilised Access Rights”</p>
				<p><b>Notification of Underutilisation Event</b></p> <p>AN considers that the End User should be obliged to notify AN of the occurrence of any Underutilisation Event because, given the nature of Underutilisation Events, the End User will most likely be aware of the occurrence of those events before AN. The notification requirement is not unreasonable in those circumstances.</p>	<p>It is not intended to change this requirement.</p>
				<p><b>Information Request Notice</b></p> <p>AN considers that the End User should be obliged to provide information in response to an Information Request Notice as the End User will have knowledge of the event.</p>	<p>It is not intended to change this requirement.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				<p><b>Proposed Resumption Notice</b></p> <p>The amendment to clause 8.3 is acceptable provided the timeframe is amended to be 40 Business Days after the end of the relevant period. This is consistent with the corresponding timeframe under the UT3 SAAs and gives AN sufficient time to consider whether there is an alternative demand for the relevant access rights.</p>	Accept QRC's position except the timeframe to be amended to 40 Business Days after the end of the relevant period.
				<p><b>Resumption Notice</b></p> <p>AN accepts the QRC's proposed amendments in clause 8.5(a) in principle but considers that the drafting requires modification. For example, the "reasonable likelihood" test in clause 8.5(a)(ii) and (iii) introduces uncertainty.</p> <p>AN accepts the QRC's amendments in clauses 8.5(b) and (d).</p>	Accept QRC's proposed amendments to clause 8.5 in principle but the proposed drafting requires modification.
				<p><b>Dispute in relation to Resumption Notice</b></p> <p>The amendment to the timeframe in clause 8.6 is not acceptable because, having regard to the extensive process already provided for in clause 8, 10 Business Days is sufficient time to dispute a resumption.</p>	It is not intended to change this clause.
7.	Reduction of Conditional Access Rights due to Capacity Shortfall	<p>Clause 9 of UT4 AHAA</p> <p>Clause 9 of UT4 SOAA</p>	Proposed changes to those provisions so in circumstances where the Conditional Access Rights are reduced due to a Capacity Shortfall caused by an act or omission of AN, AN will be deemed to be in breach of the agreement.	<p>Where AN has entered into a commercial arrangement with an Access Holder in respect of an Expansion, AN's liability to the Access Holder for a Capacity Shortfall due to AN's act or omission will be dealt with under those arrangements.</p> <p>Where AN has funded an Expansion and its act or omission has resulted in a Capacity Shortfall, clause 8.10.2(g)(ii) of the UT4 Access Undertaking requires AN to fund the Shortfall Expansion to remedy the Capacity Shortfall.</p> <p>Consequently, AN does not consider that it is appropriate that it be liable to an Access Holder under an SAA for a Capacity Shortfall due to an act or omission of AN and does not accept the QRC's amendments to clause 9.</p>	AN acknowledges stakeholders concerns and provides this further clarification to assist review.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
8.	Reduction of Nominated Monthly Train Services if Maximum Payload exceeded	Clause 10 of UT4 AHAA Clause 10 of UT4 SOAA	No objection to the drafting but want to better understand the rationale for its inclusion – view is that the rationale included appears inconsistent with the effect of the drafting in clause 10 of the AHAA	<p>AN will only use this mechanism to increase the Access Holder's Maximum Payload and reduce its Nominated Monthly Train Services if it has an alternative demand for the additional capacity generated by the reduction its Nominated Monthly Train Services.</p> <p>AN would accept an amendment which would require it to consider a request from an Access Holder to increase the Access Holder's Maximum Payload and reduce its Nominated Monthly Train Services subject to certain conditions being satisfied (including, for example, the Access Holder paying a relinquishment fee for the additional capacity generated by the reduction in its Nominated Monthly Train Services where there is no alternative demand for that additional capacity).</p> <p>This concept is similar to the QRC's proposed new clause 11.1 of the UT4 AHAA.</p>	AN to propose drafting that would require it to consider a request from an Access Holder to increase the Maximum Payload and reduce the Access Holder's Nominated Monthly Train Services (subject to certain conditions being satisfied).
9.	Reduction of Nominated Monthly Train Services if Nominal Payload increased	Clause 11 of UT4 AHAA Clause 11 of UT4 SOAA	Consider allowing the Access Holder to request that the Nominal Payload be increased	<p>AN would only provide a Notice of Intention to Increase Nominal Payload following consultation with industry about options for increasing the capacity of the network (whether by an expansion and / or the use of larger trains). Industry will be able to make suggestions to AN through those processes.</p> <p>Please note AN's comments in relation to clause 10 (above) that it would accept an amendment to clause 10 which would require it to consider a request from an Access Holder to increase the Access Holder's Maximum Payload and reduce its Nominated Monthly Train Services subject to certain conditions being satisfied.</p> <p>In response to the QRC's comments in relation to clause 11 of the UT4 AHAA, AN notes the following:</p> <ul style="list-style-type: none"> <li>- AN does not accept the QRC's proposed amendment in clause 11.1 on the basis that the amendment would be more appropriately dealt with in clause 10 (see comments above).</li> <li>- AN does not accept the QRC's proposed amendment to clause 11.2(a) and notes that it would only give a Notice of Intention to Increase Nominal</li> </ul>	<p>AN to include a requirement for it to undertake consultation with industry prior to it issuing a Notice of Intention to Increase Nominal Payload under clause 11.</p> <p>AN accepts, in principle, the QRC's proposed amendments to clauses 11.9 and 11.11 subject to drafting modifications.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				<p>Payload following consultation with industry (such as through the Network Development Plan or Expansion process).</p> <ul style="list-style-type: none"> <li>- AN does not accept the QRC's proposed amendment to clause 11.2(c) because it imposes a constraint on AN's ability to explore opportunities to create capacity at the lowest capital cost.</li> <li>- AN accepts, in principle, the QRC's proposed amendments to clauses 11.9 and 11.11.</li> </ul>	
10.	Relinquishment of Access Rights – Relinquishment Fee	<p>Clause 12 of UT4 AHAA</p> <p>Clause 12 of UT4 SOAA</p>	Included an obligation for AN to notify the Access Holder if AN identified an opportunity to enter into an Access Agreement that would result in the lessening of the Access Holder's Relinquishment Fee and to not unreasonably delay the negotiation (and execution) of that access agreement.	AN accepts, in principle, the QRC's proposed amendments in clause 12 (other than new clause 12.2(e) which is already addressed in clause 14.2).	AN accepts, in principle, the QRC's proposed amendments in clause 12 (other than new clause 12.2(e) which is already addressed in clause 14.2).
11.	Transfers by Access Holder	<p>Clause 13 of UT4 AHAA</p> <p>Clause 13 of UT4 SOAA</p>	<p>Seeking changes to the transfer provisions to make them more efficient.</p> <p>Primarily the ability for Access Holders to pre-approve a Transfer within a cluster.</p>	<p><b>New provision dealing with short term transfers</b></p> <p>AN accepts that the UT4 SAAs should permit short term transfers but considers that short term transfers should be addressed separately to long term / permanent transfers.</p> <p>AN proposes including a new provision (in addition to the existing transfer provision which addresses long term / permanent transfers) to address short term transfers.</p> <p>AN anticipate that the new provision to address short term transfers will provide an expedited process.</p>	<p><b>New provision dealing with short term transfers</b></p> <p>AN to include a new provision to specifically addresses short term transfers.</p>
				<p><b>Amendments to existing transfer provision dealing with long term / permanent transfers</b></p> <p>On the basis that there will be a separate provisions dealing with short term transfers, AN does not accept most of the QRC's amendments to the existing transfer provision.</p> <p>Specifically, AN does not accept the QRC's proposed</p>	<p><b>Amendments to existing transfer provision dealing with long term / permanent transfers</b></p> <p>With respect to long term / permanent transfers, AN to amend clause 13 as noted in the previous column.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				<p>amendments:</p> <ul style="list-style-type: none"> <li>- to clause 13.1(a) but accepts an obligation to act in a diligent and timely manner in dealing with a transfer;</li> <li>- to clause 13.1(c)(i)(B). AN would typically require a minimum notice period of three months (but may agree to a lesser period on a case-by-case basis); and</li> <li>- to clause 13.2 (including the formatting/renumbering amendments which are not shown in mark-up). In particular, AN needs to have the ability to vary the Access Charge Rate as a consequence of the transfer to ensure that the transferee is paying for its use of the network;</li> <li>- clause 13.6. The intention of the QRC's proposed clause is not clear to AN. If that clause is intended to address short term transfers, then AN will consider the QRC's proposed drafting in clause 13.6 in developing the proposed new provision addressing short term transfers.</li> </ul> <p>AN accepts, in principle, the QRC's amendments to clause 13.3.</p> <p>AN accepts, in principle, the QRC's amendments to clause 13.4 but considers that the issue addressed by those amendments should be addressed in a new provision addressing short term transfers.</p> <p>AN does not accept the amendment to clause 13.5 as each transfer is conditional upon the payment of the applicable Transfer Fee (see clause 13.3(a)).</p>	
12.	Train control	Clause 16.2 and definition of "Train Control Direction" of UT4 AAHA	Obligation to act in good faith	AN does not accept the QRC's amendment which would require AN to act in "good faith" because a good faith obligation is not appropriate in the context of Train Control where AN will be required to provide directions for safety reasons.	It is not intended to change this clause.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
		Clause 17.2 and definition of "Train Control Direction" of UT4 SOAA			
13.	Compliance with AN's Accreditation	Clause 17.6 of UT4 AHAA  Clause 18.6 of UT4 SOAA	Onerous on the Access Holder to interpret and be aware of the terms and conditions of AN's Accreditation.  Amendments so that it is limited to the extent the Access Holder has been notified of those terms and conditions.	<b>AN relief from breach if complying with Accreditation</b>  The clause is intended to ensure that in the limited circumstances that an obligation in the SAAs conflicts with AN's obligations under its Accreditation, it will not be in breach of the SAA by complying with its obligations under its Accreditation.  To make this clearer, AN proposes the amendments to clause 17.6(a) of the UT4 AHAA and 18.6(a) of the UT4 SOAA outlines in the next column.	AN proposes to vary clause 17.6(a) of the UT4 AHAA and 18.6(a) of the UT4 SOAA to make clear that the relief from non-compliance with the AHAA/SOAA will only apply "to the extent that" the relevant act or omission is required for the purposes specified in clause 17.6(a)(i) and (ii) of the UT4 AHAA and 18.6(a)(i) and (ii) of the UT4 SOAA. This clause will only apply where there is a conflict between its obligations under the AHAA/SOAA and its obligations under its Accreditation.
				<b>Access Holder's obligation in respect of AN's Accreditation</b>  In relation to clauses 17.8(b) of the UT4 AHAA and 18.6(b) of the UT4 SOAA, AN proposes additional drafting to make it clear that the Access Holder must not do, or fail to do, anything which the Access Holder knows, or should reasonably have know, would jeopardise AN's Accreditation.  AN does not accept the QRC's proposed new clause 17.6(c) of the UT4 AHAA.	Consistent with the QRC's proposed amendments, AN proposes to vary clause 17.6(b) of the UT4 AHAA and 18.6(b) of the UT4 SOAA consistent with the QRC's proposed amendments to clause 17.6(b) of the UT4 AHAA so that it imposes an obligation on the Access Holder to not do, or fail to do, anything which the Access Holder knows, or should reasonably have known, would be likely to result in the circumstances specified in clauses 17.6(b)(i) and (ii) of the UT4 AHAA and 18.6(b)(i) and (ii) of the UT4 SOAA.  It is not intended to accept the QRC's



Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
					proposed clause 17.6(c) of the UT4 AHAA.
14.	Approval of Operating Plans	Clause 18.7 of UT4 AHAA Clause 19.7 of UT4 SOAA	Opposed to the deemed refusal framework in the Operating Plan approval process.  The Access Holder should be able to engage the dispute or expert resolution processes in the SAA where a deemed refusal arises.	AN accepts, in principle, the QRC's proposed amendment to clause 18 of the UT4 AHAA and 19 of the UT4 SOAA.	AN accepts the QRC's position and will amend clauses 18 of the UT4 AHAA and 19 of the UT4 SOAA accordingly.
15.	Obligation to use reasonable endeavours	19.2 of UT4 AHAA 20.2 of UT4 SOAA	AN may reschedule the train outside of the 48 hour period if it is unable to reschedule it within the 48 hour period and the Access Holder agrees.  AN must use reasonable endeavours to reschedule a train regardless of the amount of notice provided by the Access Holder.  Clauses 19.2(d)(iii) to (vi) of the UT4 AHAA and 20.2(d)(iii) and (iv) of the UT4 SOAA will only apply where AN has satisfied its obligations to use reasonable endeavours to reschedule the train.	The timeframe under clauses 19.2(b) of the UT4 AHAA and 20.2(b) of the SOAA should be consistent with the minimum notice period specified in the applicable system rules (once approved by the QCA), within which the Access Holder must notify Network that it is unable to operate Train Services. Currently, the applicable timeframe is 48hours.  If the Access Holder gives AN less than the minimum notice period specified in the applicable system rules (once approved by the QCA) that it will not, or will be unable to, operate a Train Service, AN should not be obliged to use reasonable endeavours to reschedule that Train Service. If AN does not reschedule such a Train Service, then clauses 19.2(d)(iii) to (vi) of the UT4 AHAA and 20.2(d)(iii) and (iv) of the UT4 SOAA should apply.	AN will amend clauses 19.2(b) of the UT4 AHAA and 20.2(b) of the UT4 SOAA to provide that the timeframe is consistent with the minimum notice period specified in the applicable system rules (once approved by the QCA).  It is not intended to make any further amendments to this clause.
16.	Obligation to use reasonable endeavours	Clause 19.3 of UT4 AHAA  Clause 20.3 of UT4 SOAA	AN may reschedule the train outside of the 48 hour period if it is unable to reschedule it within the 48 hour period and the Access Holder agrees.  If AN does not notify the Access Holder but does not make the Infrastructure available, it must use reasonable endeavours to reschedule the train within 48 hours.  Clause 19.3(e) will only apply where AN has satisfied its obligations to use reasonable endeavours to reschedule the train.	The timeframe under clauses 19.3(b) of the UT4 AHAA and 20.3(b) of the SOAA should be consistent with the minimum notice period specified in the applicable system rules (once approved by the QCA), within which the Access Holder must notify Network that it is unable to operate Train Services. Currently, the applicable timeframe is 48hours.  AN accepts, in principle, the QRC's amendments to clauses 19.3 of the UT4 AHAA and 20.3 of the UT4 SOAA other than:  - the timeframes for the rescheduling of Train Services (as discussed above); and	Except as noted in the previous column, AN accepts QRC's amendments in principle subject to some modifications to the drafting.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				- the replacement of the words “may not” with “will” in clause 19.3(e)(ii) of the UT4 AHAA and 20.3(e)(ii) of the UT4 SOAA.	
17.	Costs of implementing amendments to a System Wide Amendment	Clause 21.6 of UT4 AHAA Clause 22.6 of UT4 SOAA	Phase “safety grounds” is not defined and too vague.  If a System Wide Amendment requires amendment due to conduct attributable to AN or its staff the costs of that variation should be borne by AN.	AN accepts the QRC’s proposed amendments to clauses 21.1 of the AHAA and clause 22.1 of the UT4 SOAA whereby the words “on safety grounds” have been deleted with the words “to ensure the ongoing safe operation of the network.”  Access Holders will be in a position to minimise the Net Financial Effect of proposed amendments to System Wide Requirements. Given that AN is obliged to compensate Access Holders for the Net Financial Effect, it is in AN’s interest to minimise the Net Financial Effect if it is in the position to do so.  Consistent with the position in the UT3 SAAs, each party should be required to fund its own costs of implementing amendments to System Wide Requirements which are required on safety grounds.  Consequently, AN does not accept the QRC’s proposed amendments to clauses 21.6 of the AHAA and clause 22.6 of the UT4 SOAA.	AN accepts the QRC’s position in relation to clauses 21.1(a)(i) of the AHAA and clause 22.1(a)(i) of the UT4 SOAA and will amend the drafting accordingly.  AN acknowledges stakeholders concerns in relation to clauses 21.6 of the AHAA and clause 22.6 of the UT4 SOAA and provides this further clarification to assist review.
18.	Indemnities by Access Holders for liabilities to third parties	Clause 31.3 of UT4 AHAA Clause 32.3 of UT4 SOAA	Indemnity by Access Holder in favour of AN for liabilities to third parties is unreasonably broad.	Under the UT3 SOAA, the Consequential Loss exclusion did not extend to the indemnity in clause 14.3 of the UT3 SOAA. As the indemnity in clause 14.3 of the UT3 SOAA is equivalent to the indemnity in clause 31.3 of the UT4 AHAA and 32.3 of the UT4 SOAA, the Consequential Loss exclusion should not apply to those indemnities either.  It is important that the Consequential Loss exclusion does not apply to the indemnity in clause 31.3 of the UT4 AHAA and 32.3 of the UT4 SOAA because those indemnities are intended to cover liability suffered by AN arising from third party claims. Third party claims are Consequential Loss (see paragraph (d) of the definition of Consequential Loss). If the Consequential Loss exclusion applied to those indemnities, then AN would	AN acknowledges stakeholders concerns and provides this further clarification to assist review.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				not be entitled to be indemnified for third party claims. The related amendment to clauses 32.1 of the UT4 AHAA and 33.1 is not acceptable to AN.	
19.	Limitations and Exclusions of liability – Consequential Loss	Clause 1.1 of UT4 AHAA Clause 1.1 of UT4 SOAA	Definition of “Consequential Loss” lacks certainty. Removal of first paragraphs of definition of “Consequential Loss”.	The definition of “Consequential Loss” in the UT4 SAAs is essentially the same as the definition in the UT3 SAAs (with minor modifications which are not disputed by the QRC).  The QRC has proposed deleting paragraphs (a) and (b) of AN’s definition of “Consequential Loss”. The heads of loss included in those paragraphs are very typically included within the scope of consequential loss definitions under commercial agreements.  The QRC has also proposed amending AN’s definition of Consequential Loss so that paragraphs (e), (f) and (g) in AN’s proposed definition are no longer general exclusions to Consequential Loss. This appears to be a formatting error in the QRC’s mark-up. This has the effect of, for example, including personal injury claims as Consequential Loss when clearly this is not intended or appropriate.  AN’s initial drafting should be reinstated.	AN acknowledges stakeholders concerns and provides this further clarification to assist review.
20. N	Limitations and Exclusions of liability – Claims and exclusions in respect of Infrastructure Standard	Clause 32.3 of the UT4 AHAA Clause 33.4 of SOAA	The exclusion of liability is too broad. The SAAs impose obligations on AN broader than AN carrying out Maintenance Works and AN should be liable for claims if those obligations are not satisfied or carried out negligently.	The exclusion in clause 32.3 of the UT4 AHAA and 33.4 of the UT4 SOAA is consistent with the exclusion in clause 14.4 of the UT3 SAAs.  The intention is that AN will not be liable in respect of the standard of the Infrastructure unless AN has failed to comply with its maintenance obligation under clause 24.2 of the UT4 AHAA or 25.2 of the UT4 SOAA. Those clauses impose a broad obligation on AN in relation to maintenance, repairs, renewal and replacement of the Infrastructure to enable the operation of Train Services in accordance with the SAAs.	AN acknowledges stakeholders concerns and provides this further clarification to assist review.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
21.	Limitations and Exclusions of liability – Claims and exclusions in respect of non-provision of access	Clause 32.4 of the UT4 AHAA Clause 33.5 of the UT4 SOAA	QRC wants to reduce AN's exclusions of liability for Claims in respect of non-provision of Access so AN is liable where its failure to provide is a result of its breach or negligence.	<p>Consistent with our comments in relation to clause 19.2 and 19.3 of the UT4 AHAA, the QRC's proposed amendment to clause 32.4(a) of the AHAA and 33.5(a) of the UT4 SOAA is not acceptable.</p> <p>AN accepts, in principle, the QRC's amendment to clause 32.4(b) of the UT4 AHAA and 33.5(b) of the UT4 SOAA.</p> <p>The deletion of clauses 32.4 (f)(ii) and 32.4(f) (iii) of the UT4 AHAA (using the numbering in AN's draft AHAA) and 33.5(f)(ii) and 33.5(f)(iii) of the UT4 SOAA is not acceptable. AN does not agree that those clauses are inconsistent with clause 32.4(a) of the UT4 AHAA and clause 33.5(a) of the UT4 SOAA and considers that the deletion of those clauses is inconsistent with the principle that AN should not be liable for the actions of third parties.</p> <p>Using the numbering in AN's draft AHAA, the QRC's proposed amendment to clause 32.4(f)(vi)(B) of the UT4 AHAA and clause 33.5(f)(vi)(B) of the UT4 SOAA is not acceptable for the reasons discussed above in relation to the QRC's submission on clause 9 of the AHAA.</p>	AN to provide revised drafting for those amendments proposed by QRC which are accepted in principle.
22.	Limitations and Exclusions of liability – Claims and exclusions in respect of delays to Train Movements	Clause 32.5 of the UT4 AHAA Clause 33.6 of UT4 SOAA	The QRC resist the carve out for delays attributable to other Railway Operators or customers of other Railway Operators as this is a matter to be factored into the scope of the obligation (to use reasonable endeavours)	<p>AN considers that the deletion of the reference to delays attributable to other Railway Operators clauses is inconsistent with the principle that AN should not be liable for the actions of third parties. AN notes that even if it reschedules Train Services in accordance with its obligations under the UT4 AHAA or UT4 SOAA, there will inevitably be delays to Train Services. However, AN is prepared to delete clause 32.5(e)(iii) of the UT4AHAA and clause 33.6(c)(iii) of the UT4 SOAA so that the reference to delays attributable to customers of other Railway Operators or any employees, contractors, volunteers or agents of a customer of another Railway Operator is removed.</p>	AN will delete clause 32.5(e)(iii) of the UT4 AHAA and clause 33.6(c)(iii) of the UT4 SOAA.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				The deletion of clause 32.5(e)(ii) of the UT4 AHAA (using the numbering in AN's draft of the UT4 AHAA) and clause 33.6(c)(ii) of the UT4 SOAA is not acceptable.	
23.	Material Change	<p>Clause 1.1 of the UT4 AHAA</p> <p>Clause 1.1 of the UT4 SOAA</p>	<p>Definition of "Material Change" is unreasonably broad. The QRC proposes a limitation of scope of the definition by:</p> <ul style="list-style-type: none"> <li>- Narrowing the definitions of "Relevant Taxes" and "Changes in Law"; and</li> <li>- Removing the ability for AN to deem a change in government funding as an additional cost of performing its obligations, this is irrelevant given AN is not a government entity</li> </ul>	<p>Given the way in which clauses 34.1 of the UT4 AHAA and 35.1 of the UT4 SOAA (adjustment for a Material Change) are drafted, those clauses will only allow AN to recover the Net Financial Effect of a Material Change. The definition of Net Financial Effect is limited to the net effect in financial terms of the performance of AN's obligations and exercising its rights under the Agreement.</p> <p>As a consequence, the QRC's proposed amendments to the definition of "Relevant Taxes" is not acceptable because the proposed amendment is already addressed in the existing draft.</p> <p>AN accepts the addition of the words "legally binding" in the definition of "Changes in Law".</p> <p>AN does not accept the introduction of the materiality threshold to paragraph (e) of the definition of "Changes in Law" as a perceived immaterial change could have a material financial impact on AN.</p> <p>AN accepts the QRC's amendment to the definition of "Material Change" (ie the removal of the reference to government funding).</p>	<p>It is not intended to change the definition of "Relevant Taxes".</p> <p>The definition of "Changes in Law" to be amended as proposed by the QRC, except for the inclusion of the word "material" (in two places) in paragraph (e).</p> <p>The definition of "Material Change" to be amended as proposed by the QRC.</p>
24.	Powers to suspend	<p>Clause 37.4 of UT4 AHAA</p> <p>Clause 38.5 of UT4 SOAA</p>	Entire clause has been deleted.	AN does not accept the deletion of clause 37.4 of the UT4 AHAA or 38.4 of the UT4 SOAA on the basis that if the End User Agreements have been suspended, AN should have the corresponding right to suspend the operation of Train Services under the SAAs.	It is not intended to delete this clause.
25.	Limitation of liability	<p>Clause 37.5(c) of UT4 AHAA</p> <p>Clause</p>	AN's liability to the Access Holder will not be automatically excluded where no reasonable person in AN's position could have formed the view that the stated grounds for	The QRC's proposed amendment would have the effect of making AN liable to the Access Holder for any loss or damage arising from the suspension regardless of whether or not the suspension was valid.	It is not intended to amend this clause.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
		38.6(c) of UT4 SOAA	suspension existed.	AN's drafting is consistent with the position in corresponding clauses under the UT3 SAAs and reflects its intention that it should not be liable to an Access Holder where it has acted reasonably.	
26.	Suspension and termination	Schedule 9, Part A and B of UT4 AHAA Schedule Part A and B of UT4 SOAA	Minor amendments to Suspension Events and Termination Events in Part A and Part B of Schedule 9 to provide clarification and ensure events are reasonable and commercially sound	AN's responses to the QRC's proposed amendments to Schedule 9 are as follows:	
				<b>Schedule 9, Part A, item 1</b> The introduction of the materiality threshold is not appropriate. The test is demonstration to AN's reasonable satisfaction.	It is not intended to amend this item.
				<b>Schedule 9, Part A, item 2</b> The introduction of the materiality threshold is not appropriate as all relevant information needs to be provided before the operation of a Train Service.	It is not intended to amend this item.
				<b>Schedule 9, Part A, item 3</b> AN accepts the inclusion of the words "in a material respect" instead of the word "materially" AN accepts the deletion of the words "in Aurizon Network's reasonable opinion" in paragraph (u).	Include the words "in a material respect" instead of the words "materially". Delete the words "in Aurizon Network's reasonable opinion" in paragraph (u).
				<b>Schedule 9, Part A, item 4</b> AN accepts the QRC's proposed amendment in principle.	Accept QRC's position subject to modifications to the drafting.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				<p><b>Schedule 9, Part A, item 5</b></p> <p>AN accepts the QRC's proposed amendment.</p>	To be amended as proposed by the QRC.
				<p><b>Schedule 9, Part B, item 1</b></p> <p>The time period in respect of the Suspension Event should be amended to 10 Business Days. The QRC's proposal of 20 Business Days is too long as the End User has already had at least 10 Business Days to pay the invoice.</p> <p>The time period in respect of the Termination Event should be re-instated to 20 Business Days. The QRC's proposal of 40 Business Days is too long.</p>	<p>In respect of the Suspension Event, amend time period to 10 Business Days.</p> <p>In respect of the Termination Event, amend time period to 20 Business Days.</p>
				<p><b>Schedule 9, Part B, item 2</b></p> <p>AN accepts the QRC's proposed amendment.</p>	Accept QRC's position
				<p><b>Schedule 9, Part B, item 4</b></p> <p>AN does not accept the QRC's proposed amendments to both the Suspension Event and Termination Event.</p>	It is not intended to amend this item.
				<p><b>Schedule 9, Part B, item 6</b></p> <p>AN does not accept the QRC's proposed amendments on the basis that the End User or the Operator either ceases the relevant conduct or it does not.</p>	It is not intended to amend this item.
				<p><b>Schedule 9, Part B, item 8</b></p> <p>AN does not accept the QRC's proposed amendments on the basis that the causing of Serious Environmental Harm is a material breach of the AHAA or SOAA which could have serious consequences. AN needs the capacity to suspend and, if necessary, terminate the AHAA or SOAA in such circumstances.</p>	It is not intended to amend this item.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				<p><b>Schedule 9, Part B, item 9</b></p> <p>AN does not accept the QRC's proposed amendment as a failure to maintain insurance is a material breach of the AHAA or SOAA. The period to remedy the non compliance before a suspension right is triggered is too long in those circumstances.</p>	It is not intended to amend this item.
				<p><b>Schedule 9, Part B, item 10</b></p> <p>AN does not accept the QRC's proposed amendments on the basis that failure to provide security is a material breach of the AHAA or SOAA. The period to remedy the non compliance before a suspension right and termination right is triggered is too long in those circumstances.</p>	It is not intended to amend this item.
				<p><b>Schedule 9, Part B, former item 13</b></p> <p>AN considers that the right of suspension in the case of a reasonably anticipated breach of safety requirements is an important safeguard.</p> <p>AN should not have to wait until a reasonably anticipated breach of safety requirements occurs before it can take action.</p> <p>AN also considers that it should have a right of termination in the event it exercises its right of suspension on multiple (three or more) occasions in any 12 month period.</p>	It is not intended to amend this item.
				<p><b>Schedule 9, Part B, current item 13 (former item 14)</b></p> <p>The inclusion of the word "Days" is acceptable to AN.</p>	Accept QRC's position.
27.	Termination	Clause 38.6 of the UT4 AHAA and 39.6 of the UT4 SOAA	Proposed that after termination, the Access Holder should be obliged to remove rollingstock as soon as practicable rather than within a 12 hour period. This is to account for flexibility required.	<p>In circumstances where the SAA has been terminated, it is important that the Access Holder/Operator removes Rollingstock as soon as reasonably practicable. AN considers that 12 hours is more than sufficient time for any operator to remove Rollingstock from the network.</p> <p>With regard to flexibility, the objective to ensure the</p>	It is not intended to amend this clause.



Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
				Infrastructure is available for other Access Holders to utilise should have precedence over affording flexibility to rail operators AN could agree an extended timeframe with the Access Holder in exceptional circumstances.	
28.	AN's liability to operators under AHAA	Clauses 3.3, 7.6, 11.10(b)(ii), 15.3(c), 22.6(a)(ii), 22.6(b)(2), 25.6, 32.3, 32.4 and 32.5 of UT4 AHAA	Deletion of non-liability to operator provisions	<p>These provisions reflect the intention under an AHAA that AN should have no liability to a nominated Operator in circumstances where AN has validly exercised a right under the AHAA. These provisions manage AN's liability to the Operator which is not a party to the AHAA.</p> <p>If the Access Holder does not wish to accept liability for the operator, it has the option of entering into the alternate form of access instead where the Access Holder does not assume liability for the operator.</p>	It is not intended to amend these clauses.
29.	Equality between Access Holders	<p>Clause 45 of the UT4 AHAA</p> <p>Clause 46 of the UT4 SOAA</p>	QRC has noted that there is merit in the most favoured nation clause extending to train scheduling, and that the effectiveness of the most favoured nation provisions are limited if there is no audit right.	<p>AN does not accept the proposal that the most favoured nation clause be extended to apply to train scheduling as AN is obliged to comply with the Network Management Principles, which form part of the Access Undertaking, in undertaking train scheduling.</p> <p>While AN understands the QRC's concerns in relation to a right of audit, such a right gives rise to confidentiality issues. AN has included drafting in clause 10.3.1 of the UT4 Access Undertaking which requires AN to provide full copies of executed SAAs to the QCA.</p> <p>This obligation, along with the non discrimination provisions in the UT4 Access Undertaking, provide an Access Holder with a mechanism for ensuring non discriminatory treatment without giving rise to confidentiality issues.</p>	It is not intended to amend this clause.
30.	Interpretation	Clause 1.2(e)(xvii) of UT4 TOA	<p>New provision inserted which states "access or access rights does not include rights granted by AN to a Railway Operator under a train operations Agreement."</p> <p>The ability for a Railway Operator to operate Train Services either under an SOAA or TOA should be no different in relation to this</p>	<p>The distinction between the right held by an Access Holder and Train Operator has been made on the basis that the Train Operator is only afforded operational rights rather than Access Rights. The Access Rights are granted to the End User under the End User Access Agreement who assumes the ToP liability.</p> <p>This distinction is important as under the Train</p>	It is not intended to amend this clause.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change
			provision.	Operations Agreement, a Train Operator does not have the usual rights associated with Access Rights, such as the ability to transfer and relinquish Access Rights. These rights should only be held solely by the End User who assumes the ToP liability.	
31.	Operation of Train Services	Clause 10.1(b) of UT4 TOA	<p>This additional provision adds an administrative burden to the parties and restricts the operation of Train Services by a Railway Operator.</p> <p>The treatment should be no different to any Railway Operator under any form of access agreement.</p>	<p>The requirement for an Operator to comply with the relevant Train Service Description unless otherwise agreed is not a new provision (see clause 4.1(d) of the UT3 TOA) and is consistent with the principle of access rights always being granted on an origin-destination basis.</p> <p>Similarly, the requirement that prior to operating a Train Service, the Operator must notify AN of the End User for whom the Operator will operate that Train Service is also contained in clause 4.1(e) of UT3 TOA.</p> <p>On the basis that AN can require this information to be provided by the Operator's Controller to the Train Controller under the Train List provided to the Train Controller under clause 1.2(b) of Schedule 10 (Interface Coordination Arrangements), AN is prepared to delete the requirement in clause 10.1(b).</p>	Accept QRC's position on the basis that, if required by AN on a case by case basis, AN can require the provision of this information under clause 1.2(b) of Schedule 10(Interface Coordination Arrangements).

## B.2 – Comparison of End User Access Agreements

- a) The table below has been prepared in relation to the *End User Access Agreement – Coal* between Aurizon Network Pty Ltd (**Aurizon Network**) and an End User which was submitted by Aurizon Network to the Queensland Competition Authority (**QCA**) on 30 April 2013 as part of its voluntary draft access undertaking (**UT4 EUAA**).
- b) The purpose of this high level summary is to identify the key changes to Aurizon Network’s current *End User Access Agreement (Coal)* (**UT3 EUAA**).
- c) This summary should be read in conjunction with the summary of the key changes to Aurizon Network’s current *Train Operations Agreement (Coal)* (**UT3 TOA**) which are included in the *Train Operations Agreement - Coal* between Aurizon Network and an Operator which was submitted by Aurizon Network to the QCA on 30 April 2013 (**UT4 TOA**). This summary does not describe every change to the UT3 EUAA and should not be read in substitution for reading the entire UT4 EUAA and the entire UT4 TOA.
- d) Unless otherwise indicated, clause references are to clauses in the UT4 EUAA or the UT3 EUAA (as applicable) and capitalised terms not otherwise defined in this summary have the meanings given in the UT4 EUAA or the UT3 EUAA (as applicable).

Item	Clause of UT4 EUAA	Clause of UT3 EUAA	Comment
1.	General	General	The UT4 EUAA is based on the UT3 EUAA and the <i>Standard Operator Access Agreement – Coal</i> which was submitted by Aurizon Network to the QCA on 30 April 2013 ( <b>UT4 SOAA</b> ).  A number of provisions from the UT3 EUAA have been updated and clarified in the UT4 EUAA. The UT4 EUAA also reflects changes to Aurizon Network’s current <i>Standard Operator Access Agreement Coal</i> ( <b>UT3 SOAA</b> ) which are included in the UT4 SOAA.
2.	General	General	Consistent with the UT4 SOAA, the UT4 EUAA includes a new concept of “ <b>Train Service Type</b> ”.
3.	2 (Term)	2.4 (Renewal)	Consistent with the UT4 SOAA, the UT4 EUAA seeks to include the Access Undertaking requirement that an Access Holder may only request a Renewal of the Access Rights no earlier than 36 months before the Expiry Date, unless otherwise agreed between the Parties.
4.	3 (Access Rights)	2 (Access Rights)	The timeframe for requesting reallocation of Access Rights has been aligned with timing for developing the Intermediate Train Plan (7 days) rather than 2 Business Days. This is to ensure that variations can be best accommodated within the schedule, and it can be optimised to create the maximum throughput.  Consistent with the UT4 SOAA, the UT4 EUAA makes it clear that Ad Hoc Train Services are subject to the EUAA and TOA.

Item	Clause of UT4 EUAA	Clause of UT3 EUAA	Comment
			Consistent with the UT4 SOAA, the UT4 EUAA includes a requirement that the Access Holder holds or has the benefit of Supply Chain Rights for all Train Services at all times.
5.	4 (Billing and payments)	3.1 (Obligation to pay charges) 3.2 (Invoicing)	<p>The UT4 EUAA clarifies that the End User must pay to Aurizon Network the TOP Charges if no Train Operations Agreement is executed on or before the Commitment Date or there is no Train Operations Agreement in place.</p> <p>The UT4 EUAA clarifies when a Train Service that is taken to be cancelled under a TOA will be taken to be one of the Nominated Monthly Train Services.</p> <p>The UT4 EUAA includes a new provision which allows Aurizon Network to deduct any amounts which are due and payable by the End User to Aurizon Network under the EUAA from any amounts which are due and payable by Aurizon Network to the End User under the EUAA.</p> <p>The UT4 EUAA also clarifies that where the End User is paying all of the Access Charges and:</p> <ul style="list-style-type: none"> <li>the Operator does not comply with performance levels under the TOA, the End User must pay to Aurizon Network the amount determined in accordance with the relevant TOA as a result of that failure; and</li> <li>Aurizon Network does not comply with performance levels under the TOA, Aurizon Network will credit to the End User the amount determined in accordance with the TOA as a result of that failure.</li> </ul> <p>Consistent with the UT4 SOAA, the UT4 EUAA also includes other minor drafting changes.</p>
6.	5 (Security)	3.4 (Obligation to Provide Security) 3.5 (Exercise of Security) 3.6 (Return of Security) Schedule 7 (Pro Forma Security)	<p>The security provisions of the UT4 EUAA have been amended for consistency with the UT4 SOAA.</p> <p>See item 51 of this table for comments in relation to changes to the definition of “Security Amount”.</p>
7.	6 (Resumption of Access Rights)	4.1 (Reduction of Access Rights)	Consistent with the UT4 SOAA, the UT4 EUAA provides that Aurizon Network may propose to resume the Access Rights for a Train Service Type if it considers that a “Resumption Trigger Event” (which includes an “Underutilisation Event”) has occurred.
8.	N/A	4.4 (Forecasts)	Consistent with the UT4 SOAA, the UT4 EUAA has been amended to remove the End User’s obligation to provide Aurizon Network with a six year forecast of its future service requirements and Aurizon Network’s obligation to provide the Operator with a six year forecast of planned major Enhancements.

Item	Clause of UT4 EUAA	Clause of UT3 EUAA	Comment
9.	7 (Reduction of Conditional Access Rights due to Capacity Shortfall)	4.5 (Reduction of Access Rights where insufficient capacity created)	Consistent with the UT4 SOAA, the UT4 EUAA provides for the reduction of Access Rights, which are conditional upon an Expansion being completed and commissioned, where there is a shortfall in the capacity created by the Expansion.
10.	8 (Reduction of Nominated Monthly Train Services if Maximum Payload exceeded)	N/A	Consistent with the UT4 SOAA, the UT4 EUAA includes a new provision which allows Aurizon Network to reduce the Nominated Monthly Train Services for a Train Service Type and to revise the Nominal Payload and Maximum Payload for that Train Service Type by giving the Operator a "Reduction Notice" if the Average Annual Payload for a Train Service Type exceeds the Maximum Payload for that Train Service Type. The UT4 EUAA includes an additional provision which clarifies the process for reducing the number of services that the Operator (or Operators) may operate where the Train Service Description for the relevant Train Service Type is varied under the EUAA.
11.	9 (Reduction of Nominated Monthly Train Services if Nominal Payload increased)	N/A	<p>Consistent with the UT4 SOAA, the UT4 EUAA includes a new provision under which Aurizon has the right to increase the Nominal Payload for a Train Service Type by notice to the End User. Corresponding amendments to the Nominal Payload, Maximum Payload and Nominated Monthly Train Services will also be made to the Train Service Description for the relevant Train Service Type as a result of Aurizon increasing the Nominal Payload for a Train Service under the EUAA. The End User will be deemed to have given notice to Aurizon varying the Access Rights which the End User has allocated to each Operator under a Train Operations Agreement as a result of a increase in the Nominal Payload for a Train Service Type.</p> <p>Although generally consistent with the UT4 SOAA, this provision has been modified from the UT4 SOAA, as the increase to Nominal Payload will be effected under the EUAA but will result in a reduction in Nominated Monthly Operational Rights under a TOA. The EUAA does not provide for any compensation to be payable to the End User as a result of Aurizon exercising its rights to increase the Nominal Payload for a Train Service Type under clause 9.</p>
12.	10 (Relinquishment of Access Rights) 11 (Transfer of Access Rights by End User) 12.2 (Replacement Access Agreement)	4.2 (Relinquishment and Transfer of Access Rights)	<p>Consistent with the UT4 SOAA, the UT4 EUAA provides that if the period of a Transfer of Access Rights, plus the periods of all previous Transfers of Access Rights for Train Services for Train Service Types with the same Origin within the three year period ending on the last day of the Transfer Period, is two years or more, then the Transfer Fee relief is not available and a Transfer Fee will payable on the Transfer.</p> <p>Consistent with the UT4 SOAA, the Transfer provisions also include a concept of Ancillary Access Rights (as defined in the Access Undertaking).</p>

Item	Clause of UT4 EUAA	Clause of UT3 EUAA	Comment
13.	12 (Reduction Factor)	1.1 (Definitions "Reduction Factor")	Consistent with the UT4 SOAA, minor drafting changes have been made to the definition of "Reduction Factor" in the UT4 EUAA to provide greater clarity.
14.	13.1 (Termination where no Access Rights Remain) 13.2 (Effect on entitlement to operate and Access Charge Rates) 13.3 (No compensation or liability)	4.3 (Termination where all Access Rights reduced, relinquished or transferred) 4.1(e) (Reduction of Access Rights) 4.1(f) (Reduction of Access Rights)	Consistent with the UT4 SOAA, the UT4 EUAA clarifies that: <ul style="list-style-type: none"> <li>the End User's entitlement to have an Operator operate Train Services is reduced in accordance with the resumption, reduction, relinquishment or transfer of Access Rights;</li> <li>the End User is no longer obliged to pay Access Charges in respect of the resumed, reduced, relinquished or transferred Access Rights (except Access Charges that accrued before the resumption); and</li> <li>Aurizon Network is not liable for any loss or damage suffered or incurred by the End User in connection with any resumption, reduction, relinquishment or transfer of Access Rights.</li> </ul>
15.	14 (Reduction of Access Rights due to failure of an Operator to satisfy conditions)	N/A	The UT4 EUAA includes an acknowledgement that if the Operator fails to satisfy the conditions for the commencement of a Train Service Type under a Train Operations Agreement, then Aurizon Network may, if the default is not remedied within a specified period, terminate the relevant Train Operations Agreement. The End User will then have the right under the EUAA to nominate a new Operator to use, or vary the previous nomination of another Operator to include, the relevant Access Rights.
16.	15 (Compliance)	5 (Performance Levels) 17.22 (Compliance with official requirements)	Consistent with the UT4 SOAA, the UT4 EUAA includes a new clause which provides that Aurizon Network will not be in breach of the UT4 EUAA with respect to any act or omission which is required in order for Aurizon Network to comply with its Accreditation or to ensure that its Accreditation is not at risk of amendment, suspension, cancellation or revocation. In addition, the End User must not do, or fail to do, anything which would likely result in the amendment, suspension, cancellation or revocation of Aurizon Network's Accreditation.

Item	Clause of UT4 EUAA	Clause of UT3 EUAA	Comment
17.	16 (Weighbridges and Overload Detectors)	3.8 (Weighbridges and Overload Detectors)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
18.	17 (Infrastructure management)	6 (Infrastructure management)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
19.	18 (Insurance by End User)	7 (Insurance by the End User)	Minor drafting amendments including a right for Aurizon Network to pay excesses/deductibles which the End User fails to pay and then recover such amounts from the End User as a debt due to Aurizon Network.
20.	19 (Indemnities)	8.1 (Indemnity by End User) 8.2 (Indemnity by Aurizon Network) 8.3 (Liability to Third Parties)	<p>Consistent with the UT4 SOAA, the UT4 EUAA maintains the indemnity given by the End User to Aurizon Network, its directors and Aurizon Network's Staff against Claims suffered or incurred by Aurizon Network, its directors or Aurizon Network's Staff due to any breach by the End User or in respect of personal injury, death and property damage caused or contributed to by the End User.</p> <p>However, unlike the UT3 EUAA (but consistent with the UT4 SOAA), the indemnity does not extend to deliberate acts or omissions of the End User (unless they are breaches of the UT4 EUAA) on the basis that the End User should not be liable for acts or omissions which are not prohibited (for an act) or required (for an omission) under the EUAA.</p> <p>Similarly, the UT4 EUAA maintains the indemnity given by Aurizon Network to the End User against Claims suffered or incurred by the End User due to breach by Aurizon Network or in respect of personal injury, death and property damage caused or contributed to by Aurizon Network.</p> <p>However, unlike the UT3 EUAA (but consistent with the UT4 SOAA), the indemnity does not extend to deliberate acts or omissions of Aurizon Network (unless they are breaches of the UT4 EUAA) on the basis that Aurizon Network should not be liable for acts or omissions which are not prohibited (for an act) or required (for an omission) under the EUAA.</p> <p>The indemnity given by the End User under the EUAA in respect of Claims suffered or incurred by Aurizon Network, its directors or Aurizon Network's staff in respect of loss or damage or personal injury or death where such person or property is being transported in a Train Services applies where the loss, damage, personal injury or death is caused or contributed to by a negligent act or omission of the End User or the End User's Staff as the End User will not have control of the Train Service. Consistent with the UT4 SOAA, the UT4 EUAA expressly provides that that indemnity extends to Consequential Loss suffered by Aurizon Network and that the exclusion of liability for Consequential Loss does not apply to this indemnity. [Note: There is a paragraphing error in clause 19.3(b).]</p>

Item	Clause of UT4 EUAA	Clause of UT3 EUAA	Comment
			<p>Consistent with the UT4 SOAA, the UT4 EUAA also:</p> <ul style="list-style-type: none"> <li>clarifies that the indemnities given by the End User and Aurizon Network in respect of personal injury and property damage are subject to the limitations of liability in clause 20; and</li> <li>unlike the UT3 EUAA, provides that a Party with the benefit of an indemnity is under an express obligation to use reasonable endeavours to mitigate its losses.</li> </ul>
21.	<p>20 (Limitations and exclusions of liability)</p> <p>21 (Determination of liability and loss adjustment)</p>	9 (Limitation of liability)	<p>The amendments to the consequential loss provisions in the UT4 EUAA are consistent with the amendments to the UT4 SOAA, except that an Access Interface Deed is not required in the EUAA/TOA arrangement.</p> <p>Consistent with the UT4 SOAA, minor amendments have been made to these provisions. Unlike the UT3 EUAA, the UT4 EUAA does not include a provision which imposes on Aurizon Network liability for wrongful inspection and audit. Aurizon Network considers that this is an operational risk, and the risk is better allocated within the TOA. Additionally, this liability is already included in the TOA, creating a double-up of liability. As such, the clause has been removed from the EUAA and included in the TOA.</p>
22.	22 (Material Change)	10 (Material Change)	<p>Consistent with the UT4 SOAA, this provision of the UT3 EUAA includes minor drafting changes to provide greater clarity.</p> <p>In addition, unlike the UT3 EUAA, the definition of “Material Change” under the UT4 EUAA specifically includes a “Change in the Access Undertaking”. A “Change in Access Undertaking” includes any amendment to or replacement of an Access Undertaking, as well as any change in the interpretation or application of an Access Undertaking resulting from a court or other Authority’s decision (including by exercise of delegated authority).</p>
23.	23 (Disputes)	11 (Disputes)	Consistent with the UT4 SOAA, additional details have been included to provide greater clarity.
24.	24 (Force Majeure)	12 (Force Majeure)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.



Item	Clause of UT4 EUAA	Clause of UT3 EUAA	Comment
25.	25 (Suspension) 26 (Liability for wrongful suspension) 27 (Termination) Schedule 6 (Suspension Event and Termination Events)	13 (Suspension) 14 (Termination)	<p>Unlike the UT3 EUAA, the Suspension Events and Termination Events are specified in a schedule of the UT4 EUAA.</p> <p>The UT4 EUAA includes an acknowledgement by the End User that under a Train Operations Agreement, Aurizon has the right to suspend the right of a particular Operator to operate some of all of the Operator's Train Services for a Train Service Type or Train Services generally upon the occurrence of any one or more of a number of specified events or circumstances in respect of that Operator. In those circumstances the End User has the right to nominate an alternative existing Operator to operate the affect services.</p> <p>Under the UT4 EUAA, an Insolvency Event occurring in respect of the End User is a Suspension Event. Unlike the UT3 EUAA, there is no requirement that the Insolvency Event must have continued for at least seven days.</p> <p>The UT4 EUAA includes a new "catch-all" Suspension Event which arises when the End User fails to comply with any other obligation under the UT4 EUAA and the default continues for 20 Business after Aurizon Network notifies the End User of the default.</p> <p>The UT4 EUAA does not include the specific Termination Event which is included in the UT3 EUAA with respect to the End User's failure to comply in any material respect with its obligations under clause 6 (Infrastructure Management). However, the UT4 EUAA does include a "catch-all" Termination Event which arises where the End User fails to comply with any other obligation under the UT4 EUAA and the default continues for 20 Business after Aurizon Network notifies the End User of the default.</p>
	28 (Assignment)	15 (Assignment)	<p>Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.</p> <p>The UT4 EUAA also clarifies that a Change in Control (which is deemed to be an assignment for the purposes of the clause 28) does not include a Change in Control where the End User (or its Ultimately Holding Company) is listed on a recognised stock exchange and the Change in Control is a result of a Change in Control of that listed entity.</p>
26.	29 (GST)	3.3 (GST)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
27.	30 (Confidentiality)	17.2 (Confidentiality) and Schedule 5	The confidentiality provisions have been moved (with some drafting changes) from the Confidentiality Deed in schedule 5 of the UT3 EUAA to the body of the UT4 EUAA.
28.	31 (Intellectual Property)	17.3 (Intellectual Property)	Consistent with the UT4 SOAA, the UT4 EUAA includes a new provision under which the End User grants Aurizon Network a licence to use, modify and reproduce the intellectual property rights in any material supplied by the End User to Aurizon Network for purposes in connection with the EUAA, undertaking capacity assessments, infrastructure planning or to enable Aurizon Network to comply with the Access Undertaking.

Item	Clause of UT4 EUAA	Clause of UT3 EUAA	Comment
29.	32 (Relationship with Train Operations Agreement)	16 (Relationship with Train Operations Agreement)	Minor drafting changes to provide clarity and removal of the requirement to provide to the End User copies of certain notices which are issued by Aurizon to an Operator under a Train Operations Agreement.
30.	33 (Notices)	17.9 (Notices)	Consistent with the UT4 SOAA, the Notice provisions of the UT4 EUAA have been amended to allow Notices, if agreed by Aurizon Network, to be given by email.
31.	34.2 (Amendment)	17.1 (Variation/Amendment) and 17.20 (Schedules)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
32.	34.3 (Entire agreement)	17.4 (Entire Agreement)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity and an express acknowledgement that the End User has not relied on any representation made by Aurizon Network relating to the subject matter of the EUAA.
33.	34.4 (Non-merger)	17.5 (Non-merger)	No change.
34.	34.5 (Authority to enter into agreement)	17.6 (Authority to enter into Agreement)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
35.	34.6 (Consents and approvals) and 34.15 (Approvals and consents)	17.17 (Approvals and consents)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
36.	34.7 (Relationship)	17.8 (Relationship)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
37.	34.8 (Certificate)	17.10 (Certificate)	No change.

Item	Clause of UT4 EUAA	Clause of UT3 EUAA	Comment
38.	34.9 (Costs)	17.11 (Costs)	No change.
39.	34.10 (Duty)	17.12 (Stamp Duty)	No change.
40.	34.11 (Waiver and exercise of rights)	17.13 (Waiver and Exercise of Rights)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
41.	34.12 (Computation of time)	17.14 (Computation of Time)	No change.
42.	34.13 (Severance of invalid or illegal terms)	17.15 (Severance of invalid or illegal terms)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
43.	34.14 (Rights cumulative)	17.16 (Rights Cumulative)	No change.
44.	34.16 (Third Party Land)	17.18 (Ownership of Land)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
45.	34.17 (Implementation of agreement)	17.19 (Implementation of Agreement)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
46.	34.18 (Governing law and jurisdiction)	17.21 (Governing Law and Jurisdiction)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
47.	34.19 (PPS Act)	N/A	Consistent with the UT4 SOAA, the UT4 EUAA has been amended to include a provision in relation to the <i>Personal Property Securities Act 2009</i> (Cth).
48.	35 (Most	17.23 (Most	Minor drafting changes to provide greater clarity.

Item	Clause of UT4 EUAA	Clause of UT3 EUAA	Comment
	favoured nation status)	Favoured Nation Status)	
49.	36 (JV Participants and liability)	N/A	Consistent with the UT4 AHAA, the UT4 EUAA includes a provision which applies where the End User enters into the EUAA as agent for a joint venture.
50.	Schedule 1 (Reference Schedule) Schedule 2 (Train Service Descriptions)	Schedule 1 (End User's Train Service Entitlements)	The UT4 EUAA has been amended to provide that the Security Amount is the greater of the maximum amount of aggregate TOP Charges for all Train Services Types under the EUAA that could potentially be payable during the applicable Year if the Operators do not operate any Train Services for the End User for a reason other than Aurizon Network Cause and the sum of the maximum amount of the deductibles for each of the insurance policies for any one loss as specified in schedule 5. Under UT3 EUAA the Security Amount is determined by reference to the greater of 12 weeks of Access Charges and the amount of the deductible for any one loss for the insurance policy required under the agreement.  Consistent with the UT4 SOAA, schedule 1 and schedule 2 of the UT4 EUAA have been amended to address Train Service Type-specific details. Minor drafting changes have been made to provide greater clarity.
51.	Schedule 3 (Nominated Network)	Schedule 2 (Nominated Network)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
52.	Schedule 4 (Access Charges)	Schedule 3 (Calculation of Access/TOP Charges)	The formula for calculating TOP Charges has been amended to reflect the UT4 TOP arrangements.
53.	Schedule 5 (Insurance)	Schedule 4 (Insurance)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
54.	Schedule 6 (Suspension Events and Termination Events)	N/A	See comments in item 25.
55.	Schedule 7 (Pro Forma Train	Schedule 6 (Pro Forma Train	No change.

Item	Clause of UT4 EUAA	Clause of UT3 EUAA	Comment
	Operations Agreement)	Operations Agreement)	

### B.3 – Comparison of Train Operations Agreement

- a) The table below has been prepared in relation to the *Train Operations Agreement – Coal* between Aurizon Network Pty Ltd (**Aurizon Network**) and an Operator which was submitted by Aurizon Network to the Queensland Competition Authority (**QCA**) on 30 April 2013 as part of its voluntary draft access undertaking (**UT4 TOA**).
- b) The purpose of this high level summary is to identify the key changes to Aurizon Network’s current *Train Operations Agreement (Coal)* (**UT3 TOA**).
- c) This summary should be read in conjunction with the summary of the key changes to Aurizon Network’s current *End User Access Agreement (Coal)* (**UT3 EUAA**) which are included in the *End User Access Agreement – Coal* between Aurizon Network and an End User which was submitted by Aurizon Network to the QCA on 30 April 2013 (**UT4 EUAA**). This summary does not describe every change to the UT3 TOA and should not be read in substitution for reading the entire UT4 TOA and the entire UT4 EUAA.
- d) Unless otherwise indicated, clause references are to clauses in the UT4 TOA or the UT3 TOA (as applicable) and capitalised terms not otherwise defined in this summary have the meanings given in the UT4 TOA or the UT3 TOA (as applicable).

Item	Clause of UT4 TOA	Clause of UT3 TOA	Comment
1.	General	General	<p>The UT4 TOA is based on the UT3 TOA and the <i>Standard Operator Access Agreement – Coal</i> which was submitted by Aurizon Network to the QCA on 30 April 2013 (<b>UT4 SOAA</b>).</p> <p>A number of provisions from the UT3 TOA have been updated and clarified in the UT4 TOA. The UT4 TOA also reflects changes to Aurizon Network’s current <i>Standard Operator Access Agreement Coal</i> (<b>UT3 SOAA</b>) which are included in the UT4 SOAA.</p> <p>For ease of reference, Annexure A to this document is a table which identifies and explains key changes to the UT3 SOAA (which are included in the UT4 SOAA) and the rationale for such changes.</p>
2.	General	General	Consistent with the UT4 SOAA, the UT4 TOA includes a new concept of “ <b>Train Service Type</b> ”.
3.	3 (Operational Rights)	Instrument of Agreement (Grant of Operational Rights and Nature and Scope of Operational Rights)	<p>Consistent with the UT4 SOAA, minor drafting changes have been made to this provision of the UT4 TOA.</p> <p>Consistent with the UT4 SOAA, the UT4 TOA also makes it clear that Ad Hoc Train Services are subject to the EUAA and TOA.</p> <p>Although both the End User and the Operator may request Ad Hoc Train Services, the End User may request Ad Hoc Train Services for Train Services which may or may not be Train Service Types under the EUAA. The Operator under the TOA may only request Ad Hoc Train Services which are additional to the Nominated Monthly Train Services but are otherwise in accordance with the Train Service Description for that Train Service Type.</p>
4.	4 (Ancillary Services) and Schedule 11 (Ancillary Services and Ancillary	Instrument of Agreement – 3 (Ancillary Services)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.

Item	Clause of UT4 TOA	Clause of UT3 TOA	Comment
	Services Charges)		
5.	5 (Nomination of the Operator)	Instrument of Agreement – 6 (Further Nomination of Operator)	Minor drafting changes to provide greater clarity.
6.	8 (Billing and payments)	2 (Charges)	Consistent with the UT4 SOAA, the UT4 TOA includes minor drafting changes including a new provision which allows Aurizon Network to deduct any amounts which are due and payable by the Operator to Aurizon Network under the TOA from any amounts which are due and payable by Aurizon Network to the Operator under the TOA.
7.	9 (Security)	2.4 (Obligation to Provide Security) 2.5 (Exercise of Security) 2.6 (Return of Security) Schedule 13 (Pro Forma Security)	The security provisions of the UT4 TOA have been amended for consistency with the UT4 SOAA (where applicable). See item 57 of this table for comments in relation to changes to the definition of “Security Amount”.
8.	10.1 (Operation of Train Services) 10.2 (Commencement of Train Services) 10.3 (Commencement of Train Services for Train Service Type)	4.1 (Train Services)	This provision of the UT4 TOA has been amended for consistency with the UT4 SOAA (where applicable). The conditions precedent to the Operator’s commencement of Train Services have been broadened from the position in UT3 TOA to include the following conditions: <ul style="list-style-type: none"> <li>• Operator has provided Security to Aurizon Network if required under the TOA;</li> <li>• the Operating Plan has been approved by Aurizon Network; and</li> <li>• Aurizon Network has given the Operator an Authority to Travel or Train Route Acceptance.</li> </ul> The UT4 TOA also includes a process for the reduction of the Operator’s Operational Rights where the Operator has not satisfied the relevant conditions for the commencement of the operation of Train Services for a Train Service Type within the specified timeframe. Under the EUAA, the End User has the right to nominate an alternate operator if the initial Operator has failed to satisfy the conditions for the commencement of the operation of a Train Service for a Train Service Type under the TOA.  If there are no Operational Rights remaining following the relevant reductions, then Aurizon Network may terminate the TOA.

Item	Clause of UT4 TOA	Clause of UT3 TOA	Comment
9.	10.4 (Supply Chain Rights)	6.11 (Private Facilities)	Consistent with the UT4 SOAA, the UT4 TOA has been amended to include a new requirement that the Operator hold, or have the benefit of, <b>“Supply Chain Rights”</b> for all Train Services at all times during the Term.
10.	11 (Reduction of Nominated Monthly Train Services if Maximum Payload exceeded)	N/A	<p>Consistent with the UT4 SOAA, the UT4 EUAA includes a new provision under which the Operator acknowledges that under the EUAA, Aurizon Network has the right to reduce the Nominated Monthly Train Services of an End User for a Train Service Type if the Maximum Payload for that Train Service Type is exceeded.</p> <p>The Operator also acknowledges that upon the reduction of the Nominated Monthly Train Services, the End User will be deemed to have given notice to Aurizon Network to reduce the number of Nominated Monthly Operating Rights the Operator has the right to operate for the Train Service Type utilising the Access Rights in accordance with that notice.</p> <p>Aurizon Network will notify the Operator if the Nominated Monthly Train Services are reduced under the EUAA and the TOA will be varied in accordance with notice that the End User is deemed to have given to Aurizon Network.</p>
11.	12 (Reduction of Nominated Monthly Train Services if Nominal Payload increased)	N/A	<p>Consistent with the UT4 SOAA, the UT4 TOA includes a new provision under which the Operator acknowledges that Aurizon Network may give the End User a notice of Aurizon Network’s intention to increase the Nominal Payload for a Train Service Type under the EUAA.</p> <p>However, unlike the UT4 SOAA, the Operator under the TOA has no express right to dispute the Revised Maximum Payload for the Train Service Type or the Revised Nominated Monthly Train Services for the Train Service Type as a result of the increased Nominal Payload.</p> <p>Under the UT4 TOA, the Operator must give Aurizon Network estimates of the Net Financial Effect (if any) on the Operator of the intended variations to the Nominal Payload, Maximum Payload and Nominated Monthly Operational Rights for the relevant Train Service Type.</p> <p>Aurizon Network is liable to compensate the Operator for the Net Financial Effect of the variations specified in a Notice of Intention to Increase Nominal Payload.</p>
12.	13 (Day to day Train Movements)	5 (Day to day Train Movements)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
13.	14 (Compliance)	6.1 (Compliance) 6.6(e) (Performance Levels) 6.7 (Interface Coordination Plan)	<p>Consistent with the UT4 SOAA, in addition to existing requirements, the Operator must ensure compliance with the Operating Plan and the applicable requirements under the Noise Code.</p> <p>Consistent with the UT4 SOAA, clause 6.6(e) of the UT3 TOA has been moved to clause 14.2 of the UT4 TOA.</p> <p>Consistent with the UT4 SOAA, the UT4 TOA includes a new clause which provides that Aurizon Network will not be in breach of the UT4 TOA with respect to any act or omission which is required in order for Aurizon Network to comply with its Accreditation or to ensure that its Accreditation is not at risk of amendment, suspension, cancellation or revocation. In addition, the Operator must not do, or fail to do, anything which would likely result in the amendment, suspension, cancellation or revocation of Aurizon Network’s Accreditation.</p>
14.	15 (Operating Plan)	N/A	Consistent with the UT4 SOAA, the UT4 TOA includes a new requirement that before the commencement of any Train Services, the Operator must develop and submit to Aurizon Network for approval an Operating Plan.



Item	Clause of UT4 TOA	Clause of UT3 TOA	Comment
15.	16 (Train operations)	6.2 (Compliance with Scheduled Time) 6.3 (Alterations to Train Services) 6.4 (Notification) 6.5 (Operator to Supply Information) 6.8 (Operations of Trains and Rollingstock)	Consistent with the UT4 SOAA, the UT4 TOA includes more detailed provisions which clarify the process for rescheduling and cancellation of Train Services by the Operator and Aurizon Network.
16.	17 (Authorisation of Rollingstock and Rollingstock Configurations)	6.9 (Authorisation of Rollingstock & Rollingstock Configurations)	<p>These provisions of the UT4 TOA have been amended for consistency with the UT4 SOAA.</p> <p>However, the UT4 TOA has also been amended to make the variation to the Access Charge Rates as a result of the authorisation of new Rollingstock and/or Rollingstock Configurations conditional on the corresponding amendments being made to the EUAA and any nomination of the Operator by the End User being varied (if necessary).</p> <p>Under clause 32.2 of the EUAA, the End User is obliged to agree to amendments required to the EUAA as a result of any modified or additional Rollingstock or Rollingstock Configurations being authorised under a TOA.</p>
17.	18 (Amendments to System Wide Requirements)	6.10 (Amendments to System Wide Requirements)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
18.	19 (Weighbridges and Overload Detectors)	3 (Weighbridges and Overload Detectors)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
19.	20 (Performance Levels) Schedule 6 (Performance Levels)	6.6 (Performance Levels) Schedule 5 (Performance Levels)	<p>Unlike the UT3 TOA, the UT4 TOA provides that the financial effects of a failure by an Operator or Aurizon Network to comply with the performance levels under a TOA are flowed through to the EUAA (via clause 4.7 of the EUAA) where the End User is paying all of the Access Charges.</p> <p>Clause 6.6(e) of the UT3 TOA has been moved to clause 14.2 of the UT4 TOA.</p> <p>Schedule 6 of the UT4 TOA includes an Aurizon Network Performance Level, being the “Average Below Rail Transit Time Threshold”. This has been renamed and relocated from item 1.4 of Schedule 1 of the UT3 TOA.</p> <p>Unlike Schedule 5 of the UT3 TOA, Schedule 6 of the UT4 TOA includes a section for the “Operator Performance Levels” to be inserted. In contrast, the UT3 TOA provides that Aurizon Network and the Operator will meet to negotiate in good faith the Operator Performance Level</p>

Item	Clause of UT4 TOA	Clause of UT3 TOA	Comment
			within twelve Months of the Commencement Date.
20.	21 (Infrastructure management)	7.1 (Management and Control of the Nominated Network) 7.2 (Maintenance of the Nominated Network) 7.3 (Inspection by Operator)	Minor drafting changes to provide greater clarity. The limitation of liability in clause 7.2(c) of the UT3 TOA has been addressed in clauses 29.5 and 29.6 of the UT4 TOA (see 28 below).
21.	22 (Incident management)	8 (Incident management)	These provisions of the UT4 TOA have been amended for consistency with the UT4 SOAA. However, under the UT4 TOA (consistent with the UT3 TOA), the Operator is not obliged to ensure that the End User does not cause any Obstruction and to ensure that the End User notifies the Train Controller of any Obstruction, anything that may cause an Incident or Obstruction, or any harm to the Environment.
22.	23 (Accreditation)	10 (Accreditation)	These provisions of the UT4 TOA have been amended for consistency with the UT4 SOAA.
23.	24 (Operator's staff)	11 (Operator's staff)	Consistent with the UT4 SOAA, minor drafting amendments for clarity.
24.	25 (Interface and environmental risk management)	9 (Environmental management and protection) 12 (Interface risk management)	These provisions of the UT4 TOA have been amended for consistency with the UT4 SOAA. However, under the UT4 TOA (consistent with the UT3 TOA), variations to the Access Charges as a result of amendments to the IRMP are conditional on the corresponding amendments being made to the EUAA and any nomination of the Operator by the End User being varied (if necessary).

Item	Clause of UT4 TOA	Clause of UT3 TOA	Comment
25.	26 (Inspection and audit rights)	7.3 (Inspection by Operator) 13 (Inspection and audit rights)	Minor drafting changes to consolidate inspection provisions and to provide greater clarity.
26.	27 (Insurance by Operator)	14 (Insurance by Operator)	Minor drafting amendments including a right for Aurizon Network to pay excesses/deductibles which the Operator fails to pay and then recover such amount from the Operator as a debt due to Aurizon Network.
27.	28 (Indemnities)	15.1 (Indemnity by Operator) 15.2 (Indemnity by Aurizon Network) 15.3 (Liability to Third Parties)	These provisions of the UT4 TOA have been amended for consistency with the UT4 SOAA.
28.	29 (Limitations and exclusions of liability) 30 (Determination of liability and loss adjustment)	15 (Indemnities and Liabilities) 16 (Limitation of liability) 7.2(c) (Maintenance of Nominated Network)	These provisions of the UT4 TOA have been amended for consistency with the UT4 SOAA . Unlike the UT4 SOAA, but consistent with the UT3 TOA, the Operator is not obliged to ensure that Aurizon Network has the benefit of any limitations or exclusions from liability under the conditions of carriage with the “Customer” (being the End User).
29.	31 (Material Change)	17 (Material Change)	Consistent with the UT4 SOAA, this provision of the UT3 TOA includes minor drafting changes to provide greater clarity.  In addition, unlike the UT3 TOA, the definition of “Material Change” under the UT4 TOA specifically includes a “Change in the Access Undertaking”. A “Change in Access Undertaking” includes any amendment to or replacement of an Access Undertaking, as well as any change in the interpretation or application of an Access Undertaking resulting from a court or other Authority’s decision (including by exercise of delegated authority).
30.	32 (Disputes)	18 (Disputes)	Consistent with the UT4 SOAA, additional details have been included to provide greater clarity on the dispute process.

Item	Clause of UT4 TOA	Clause of UT3 TOA	Comment
31.	33 (Force Majeure)	19 (Force Majeure)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
32.	34 (Suspension) 35 (Termination)  Schedule 9 (Suspension Events and Termination Events)	20 (Suspension) 21 (Termination)	<p>The Suspension Events and Termination Events are now specified in schedule 9 of the UT4 TOA and are categorised as Train Service Type-specific events or general events.</p> <p>Consistent with the UT4 SOAA, the UT4 TOA includes Suspension Events which have been amended since the UT3 TOA in order to correspond with the Termination Events in the UT4 TOA (for example, the Suspension Events in Items 6, 7 and 8 of Schedule 9 Part B of the UT4 TOA are amendments to the Suspension Event in clause 20.1 (a)(v) in the UT3 TOA in order to correspond with the Termination Event in Items 6, 7 and 8 of Schedule 9 Part B of the UT4 TOA).</p> <p>In contrast to the UT3 TOA, the UT4 TOA provides that a failure by the Operator to comply with a notice given by Aurizon Network requiring the Operator to cease conduct which is causing or threatening to cause a risk to the safety of persons or property or harm to the Environment is a Termination Event, in addition to being a Suspension Event under the UT3 TOA and the UT4 TOA</p> <p>The UT4 TOA also clarifies that an Activity of the Operator in connection with the TOA that causes, or threatens to cause, Serious Environmental Harm is a Suspension Event and a Termination Event.</p> <p>The UT4 TOA expressly provides that a failure to establish, maintain or replace Security as required under the TOA is a Suspension Event (where such default continues for at least five Business Days after notice of the default) and a Termination Event (where such default continues for at least twenty Business Days after notice of the default).</p> <p>The UT4 TOA includes a new Termination Event where Aurizon Network gives the Operator three or more Suspension Notices within any 12 month period because Aurizon Network anticipates that the Operator will fail to comply with any Laws relating to rail safety relevant to the operation of the Train Services, Train Control Directions, Safeworking Procedures or Safety Standards and Aurizon Network is of the opinion that the anticipated default is likely to cause an increased risk to the safety of any person or a material risk to property.</p> <p>The UT4 TOA clarifies that the termination of the End User Access Agreement is a Termination Event.</p>
33.	36 (Assignment)	22 (Assignment)	<p>Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.</p> <p>The UT4 TOA also clarifies that a Change in Control (which is deemed to be an assignment for the purposes of the clause 36) does not include a Change in Control where the Operator (or its Ultimately Holding Company) is listed on a recognised stock exchange and the Change in Control is a result of a Change in Control of that listed entity.</p>
34.	37 (GST)	2.3 (GST)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.

Item	Clause of UT4 TOA	Clause of UT3 TOA	Comment
35.	38 (Confidentiality)	24.2 (Confidentiality) Schedule 12 (Confidentiality Deed)	The confidentiality provisions have been moved (with some drafting changes) from the Confidentiality Deed in schedule 12 of the UT3 TOA to the body of the UT4 TOA.
36.	39 (Intellectual Property)	24.3 (Intellectual Property)	Consistent with the UT4 SOAA, the UT4 TOA includes a new provision under which the Operator grants Aurizon Network a licence to use, modify and reproduce the intellectual property rights in any material supplied by the Operator to Aurizon Network for purposes in connection with the TOA, undertaking capacity assessments, infrastructure planning or to enable Aurizon Network to comply with the Access Undertaking.
37.	40 (Relationship with End User Access Agreements)	23 (Relationship with End User Access Agreements)	Minor drafting changes to provide clarity.
38.	41 (Notices)	24.9 (Notices)	Consistent with the UT4 SOAA, the Notice provisions of the UT4 TOA have been amended to: <ul style="list-style-type: none"> <li>• allow Notices, if agreed by Aurizon Network, to be given by email;</li> <li>• provide that a Train Control Direction is deemed to have been given at the time the direction is given, issued or made; and</li> <li>• provide that a direction from the Incident Commander is deemed to have been given at the time the direction is communicated by the Incident Commander.</li> </ul>
39.	42.2 (Amendment)	24.1 (Variation/Amendment) 24.20 (Schedules)	No change.
40.	42.3 (Entire agreement)	24.4 (Entire Agreement)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity and an express acknowledgement that the Operator has not relied on any representation made by Aurizon Network relating to the subject matter of the TOA.
41.	42.4 (Non-merger)	24.5 (Non-merger)	No change.

Item	Clause of UT4 TOA	Clause of UT3 TOA	Comment
42.	42.5 (Authority to enter into agreement)	24.6 (Authority to enter into Agreement)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
43.	42.6 (Consents and approvals) 42.15 (Approvals and consents)	24.17 (Approvals and consents)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
44.	42.7 (Relationship)	24.8 (Relationship)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
45.	42.8 (Certificate)	24.10 (Certificate)	No change.
46.	42.9 (Costs)	24.11 (Costs)	No change.
47.	42.10 (Duty)	24.12 (Stamp Duty)	No change
48.	42.11 (Waiver and exercise of rights)	24.13 (Waiver and Exercise of Rights)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
49.	42.12 (Computation of time)	24.14 (Computation of Time)	No change.
50.	42.13 (Severance of invalid or illegal terms)	24.15 (Severance of invalid or illegal terms)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.

Item	Clause of UT4 TOA	Clause of UT3 TOA	Comment
51.	42.14 (Rights cumulative)	24.16 (Rights Cumulative)	No change.
52.	42.16 (Third Party Land)	24.18 (Ownership of Land)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
53.	42.17 (Implementation of agreement)	24.19 (Implementation of Agreement)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
54.	42.18 (Governing law and jurisdiction)	24.21 (Governing Law and Jurisdiction)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
55.	42.19 (PPS Act)	N/A	Consistent with the UT4 SOAA, the UT4 TOA has been amended to include a provision in relation to the <i>Personal Property Securities Act 2009</i> (Cth). See item 61 of the table in Annexure A.
56.	43 (Most favoured nation status)	24.22 (Most Favoured Nation Status)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
57.	Schedule 1 (Reference Schedule) Schedule 2 (Train Service Descriptions)	Schedule 1 (Train Service Entitlements)	<p>The definition of the “Security Amount” has been clarified in the UT4 TOA.</p> <p>Where the End User is paying all Access Charges, it is an amount equivalent to the lesser of 12 weeks of future Access Charges (assuming full utilisation) and the sum of the maximum amount of the deductibles for each of the insurance policies for any one loss as specified in the relevant schedule.</p> <p>Where the End User is only paying TOP Charges, it is an amount equivalent to the greater of 12 weeks of future Access Charges (assuming full utilisation) and the sum of the maximum amount of the deductibles for each of the insurance policies for any one loss as specified in the relevant schedule.</p> <p>Schedule 1 and Schedule 2 of the UT4 TOA have been amended to address Train Service Type-specific details. Minor drafting changes</p>

Item	Clause of UT4 TOA	Clause of UT3 TOA	Comment
			have been made to provide greater clarity.
58.	Schedule 3 (Nominated Network)	Schedule 2 (Nominated Network)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity. The references to “Nominated Monthly Train Services” has been changed to “Nominated Monthly Operational Rights” to reflect the fact that the Operator is granted Operational Rights.
59.	Schedule 4 (Access Charges)	Schedule 3 (Calculation of Access and Other Charges)	The formula for calculating TOP Charges has been amended to reflect the UT4 TOP arrangements.
60.	Schedule 5 (Rollingstock and Rollingstock Configurations)	Schedule 4 (Authorised Rollingstock and Rollingstock Configurations)	The process for authorisation of Rollingstock is now included in clause 17 of the UT4 EUAA (see item 16). Consistent with the UT4 SOAA, this schedule now includes a table which sets out the Maximum Allowable Gross Tonnage, Maximum Desirable Gross Tonnage and Tare Weight of Wagons, Trains and Other Rollingstock.
61.	Schedule 6 (Performance Levels)	Schedule 5 (Performance Levels)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity and a new item which sets out the Average Below Rail Transit Time Threshold for each Train Service Type.
62.	Schedule 7 (High visibility clothing, Emergency Procedures and Environmental Management Standards)	Schedule 6 (Safeworking Procedures etc)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity and reflect current practices. Parts of the schedule are now contained within the body of the UT4 TOA – for example, the Safeworking Procedures are now incorporated by reference rather than being set out in the Schedule.



Item	Clause of UT4 TOA	Clause of UT3 TOA	Comment
63.	Schedule 8 (Insurance)	Schedule 7 (Insurance)	Consistent with the UT4 SOAA, minor drafting changes to provide greater clarity.
64.	N/A	Schedule 8 (Aurizon Network's Investigation Procedures)	Under clause 22.7(a) of the UT4 TOA, investigations must be carried out in accordance with the investigations procedures in Aurizon's document entitled <i>Investigations Procedures</i> . In UT3 TOA the procedure was set out in Schedule 8.
65.	N/A	Schedule 9 (EIRMR and IRMP)	The EMP has replaced the EIRMR in the UT4 TOA which, together with the IRMP, is developed by the parties after execution of the TOA and are no longer included in schedules to the agreement.
66.	Schedule 9 (Suspension Events and Termination Events)	N/A	See comments in item 32 of this table.
67.	Schedule 10 (Interface Coordination Arrangements)	Schedule 10 (Interface Coordination Plan)	The Interface Coordination Arrangements no longer include the Network Management Principles which are set out in the Access Undertaking.
68.	Schedule 11 (Ancillary Services and Ancillary Services Charges)	Schedule 11 (Ancillary Services and Other Charges)	Consistent with the UT4 SOAA, minor drafting changes to include a definition of "Wayside Equipment".

## Annexure C – Updated draft of Expansions [Part 8]

# Network development and Expansions

## 8.1 Overview

This **Part 8** sets out various provisions relating to the creation of new Rail Infrastructure and supply chain coordination – in particular:

- (a) **clause 8.2** sets out general principles regarding limitations on Aurizon Network's rights and obligations to fund, construct or permit the creation of new Rail Infrastructure;
- (b) **clause 8.3** sets out principles in relation to Aurizon Network's undertaking of Concept Studies;
- (c) **clauses 8.4, 8.5 and 8.6** set out principles in relation to the way in which Pre-feasibility Studies and Feasibility Studies are to be funded;
- (d) **clause 8.8** sets out general principles in relation to the funding of Expansions;
- (e) **clause 8.9** describes how Users may fund all or part of an Expansion;
- (f) **clause 8.10** sets out provisions in relation to Capacity Shortfalls and Access Agreements being conditional on Expansions or Customer Specific Branch Lines;
- (g) **clause 8.11** confirms that Aurizon Network will participate in supply chain coordination including processes in relation to the review of System Operating Assumptions;
- (h) **clause 8.12** describes Aurizon Network's obligations in relation to its proposed Network Development Plan; and
- (i) **clause 8.13** sets out a voting process that Aurizon Network may apply in relation to certain matters concerning capital expenditure projects.

## 8.2 General principles

### 8.2.1 Rights and obligations to fund, construct or permit the creation of new Rail Infrastructure

- (a) Subject to **clauses 8.2.1(b), 8.2.1(d)** and **9**, nothing in this Undertaking:
  - (i) obliges Aurizon Network to fund, construct or permit an Expansion, or to agree to do so; or
  - (ii) prevents Aurizon Network from agreeing (in its absolute discretion) to fund, construct or permit an Expansion, or any part thereof.

- (b) Aurizon Network is not obliged to fund an Expansion unless it agrees to do so.
- (c) Aurizon Network is obliged to construct or permit an Expansion where all of the following circumstances apply:
  - (i) Aurizon Network is satisfied (acting reasonably) that the Expansion is technically and economically feasible and consistent with the safe and reliable operation of the Rail Infrastructure;
  - (ii) Aurizon Network is required to do so in accordance with a written agreement (which is or becomes unconditional) with an Access Seeker or Funding User in respect of the Expansion;
  - (iii) the Expansion is fully funded by either:
    - (A) Aurizon Network agreeing to fund the Expansion; or
    - (B) Funding Users in accordance with a User Funding Agreement for the Expansion; or
    - (C) Funding Users partially funding the Expansion under a User Funding Agreement and the remainder of the funding being provided by Aurizon Network; and
  - (iv) unless:
    - (A) otherwise agreed by Aurizon Network; or
    - (B) the relevant Expansion is to be funded using SUFA, the Expansion (whether or not funded in whole or part by a person other than Aurizon Network) is or will be owned and operated by Aurizon Network.
- (d) Notwithstanding any other provision of this **Part 8**:
  - (i) to the extent that funding is required for Asset Replacement Expenditure, Aurizon Network will be responsible for the provision of that funding as well as undertaking or procuring the undertaking of the capital project to the extent that the capital project involves Asset Replacement Expenditure;
  - (ii) Aurizon Network is not obliged to fund, construct or permit an Expansion to the extent that the QCA could not require Aurizon Network to do so under an access determination, having regard to the matters in section 119 of the Act; and
  - (iii) a dispute determination under **clause 11** relating to Aurizon Network's obligations to fund, construct or permit Expansions under this **0** must not be inconsistent with the restrictions in section 119 of the Act (regardless of whether the dispute is determined by the QCA or an expert).

- (e) Aurizon Network is not obliged to fund or construct a Customer Specific Branch Line (subject to its obligations in relation to Connecting Infrastructure). However, nothing in this Undertaking prevents Aurizon Network from doing so at its discretion by agreement with the Customer seeking to have the Customer Specific Branch Line constructed.
- (f) Aurizon Network's obligations in respect of Connecting Infrastructure are set out in **Part 9** and nothing in this **0** limits Aurizon Network's obligations under **Part 9**.
- (g) Aurizon Network will not unnecessarily and unreasonably delay any Expansion that it is obliged to construct in accordance with this Undertaking, provided that after any relevant agreement with any Access Seeker, Access Holder, Customer or User Funder (as applicable) including any relevant User Funding Agreement is executed for that Expansion then Aurizon Network's obligations in relation to any delay are solely governed by that agreement.
- (h) Aurizon Network must enter into Access Agreements for the capacity to be created by an Expansion.
- (i) Nothing in this **Part 8**:
  - (i) prevents or otherwise restricts Aurizon Network and an Access Seeker (or its Customer) (in each party's absolute discretion) from entering into arrangements relating to or in connection with funding, constructing or permitting an Expansion or Customer Specific Branch Line necessary to provide additional Capacity required to grant Access Rights requested by that Access Seeker; or
  - (ii) prevents Aurizon Network from electing to fund and construct Customer Specific Branch Lines and otherwise invest in the Rail Infrastructure on its own account.
- (j) To the extent that this Undertaking is inconsistent with a User Funding Agreement, Connection Agreement or a Studies Funding Agreement for a Pre-feasibility Study or a Feasibility Study, the User Funding Agreement, Connection Agreement or Studies Funding Agreement (as applicable) will prevail to the extent of that inconsistency (but only as between Aurizon Network and the other parties to those agreements, any relevant Access Seeker (if its Customer is one of those parties) and any relevant Customer (if its Access Seeker is one of those parties)).
- (k) Subject to the requirements of this **Part 8**, the person responsible for the investigation and design of any Expansion or Customer Specific Branch Line that is necessary in order to provide any Access Rights requested by an Access Seeker must be Aurizon Network.

- (l) In this **Part 8** where an Access Seeker has submitted two or more Access Applications which differ in respect of origins/destinations, quantum of capacity, commencement dates or other capacity requirements in relation to a particular Expansion, Aurizon Network will treat each Access Application as a separate Access Application and as if each were lodged by a separate Access Seeker.
- (m) **Clauses 8.2.3 to 8.13.7** apply only to Expansions for the purpose of providing additional Access to coal carrying Train Services and does not govern the process by which Aurizon Network may fund, construct or permit an Expansion for the purpose of providing additional Access to non-coal carrying Train Services.

### 8.2.2 Interdependent and sequential nature of Expansions

- (a) The following principles relate to the interdependent and sequential nature of Expansions:
  - (i) for any Coal System there may be multiple Expansions that incrementally build on each other in sequence to increase the Capacity of that Coal System;
  - (ii) as the Expansions are sequential, Expansions later in the sequence will assume the satisfactory completion of, and delivery of outcomes for Expansions earlier in the sequence;
  - (iii) to the extent that events or circumstances affect an Expansion in the sequence (for example, by it being delayed, not progressing or not delivering the expected outcomes), then Expansions later in the sequence may also be affected and will need to be reviewed to take into account the effect of those events or circumstances;
  - (iv) similarly, to the extent that any Coal Systems overlap, Expansions on one Coal System may affect Expansions on another Coal System; and
  - (v) until:
    - (A) the Access Seekers for any earlier Expansion in a sequence of Expansions have entered into Access Agreements, Commercial Terms or User Funding Agreements, as applicable, (**Earlier Expansion Agreements**) in respect of that earlier Expansion; and
    - (B) such agreements are or have become unconditional,

Access Seekers for any later Expansion in a sequence of Expansions and Aurizon Network must not enter into Access Agreements, Commercial Terms or User Funding Agreements, as applicable, (**Later Expansion Agreements**)

in respect of that later Expansion except where conditional on the requirements in **clauses 8.2.2(a)(v)(A) and (B)** being satisfied for the Later Expansion Agreement to come into full effect.

- (b) Where:
- (i) different Access Seekers will be provided with Access through an interdependent sequence of Expansions (**Expansion Sequence**); and
  - (ii) an Expansion Re-sequence Event has occurred in relation to any Access Seekers (**Affected Access Seekers**),

Aurizon Network may, or if notified under **clause 8.2.2(c)** of circumstances it considers qualify as an Expansion Re-sequence Event must, acting reasonably re-allocate the Affected Access Seekers to a later Expansion in the Expansion Sequence and re-allocate other Access Seekers from a later Expansion to an earlier Expansion in the Expansion Sequence.

- (c) If the majority of Access Seekers for a later Expansion in an Expansion Sequence believe an Expansion Re-sequence Event has occurred in relation to an earlier Expansion in that Expansion Sequence, those Access Seekers may notify Aurizon Network of their belief and the grounds on which that belief is based. For the purpose of this **clause 8.2.2(c)**, the majority of Access Seekers will be determined by reference to the number of Train Paths sought by the Access Seekers in relation to the later Expansion.

- (d) If Aurizon Network intends to re-allocate Access Seekers under **clause 8.2.2(b)** to a different Expansion, it must give the Access Seekers who would be affected by the re-allocation written notice and reasonable details of the intended re-allocation.

- (e) An Access Seeker may within 10 Business Days after being given a notice under **clause 8.2.2(d)** refer the proposed re-allocation to an expert as a dispute for resolution under **clause 11.1.4** and the expert will determine whether Aurizon Network may proceed with the re-allocation having regard to the matters in **clause 8.2.2(b)**. The expert's determination will, subject to **clause 11.1.4(d)**, be binding on all of the Access Seekers who will be affected by any re-allocation and Aurizon Network.

- (f) Aurizon Network will not proceed with an intended re-allocation until:
- (i) the period under **clause 8.2.2(e)** for referring the intended re-allocation to an expert has expired; or
  - (ii) if the intended re-allocation has been referred to an expert under **clause 8.2.2(e)**, the expert determines that Aurizon Network may proceed with the re-allocation.

- (g) If an expert determines that an intended re-allocation may not proceed:
  - (i) subject to **clause 8.2.2(g)(ii)**, Aurizon Network is not prevented from giving a new notice under **clause 8.2.2(e)** in relation to the relevant Expansion Sequence; or
  - (ii) where the expert determines that Aurizon Network's proposed re-allocation should be different, Aurizon Network must adopt the re-allocation determined by the expert.

**[Note from Aurizon Network: Proposed new definitions for Part 12:**

**Expansion Re-sequence Event**

**Where, for an Access Seeker in relation to a proposed Expansion (in an Expansion Sequence), Aurizon Network has an expectation (acting reasonably) that:**

**(a) the Access Seeker (or, if applicable, their Customer) is unlikely to have entered into an Access Agreement, Commercial Terms or a User Funding Agreement, as applicable, in respect of the funding and construction of that Expansion that will have become unconditional, prior to the date 12 months after the Reference Date; and**

**(b) another Access Seeker, for whom Capacity is proposed to be created later in the Expansion Sequence, (or, if applicable, their Customer) is likely to be able to enter into an Access Agreement, Commercial Terms or a User Funding Agreement, as applicable, in respect of the funding and construction of the proposed Expansion, that will have become unconditional, sooner than the Access Agreement, Commercial Terms or a User Funding Agreement, as applicable, referred to paragraph (a).**

**Reference Date**

**The date notified by Aurizon Network under clause 8.6(f)(ii)(C) in relation to the relevant proposed Expansion.]**

### **8.2.3 Determination of sufficient demand for an Expansion**

- (a) Without limiting Aurizon Network's ability to conduct a Demand Assessment for an Expansion on its own volition, Aurizon Network will promptly (and in any case within 10 Business Days of the relevant

event referred to in paragraphs (i), (ii) or (iii) below) commence a Demand Assessment for an Expansion where:

- (i) the operator of an existing or proposed coal terminal formally advises that it has commenced a process to expand an existing coal terminal or to build a new coal terminal which is likely to create demand for additional below rail capacity; or
  - (ii) an Access Seeker submits an Access Application for Access that Aurizon Network concludes cannot be satisfied without Aurizon Network undertaking an Expansion with a value of [\$300m] or more and that Access Seeker requests in writing that Aurizon Network carry out a Concept Study for that Expansion; or
  - (iii) at least 3 Access Seekers make a written request to Aurizon Network for it to conduct a Demand Assessment.
- (b) Where Aurizon Network undertakes a Demand Assessment for an Expansion it will do so using the most appropriate means and information that it identifies (acting reasonably) in the circumstances including:
- (i) the Access Applications it has received;
  - (ii) its own market intelligence;
  - (iii) any Expression of Interest process conducted by Aurizon Network;
  - (iv) liaison and consultation with participants in coal supply chains and Supply Chain Groups relating to the relevant Coal System; and
  - (v) analysis or advice from its expert advisors.
- (c) An Access Seeker may dispute whether Aurizon Network has acted reasonably in determining the means and information to be used for its Demand Assessment under **clause 8.2.3(b)** (including any information requested under **clause 8.2.3(f)**). Unless otherwise settled, disputes notified in accordance with this clause must be referred by Aurizon Network or a disputing party to an expert for determination in accordance with the process in **clause 11.1.4**. The expert's determination will, subject to **clause 11.1.4(d)**, be binding on all of the Access Seekers the subject of the relevant Demand Assessment and Aurizon Network.
- (d) Subject to **clause 8.2.3(e)**, where a Demand Assessment is triggered by one of the circumstances referred to in **clauses 8.2.3(a)(i), (a)(ii) or (a)(iii)**, Aurizon Network will conduct, complete and prepare a report of the results of its Demand Assessment:



- (i) if the Demand Assessment is carried out by means of an Expression of Interest process, within 60 Business Days of the commencement of the assessment study; or
- (ii) in all other cases, within 20 Business Days of the commencement of the assessment study.

The QCA and each Access Seeker that was the subject of the Demand Assessment will be provided with a copy of the completed Demand Assessment report.

- (e) The provided Demand Assessment report will not identify individual Access Seekers or potential access seekers by name or, to the extent practicable, precise origins or destinations for trains utilising the potential Expansion.
- (f) In order to carry out a Demand Assessment Aurizon Network may (acting reasonably) request information from Access Seekers and potential access seekers identified by Aurizon Network as potential users of the potential Expansion. The type of information which can be sought by Aurizon Network includes:
  - (i) status of a coal resource; ***[Note from Aurizon Network: Aurizon Network would require information for each Access Seeker's mine about both its reserve/resource status and the quantity of such reserves/ resources.]***
  - (ii) status of project development;
  - (iii) current project development program;
  - (iv) status of mining tenure; and
  - (v) status of out-loading capacity assets or rights.
- (g) Once a Demand Assessment report has been provided Access Seekers wishing to dispute the outcome of a Demand Assessment must notify Aurizon Network and the QCA within 20 Business Days of the provision of the Demand Assessment report to them.
- (h) Unless otherwise settled, disputes notified in accordance with **clause 8.2.3(g)** must be referred by Aurizon Network or a disputing party to an expert for determination in accordance with the process in **clause 11.1.4**. The expert (who will, failing agreement, be appointed under **clause 11.1.4(b)(i)(B)**) will determine whether the Demand Assessment report published by Aurizon Network was reasonable and if not, what Demand Assessment conclusions should apply. Aurizon Network will promptly provide each Access Seeker that was the subject of the relevant Demand Assessment:
  - (i) where the expert decides that the Demand Assessment conclusions should differ from those originally proposed by Aurizon Network, a final Demand Assessment report reflecting the expert's preferred conclusions; or

- (ii) where the expert confirms the Demand Assessment conclusions reached by Aurizon Network in its Demand Assessment report, confirmation of that fact will be provided to the relevant Access Seekers.

The expert's determination will, subject to **clause 11.1.4(d)**, be binding on all of the relevant Access Seekers and Aurizon Network.

- (i) Each Access Seeker that was the subject of the Demand Assessment will be notified promptly by Aurizon Network if a dispute has been referred to an expert under **clause 8.2.3(h)**. Each Access Seeker wishing to make a written submission to the expert on its view as to how the dispute should be resolved will have [10] Business Days from the date of notification to do so. The costs of engaging the expert will be borne by such party or parties as determined by the expert.

#### **8.2.4 Participation of Customers**

- (a) Without limitation to **clauses 8.4 to 8.9**, if a Customer wishes to fund the cost of:
  - (i) a Pre-feasibility Study, as a Pre-feasibility Funder under **clause 8.4**;
  - (ii) a Feasibility Study, as a Feasibility Funder under **clause 8.6**;  
or
  - (iii) an Expansion, as a User under **clause 8.9**,as applicable, then the Customer must give a notice to Aurizon Network that it wishes to do so and agrees to be bound by the provisions of this Undertaking in relation to such matters.
- (b) Where Aurizon Network does not receive a notice from a Customer under **clause 8.2.4(a)** in respect of a proposed Pre-feasibility Study, Feasibility Study or Expansion (as applicable), then Aurizon Network may refuse to negotiate agreements in relation to such matters with that Customer or to otherwise treat that Customer as a proposed Pre-feasibility Funder, Feasibility Funder or Funding User.
- (c) Where Aurizon Network considers, acting reasonably, that a Customer has materially failed to comply with any provision of this Undertaking relating to the funding of the cost of a Pre-feasibility Study, Feasibility Study or an Expansion (as applicable), then Aurizon Network may, without prejudice to any other rights it may have, do either or both of the following:
  - (i) give a written Negotiation Cessation Notice to the Customer or its Access Seeker (as applicable) under **clause 4.11**; and
  - (ii) cease any other relevant negotiations with that Customer in relation to the funding of the cost of the Pre-feasibility Study, Feasibility Study or an Expansion (as applicable) by giving written notice to that Customer.

- (d) Where Aurizon Network is to conduct a Demand Assessment it must invite all relevant Customers of which it is aware to participate in the Demand Assessment process.

### 8.2.5 Compliance with obligations

Aurizon Network must meet its obligations under this **0** in respect of Pre-feasibility Studies, Feasibility Studies and Expansions, despite any resource constraints on Aurizon Network.

## 8.3 Principles for Concept Studies

- (a) Aurizon Network must promptly undertake a Concept Study (whether in connection with the Network Development Plan or otherwise) for capacity that is consistent with the capacity identified in the relevant Demand Assessment report finalised under **clause 8.2.3** following completion of the final Demand Assessment. However, this obligation will not apply where a further Concept Study is not required because a Concept Study for the relevant Expansion is already underway or completed.
- (b) Aurizon Network will publish on the Website general details of:
  - (i) each Concept Study it is undertaking promptly after commencement of work on the Concept Study; and
  - (ii) the conclusions reached in respect of each Concept Study promptly after its completion.

## 8.4 Principles for Pre-feasibility Studies

- (a) Following a Concept Study, Aurizon Network must promptly undertake and complete scoping, planning, an evaluation of alternatives or other preliminary studies or assessments for that Expansion (**Pre-feasibility Study**), if:
  - (i) subject to **clause 8.4(b)**, one or more of Potential Pre-feasibility Funders agree with Aurizon Network for those Potential Pre-feasibility Funders to fund the Pre-feasibility Study and the relevant Studies Funding Agreements become unconditional;
  - (ii) the Potential Pre-feasibility Funders and Aurizon Network agree that Aurizon Network should fund the Pre-feasibility Study; or
  - (iii) Aurizon Network chooses, at its discretion, to fund the Pre-feasibility Study itself in circumstances where:
    - (A) no unconditional Studies Funding Agreement comes into effect as contemplated by **clause 8.4(a)(i)**:
      - (1) within 40 Business Days after the date of a communication referred to in **clause**

- 8.4(d)(ii) if no dispute has been commenced under **clause 8.4(i)**; or; and
  - (2) where a dispute has been commenced under **clause 8.4(i)**, within 15 Business Days after the expert determination; and
- (B) no agreement is reached as contemplated by **clause 8.4(a)(ii)**,

(A Pre-feasibility Study does not include a Concept Study).

***[Note from Aurizon Network: Definition of Potential Pre-feasibility Funders: “in respect of a proposed Pre-feasibility Study, the Access Seekers or Customers who are required to be given an opportunity to fund that Pre-feasibility Study as determined in accordance with clause 8.4(c) or clause 8.4(e)”]***

- (b) If all of the relevant Studies Funding Agreement for a Pre-feasibility Study terminate prior to completion of the Pre-feasibility Study, then Aurizon Network may elect to continue to undertake and complete the Pre-feasibility Study.
- (c) The Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Pre-feasibility Study under **clause 8.4(a)(i)** for an Expansion, as proposed Pre-feasibility Funders, will be:
  - (i) where Aurizon Network knows that a Capacity Shortfall exists and the proposed Expansion could create Capacity that would reduce or remove the Capacity Shortfall, Access Seekers with Capacity Shortfall Access Applications to which that Capacity Shortfall relates (or, as applicable, their Customers); and
  - (ii) those Access Seekers (or, as applicable, their Customers) whom Aurizon Network decides, acting reasonably, satisfy all of the following requirements:

The relevant Access Seeker:

- (1) is participating in a process for the acquisition of out-loading capacity (such as an expression of interest process or study funding process in relation to a coal export terminal or a domestic power station or similar out-loading facility) or otherwise has a reasonable likelihood of obtaining out-loading capacity, in either case, in a timeframe and having an out-loading capacity entitlement that are consistent with the Access Seeker's Access Application;

- (2) has at least an Exploration Permit for Coal under the *Mineral Resources Act 1989* (Qld);
  - (3) has a credible program for the development of its mine or mine expansion on a basis that is consistent with its Access Application;
  - (4) is diligently developing its mine or mine expansion in accordance with the development program referred to in paragraph (3); and
  - (5) has the ability to meet the funding obligation under the terms of the relevant Studies Funding Agreement. (Acknowledgement by the Access Seeker that it is willing to provide a bank guarantee as required under the relevant Standard Studies Funding Agreement will be deemed to satisfy this criterion).
- (d) Following a decision under **clause 8.4(c)**, Aurizon Network will advise:
- (i) each Access Seeker (or, as applicable, Customer) who was not selected to fund the Pre-feasibility Study of that fact; and
  - (ii) each Access Seeker (or, as applicable, Customer) who was selected to fund the Pre-feasibility Study of that fact and of the Access Rights for which it has been selected to participate in the funding of the Pre-feasibility Study.
- (e) Any Access Seeker (or, as applicable, Customer) that disagrees with the outcome of Aurizon Network's selection process as communicated to it under **clause 8.4(d)** may, within [10] Business Days of that communication require Aurizon Network to refer the matter to an expert for dispute resolution in accordance with **clause 11.1.4**. The expert (who will, failing agreement, be appointed under **clause 11.1.4(b)(i)(B)**) shall either confirm Aurizon Network's original decision or substitute the expert's own decision. The expert's decision will, subject to **clause 11.1.4(d)**, be binding on all potential Pre-feasibility Funders (and their Customers) and Aurizon Network as to the issues in dispute.
- (f) Each Access Seeker (or where applicable, Customer) that was given an opportunity to fund the relevant Pre-Feasibility Study will be notified promptly by Aurizon Network if a dispute has been referred to an expert under **clause 8.4(e)**. Each Access Seeker (or, as applicable, its Customer) wishing to make a written submission to the expert on its view as to how the dispute should be resolved will have

[10] Business Days from the date of notification to do so. The cost of engaging the expert will be borne by the party or parties determined by the expert.

- (g) Unless otherwise agreed by Aurizon Network and relevant proposed Pre-feasibility Funder, a Studies Funding Agreement for a Pre-feasibility Study will be in the form of the Standard Studies Funding Agreement (Pre-feasibility). For clarity, an Access Seeker (or Customer) given an opportunity to fund a Pre-feasibility Study may require that such funding be provided in accordance with the Standard Studies Funding Agreement (Pre-feasibility).
- (h) Aurizon Network must consult with the relevant proposed Pre-feasibility Funders in relation to the scope of the Pre-feasibility Study and reasonably consider the Pre-feasibility Funders' comments. Aurizon Network will provide the Pre-feasibility Funders with written reasons for its position on the scope of the Pre-feasibility Study.
- (i) If Aurizon Network and the relevant proposed Pre-feasibility Funders do not reach agreement on:
  - (i) the scope of the Pre-feasibility Study; or
  - (ii) the completion of schedules in a Studies Funding Agreement in the form of the Standard Studies Funding Agreement (Pre-feasibility),  
within:
    - (iii) [20] Business Days of a communication referred to in **clause 8.4(d)(ii)**; or
    - (iv) if a decision communicated in accordance with **clause 8.4(d)** is referred for dispute resolution as contemplated by **clause 8.4(e)**, within [5] Business Days following the expert's decision,

then, any of those persons may, within [10] Business Days after the expiration of the relevant period referred to in **clause 8.4(i)(iii)** or **clause 8.4(i)(iv)**, as applicable, require Aurizon Network to refer the issue of scope and/or the schedules to an expert as a dispute for resolution under **clause 11.1.4**. The expert (who will, failing agreement, be appointed under **clause 11.1.4(b)(i)(B)**) shall determine whether the scope and information in the schedules to the Pre-feasibility Funding Agreement proposed by Aurizon Network are reasonable (and therefore appropriate) or if not, the scope and the schedule information to be included.

- (j) The determination of a dispute under **clause 8.4(i)** will, subject to **clause 11.1.4(d)**, be binding on all proposed Pre-feasibility Funders and Aurizon Network. Aurizon Network does not breach this Undertaking in doing anything necessary to comply with that determination.
- (k) Where **clauses 8.4(e)** or **8.4(i)** applies, **clause 11.1.4** will be applied in respect of a proposed Pre-feasibility Funder who is a Customer as though a reference to:
  - (i) an Access Seeker includes a reference to that Customer; and
  - (ii) a Related Party for a Customer includes the Access Seeker for that Customer.
- (l) If the Pre-feasibility Study for an Expansion is funded under one or more Studies Funding Agreements (**Pre-feasibility SFA**), then:
  - (i) as a condition of any Studies Funding Agreements for a Feasibility Study (**Feasibility SFA**) in relation to that Expansion, the relevant Feasibility Funders will be required to include in the funding provided to Aurizon Network under their Feasibility SFAs amounts that in aggregate equal the amount to be repaid or reimbursed by Aurizon Network under **clause 8.4(l)(ii)**; and
  - (ii) after those Feasibility SFAs become unconditional, Aurizon Network will, in accordance with each relevant Pre-feasibility SFA, repay or reimburse (as applicable) the funding provided by the Pre-feasibility Funder under that Pre-feasibility SFA.
- (m) The capital expenditure for an Expansion includes the cost of a Pre-feasibility Study relating to that Expansion. However, any amounts that are not repaid or reimbursed (as applicable) under **clause 8.4(l)** will not be treated as capital expenditure and will not be included in the Regulatory Asset Base.
- (n) Without limiting any provision of this Undertaking, Aurizon Network is not obliged to construct, fund or permit an Expansion or to undertake a Feasibility Study, merely because Aurizon Network undertakes or funds any Pre-feasibility Study relating to that Expansion.
- (o) Aurizon Network will publish on the Website general details of each multi-user Pre-feasibility Study it is undertaking promptly after commencement of work on the Pre-feasibility Study. The publication will not identify individual Access Seekers by name, precise details of origins and destinations (to the extent possible) or any other confidential information.

## 8.5 Target Capacity for Feasibility Study

- (a) Where Aurizon Network:
  - (i) has completed a Pre-feasibility Study in respect of a potential Expansion; and
  - (ii) is proposing that a Feasibility Study should be commenced, prior to applying the provisions in **clause 8.6**, Aurizon Network will notify all relevant Access Seekers that it is proposing that a Feasibility Study should be commenced and the targeted amount of Capacity for the potential Expansion (**Target Capacity**).
- (b) An Access Seeker may, within 10 Business Days after being given a notice under **clause 8.5**, dispute the Target Capacity for the proposed Feasibility Study by referring the matter to an expert for dispute resolution in accordance with **clause 11.1.4**. The expert must either confirm the Target Capacity or determine the appropriate Target Capacity. The expert's determination will, subject to **clause 11.1.4(d)**, be binding on all Access Seekers notified under **clause 8.5(a)** and Aurizon Network as to the Target Capacity.
- (c) Aurizon Network will not seek to commence a Feasibility Study until:
  - (i) the period under **clause 8.5(b)** for referring the Target Capacity to an expert has expired; or
  - (ii) if the Target Capacity has been referred to an expert under **clause 8.5(b)**, the expert either confirms the Target Capacity or determines the appropriate Target Capacity.

## 8.6 Principles for Feasibility Studies

- (a) Subject to first complying with **clause 8.5**, following a Pre-Feasibility Study, Aurizon Network must promptly undertake and complete the detailed scoping, design and definition of the preferred scheme selected in the relevant Pre-feasibility Study for that Expansion, including planning and preparation for procurement and construction, (**Feasibility Study**) if:
  - (i) subject to **clause 8.6(b)**, one or more of the Potential Feasibility Funders agree with Aurizon Network to fund the Feasibility Study and the relevant Studies Funding Agreements become unconditional; or
  - (ii) the relevant Potential Feasibility Funders and Aurizon Network agree that Aurizon Network should fund the Feasibility Study; or



- (iii) Aurizon Network chooses, at its discretion, to fund the Feasibility Study itself in circumstances where:
  - (A) no unconditional Studies Funding Agreement comes into effect as contemplated by **clause 8.6(a)(i)**:
    - (1) within 40 Business Days after the date of a communication referred to in **clause 8.6(f)(ii)** if no dispute has been commenced under **clause 8.6(g)**; or
    - (2) where a dispute has been commenced under **clause 8.6(g)**, within 15 Business Days after the expert determination; ; and
  - (B) no agreement is reached as contemplated by **clause 8.6(a)(ii)**.

**[Note from Aurizon Network: Definition of Potential Feasibility Funders: “in respect of a proposed Feasibility Study, the Access Seekers or Customers who are required to be given an opportunity to fund that Feasibility Study as determined in accordance with clause 8.6(c) and clause 8.6(g)”]**

- (b) If all of the relevant Studies Funding Agreement for a Feasibility Study terminate prior to completion of the Feasibility Study, then Aurizon Network may elect to continue to undertake and complete the Feasibility Study.
- (c) Subject to **clause 8.6(d)**, the Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Feasibility Study under **clause 8.6(a)(i)** for an Expansion, as proposed Feasibility Funders, will be:
  - (i) firstly, where Aurizon Network knows that a Capacity Shortfall exists and the proposed Expansion could create Capacity that would reduce or remove the Capacity Shortfall, Access Seekers with Capacity Shortfall Access Applications to which that Capacity Shortfall relates (or, as applicable, their Customers) other than any of them who (or whose Customer) were offered an opportunity to fund the Pre-feasibility Study for the Expansion but did not become a Pre-feasibility Funder for that Pre-feasibility Study; and
  - (ii) secondly, subject to **clause 8.6(e)**, those Access Seekers (or, as applicable, their Customers) whom Aurizon Network decides (acting reasonably) satisfy all of the following requirements, namely an Access Seeker who:
    - (A) is participating in a process for the acquisition of out-loading capacity (such as an expression of interest process or study funding process in relation to a coal export terminal or a domestic power

station or similar out-loading facility) or otherwise has a reasonable likelihood of obtaining out-loading capacity in either case, in a timeframe and having an out-loading capacity entitlement that are consistent with the Access Seeker's Access Application;

- (B) has at least a Mineral Development Licence under the *Mineral Resources Act 1989* (Qld);
- (C) has a credible program for the development of its mine or mine expansion on a basis that is consistent with its Access Application;
- (D) is diligently developing its mine or mine expansion in accordance with the development program referred to in paragraph (3);
- (E) has Marketable Coal Reserves (as defined by the JORC Code **[definition to be included]**) equal to at least 10 times the annual capacity for which Access is required (as determined by reference to the Access Seeker's Access Application), following ramp up; and
- (F) where applicable, has the ability to meet the funding obligation under the terms of the proposed Studies Funding Agreement. (Acknowledgement by the Access Seeker that it is willing to provide a bank guarantee under the relevant Standard Studies Funding Agreement will be deemed to satisfy this criterion).

(d) For the purposes of **clause 8.6(c)**:

(i) where the Access Seeker has a Customer (the identity and details of which has been notified to Aurizon Network by the Access Seeker):

(A) Aurizon Network will notify the Customer that it is identifying Potential Feasibility Funders for the relevant Feasibility Study; and

(B) the Customer must notify Aurizon Network within **[10 Business Days]** after receiving that notice:

(1) that the Customer should be considered for an opportunity to fund the Feasibility Study (rather than the Access Seeker) (**Customer Nomination**); or

(2) that the Access Seeker (and, where there are two or more Access Seekers seeking

the same Access Rights, which of the Access Seekers) should be considered for an opportunity to fund the Feasibility Study (rather than the Customer or any other of those Access Seekers) (**Access Seeker Nomination**);

(ii) where Aurizon Network is given:

- (A) a Customer Nomination under **clause 8.6(d)(i)(B)(1)**, only the Customer can be eligible for an opportunity to fund the relevant Feasibility Study (and not the Access Seeker(s) for the Customer); or
- (B) an Access Seeker Nomination under **clause 8.6(d)(i)(B)(2)**, only the nominated Access Seeker can be eligible for an opportunity to fund the relevant Feasibility Study (and not the Customer or any other relevant Access Seeker for the Customer); and

(iii) where:

- (A) subject to **clause 8.6(d)(iii)(B)**, the Customer does not give Aurizon Network a Customer Nomination or an Access Seeker Nomination under **clause 8.6(d)(i)(B)**, only the Access Seeker for the Customer can be eligible for an opportunity to fund the relevant Feasibility Study (and not the Customer); or
- (B) the Customer does not give Aurizon Network a Customer Nomination or an Access Seeker Nomination under **clause 8.6(d)(i)(B)** and there are two or more Access Seekers for the Customer who are seeking the same Access Rights, neither the Customer nor any of those Access Seekers can be eligible for an opportunity to fund the relevant Feasibility Study.

(e) If the Target Capacity for the Feasibility Study is such that the Feasibility Study is for an Expansion that is expected to create insufficient Capacity for all the relevant Access Seekers that satisfy the requirements under **clause 8.6(c)(ii)**, then Aurizon Network will decide (acting reasonably), as between those particular Access Seekers (or, as applicable, their Customers) which will be given an opportunity to fund the Feasibility Study by Aurizon Network having regard to the following criteria:

- (i) those Access Seekers who meet the requirements set out in **clause 8.6(c)(ii)** to a greater extent than other Access Seekers;
- (ii) the Access Seekers who funded the Pre-feasibility Study;
- (iii) maximisation of the allocation of capacity;
- (iv) maximisation of the duration of the expected Access having regard to:
  - (A) the ratio of coal reserves to the Access capacity sought; and
  - (B) the likelihood of continuing to extract such coal reserves over time.

For clarity, the assessment under **clause 8.6(c)(ii)** will be undertaken to ensure that the aggregate of requested capacity of the proposed Feasibility Funders is not more than (and wherever possible equals) the capacity for which the Feasibility Study is being conducted.

- (f) Following a decision under **clause 8.6(c)**, Aurizon Network will notify:
  - (i) each Access Seeker (or, as applicable, Customer) who was not selected to fund the Feasibility Study of that fact; and
  - (ii) each Access Seeker (or, as applicable, Customer) who was selected to fund the Feasibility Study:
    - (A) of that fact;
    - (B) of the Access Rights for which the Access Seeker has been selected to participate in the funding of the Feasibility Study; and
    - (C) the date by which Aurizon Network anticipates that an Access Agreement, Commercial Terms or a User Funding Agreement, as applicable, in respect of the funding and construction of the Expansion the subject of the Feasibility Study would become unconditional.
- (g) Any Access Seeker (or, as applicable, its Customer) that disagrees with the outcome of Aurizon Network's selection process as communicated to it under **clause 8.6(f)** may, within [10] Business Days of that communication require Aurizon Network to refer the matter to an expert for dispute resolution in accordance with **clause 11.1.4**. The expert, (who will, failing agreement, be appointed under **clause 11.1.4(b)(i)(B)**), shall either confirm Aurizon Network's original decision or substitute the expert's own decision. The expert's decision will, subject to **clause 11.1.4(d)**, be binding on all potential Feasibility Funders (and their Customers) and Aurizon Network as to the issues in dispute.

- (h) Each Access Seeker (or where applicable, Customer) that was given an opportunity to fund the relevant Feasibility Study will be notified promptly by Aurizon Network if a dispute has been referred to an expert under **clause 8.6(g)** and will, if the Access Seeker (or, as applicable, its Customer) wishes to do so, has [10] Business Days from the date of notification to make a written submission to the expert on its view as to how the dispute should be resolved. The cost of engaging the expert will be borne by the party or parties determined by the expert.
- (i) Aurizon Network will provide details to each relevant Access Seeker of Aurizon Network's assessment of that Access Seeker's case against the requirements and criteria in **clause 8.6(c)(ii)**.
- (j) Subject to **clause 8.4(l)(i)**, unless otherwise agreed by Aurizon Network and the relevant proposed Feasibility Funder a Studies Funding Agreement for a Feasibility Study will be in the form of the Standard Studies Funding Agreement (Feasibility). For clarity, an Access Seeker (or Customer) given an opportunity to fund a Pre-feasibility Study may require that such funding be provided in accordance with the Standard Studies Funding Agreement (Feasibility).
- (k) Aurizon Network must consult with the relevant proposed Feasibility Funders in relation to the scope of the Feasibility Study and reasonably consider the Feasibility Funders' comments. Aurizon Network will provide the Feasibility Funders with written reasons for its position on the scope of the Feasibility Study.
- (l) If Aurizon Network and the relevant proposed Feasibility Funders do not reach agreement on:
  - (i) the scope of the Feasibility Study; or
  - (ii) the completion of schedules in the Studies Funding Agreements in the form of the Standard Studies Funding Agreement (Feasibility),  
within:
    - (iii) [30] Business Days of the communication referred to in **clause 8.6(f)(ii)**; or
    - (iv) if the decision communicated in accordance with **clause 8.6(f)** is referred for dispute resolution as contemplated by **clause 8.6(g)**, within [5] Business Days following the expert's decision,

then, any of those persons may, within [10] Business Days after the expiration of the relevant period referred to in **clause 8.6(l)(iii)** or **clause 8.6(l)(iv)**, as applicable, require Aurizon Network to refer the matter to an expert as a dispute for resolution under **clause 11.1.4**. The expert, (who will, failing agreement, be appointed under **clause**

**11.1.4(b)(i)(B)**), shall determine whether the scope and information in the schedules to the Feasibility Funding Agreement proposed by Aurizon Network are reasonable (and therefore appropriate) or if not, the scope and the schedule information to be included.

- (m) The determination of a dispute under **clause 8.6(l)** will, subject to **clause 11.1.4(d)**, be binding on all proposed Feasibility Funders and Aurizon Network. Aurizon Network does not breach this Undertaking in doing anything necessary to comply with that determination.
- (n) Where **clauses 8.6(g) or 8.6(l)** apply, **clause 11.1.4** will be applied in respect of a Customer who is a party to the dispute as though a reference to:
  - (i) an Access Seeker includes a reference to that Customer; and
  - (ii) a Related Party for a Customer includes the Access Seeker for that Customer.
- (o) Within 20 Business Days after a Studies Funding Agreement for a Feasibility Study becoming unconditional, Aurizon Network will:
  - (i) issue an IAP (or if one has previously been provided, a revised IAP) to the relevant Access Seeker who is, or whose Customer is, funding the Feasibility Study; and
  - (ii) subject to **clauses 8.6(p) and (q)**, grant that Access Seeker a provisional allocation of the capacity detailed in the Train Service Description included in the Studies Funding Agreement (**Provisional Capacity Allocation**).

For clarity, where Aurizon Network is funding a Feasibility Study, Aurizon Network will issue an IAP or a revised IAP (as applicable) to any relevant Access Seekers.
- (p) If an Access Seeker intends to progress its Access Application under the negotiation process set out in this Undertaking on the basis of the arrangements outlined in an IAP or revised IAP issued under **clause 8.6(o)(i)**, that Access Seeker must notify Aurizon Network of that intention in writing within 20 Business Days after Aurizon Network gives a relevant notice under **clause 8.8(c)(i)**.
- (q) Subject to **clause 8.6(r)**, all or part of a Provisional Capacity Allocation may be withdrawn by Aurizon Network acting reasonably, where:
  - (i) the relevant Access Seeker's circumstances change in a substantial way so that the Access Seeker ceases to satisfy all of the requirements in **clause 8.6(c)(ii)** or meets one or more of those requirements to a substantially lesser extent than when the assessment was originally made by Aurizon Network under that clause;

- (ii) (other than due to any default or negligent act or omission of Aurizon Network) the relevant mine or out-loading facility (including an expansion of a mine or out-loading facility) will be delayed by 12 months or more as compared to the timeframe that was proposed when Aurizon Network made the original assessment;
  - (iii) Aurizon Network exercising a right to lawfully terminate the Studies Funding Agreement with relevant Feasibility Funder for the Feasibility Study due to a breach by the relevant Feasibility Funder; or
  - (iv) Aurizon Network and the relevant Access Seeker (or, as applicable, its Customer) do not execute an Access Agreement or an agreement in relation to the funding and/or construction of the Expansion within six months (or such longer period as agreed by Aurizon Network) after the Feasibility Study is completed (provided that to the extent that the Access Seeker, or its Customer, is a party to a dispute under **clause 8.9.2** then the time from when that dispute is notified for the purpose of **clause 11.1.4** to the determination of that dispute by the expert is excluded from that period).
- (r) If Aurizon Network intends exercising its rights under **clause 8.6(q)** to withdraw all or a part of a Provisional Capacity Allocation, it must give the relevant Feasibility Funder written notice and a reasonable opportunity (for a period of at least 10 Business Days) to explain why Aurizon Network should not exercise its rights in the way proposed. If having considered any explanation provided by the Access Seeker Aurizon Network (acting reasonably) withdraws all or part of the Provisional Capacity Allocation it must give the relevant Access Seeker written notice, including reasons for its decision.
- (s) An affected Feasibility Funder may within 10 Business Days of receiving notice of Aurizon Network's decision to withdraw Provisional Capacity Allocation under **clause 8.6(q)** refer the matter to an expert as a dispute for resolution under **clause 11.1.4**. The expert will determine whether Aurizon Network has acted reasonably in deciding to withdraw the Provisional Capacity Allocation. The expert's determination will, subject to **clause 11.1.4(d)**, be binding on the parties to the dispute.
- (t) Subject to the terms of the relevant Studies Funding Agreements, where a Provisional Capacity Allocation is withdrawn under **clause 8.6(q)**, Aurizon Network will use reasonable endeavours to seek a replacement Access Seeker (or, as applicable, Customer) (**Replacement**) for all or some of that Capacity who:
- (i) will be selected using the criteria set out in **clause 8.6(c)** and subject to **clause 8.6(e)**; and

- (ii) is willing to enter into a Studies Funding Agreement as a Feasibility Funder for the relevant Feasibility Study, subject to that Replacement and the other relevant Feasibility Funders agreeing with Aurizon Network any relevant amendments relating to scope, timing and cost of the Feasibility Study in respect of the Studies Funding Agreement for that Feasibility Study.
- (u) For clarity, if a proposed replacement Feasibility Funder enters into a Studies Funding Agreement in respect of the relevant Feasibility Study, then **clauses 8.6(o) to (s)** apply to that replacement Feasibility Funder.
- (v) A Provisional Capacity Allocation will automatically cease to apply upon the Access Seeker to which that Provisional Access Allocation applies signing an Access Agreement, Commercial Terms or User Funding Agreement relating to corresponding Access Rights.
- (w) If the Feasibility Study for an Expansion is funded under one or more Studies Funding Agreements (**Feasibility SFA**), then:
  - (i) where there will be a User Funding Agreement for that Expansion, as a condition of that User Funding Agreement the relevant Funding Users will be required to include in the funding provided to Aurizon Network under their User Funding Agreement amounts that in aggregate equal the amount to be repaid or reimbursed by Aurizon Network under **clause 8.6(w)(ii)**; and
  - (ii) where:
    - (A) the agreements with Access Seekers (or their Customers) for the funding and construction of that Expansion or the Access Agreement for utilisation of that Expansion have been executed and have become unconditional; and
    - (B) a Feasibility Funder is a party to those agreements and will use Access Rights granted as a result of the Capacity to be created by that Expansion,

Aurizon Network will, in accordance with the relevant Feasibility SFA for that Feasibility Funder, repay or reimburse to the Feasibility Funder (as applicable) the funding provided by the Feasibility Funder under that Feasibility SFA.
- (x) The capital expenditure for an Expansion includes the cost of Feasibility Studies relating to that Expansion. However, any amounts that are not repaid or reimbursed (as applicable) under **clause 8.6(w)8.6(v)** will not be treated as capital expenditure and will not be included in the Regulatory Asset Base.



- (y) Without limiting any provision of this Undertaking, Aurizon Network is not obliged to construct, fund or permit an Expansion merely because Aurizon Network undertakes or funds any Feasibility Study relating to that Expansion.
- (z) Aurizon Network will publish on the Website general details of each Feasibility Study it is undertaking promptly after commencement of work on the Feasibility Study. The publication will not identify individual Access Seekers by name or, to the extent possible, precise details of origins and destinations.

## 8.7 Failure to enter into agreements

- (a) If a proposed Pre-feasibility Funder or Feasibility Funder considers that Aurizon Network has failed to enter, or unreasonably delayed entering, into a Studies Funding Agreement in accordance with this Undertaking, then the proposed Pre-feasibility Funder or Feasibility Funder (as applicable) may refer the matter to an expert for dispute resolution in accordance with **clause 11.1.4**. The expert's decision will, subject to **clause 11.1.4(d)**, be binding on all proposed Pre-feasibility Funders or Feasibility Funders (and their Customers), as applicable, for the relevant Expansion and Aurizon Network as to the issues in dispute.
- (b) If the expert determines that Aurizon Network has failed to enter, or unreasonably delayed entering, into a Studies Funding Agreement in accordance with this Undertaking, then Aurizon Network must enter into that Studies Funding Agreement within 10 Business Days.

## 8.8 Funding an Expansion - general

- (a) Subject to this **clause 8.8** and **clause 8.9**, an Access Seeker may fund its relevant portion of the cost of an Expansion that is necessary to create additional Capacity so that Access Rights may be granted to Access Seekers but only if Aurizon Network:
  - (i) is not obliged under this Undertaking to do so; and
  - (ii) either:
    - (A) is not willing to do so (as notified or deemed notified under **clause 8.8(c)**); or
    - (B) is only willing to do so subject to Commercial Terms that are unacceptable to the Access Seeker.
- (b) Aurizon Network is not obliged to construct or permit an Expansion that is not fully funded.
- (c) Aurizon Network will notify, where an Expansion is subject to a Feasibility Study that:

- (i) has been funded under Studies Funding Agreements, the Feasibility Funders within 60 Business Days after those Studies Funding Agreements become unconditional; or
- (ii) has not been funded under Studies Funding Agreements, all relevant Access Seekers within [40] Business Days of the agreement under **clause 8.6(a)(ii)** being reached or the choice in **clause 8.6(a)(iii)** being made, as applicable,

of whether Aurizon Network may be willing to fund the Expansion and, whether Aurizon Network requires Commercial Terms to be agreed in relation to the Expansion (and, if so, the details of the conditions that will comprise Commercial Terms).

- (d) If Aurizon Network has not given a notice under **clause 8.8(c)**, then (for the purpose of Access Seekers commencing the processes under **clause 8.9.1(a)**) Aurizon Network is taken to not be willing to fund the Expansion.
- (e) If Aurizon Network has given a notice under **clause 8.8(c)** and the relevant Access Seeker is willing to negotiate, then Aurizon Network and the relevant Access Seeker will negotiate in good faith the proposed Commercial Terms (if any) on which Aurizon Network will be willing to fund the Expansion.
- (f) Where Aurizon Network has given a notice under **clause 8.8(c)** that it requires Commercial Terms an Access Seeker may require Aurizon Network to negotiate a User Funding Agreement for all or part of an Expansion in parallel to negotiations in relation to the Commercial Terms.
- (g) **Clause 8.8(c)** does not prevent Aurizon Network from subsequently notifying relevant parties of whether Aurizon Network is willing to fund the Expansion with or without Commercial Terms. Any notice under this **clause 8.8(g)** does not prevent Access Seekers from pursuing User Funding in preference to the proposal from Aurizon Network for it to fund the Expansion (even if Aurizon Network's proposal is to fund without Commercial Terms).
- (h) Where Aurizon Network is obliged under this Undertaking to fund an Expansion, Aurizon Network must negotiate an Access Agreement in accordance with this Undertaking with those Access Seekers that will utilise the Expansion.
- (i) It is acknowledged that an Expansion may be funded partly by Funding Users and partly by Aurizon Network.
- (j) Where Aurizon Network is:
  - (i) granting a Provisional Capacity Allocation under **clause 8.6(o)**; or
  - (ii) negotiating or entering into an Access Agreement,

Aurizon Network will not have regard to whether any relevant Expansion is or may be a User Funded Expansion or is or may be funded by Aurizon Network.

## 8.9 User Funded Expansions

### 8.9.1 Process where Users intend to fund an Expansion

- (a) If an Access Seeker intends to fund its relevant portion of the cost of an Expansion under **clause 8.8(a)**:
  - (i) each proposed Funding User must give written notice to Aurizon Network of its bona fide intention to negotiate a User Funding Agreement for its relevant portion of the cost of the Expansion;
  - (ii) after receiving such written notice, Aurizon Network and the proposed Funding Users will negotiate in good faith a User Funding Agreement;
  - (iii) upon the User Funding Agreement being agreed by Aurizon Network and the Funding Users, or its terms being determined through dispute resolution, in accordance with this Undertaking:
    - (A) Aurizon Network will issue the proposed User Funding Agreement to the proposed Funding Users and other relevant parties (for example, the State – if applicable), as applicable; and
    - (B) subject to the proposed Funding Users and other relevant parties (for example, the State, if applicable) first executing that User Funding Agreement, Aurizon Network will execute the User Funding Agreement; and
  - (iv) the User Funding Agreement must be in the form of the Standard User Funding Agreement unless otherwise agreed by Aurizon Network and the proposed Funding Users.
- (b) Where **clause 8.9.1(a)(iii)** applies, Aurizon Network will use reasonable endeavours to procure the State to enter into a User Funding Agreement.

### 8.9.2 Disputes about completion of SUFA schedules

- (a) If Aurizon Network and any User do not reach agreement on the completion of schedules to a User Funding Agreement that is in the form of the Standard User Funding Agreement, then any of those persons may at any time refer the matter to the QCA for determination under **clause 11.1.5**.
- (b) The determination of a dispute under **clause 8.9.2(a)** will be binding on all proposed Funding Users and Aurizon Network. Aurizon

Network does not breach this Undertaking in doing anything necessary to comply with that determination.

- (c) Where **clause 8.9.2(a)** applies, **clause 11.1** will be applied in respect of a User who is a Customer as though a reference to:
- (i) an Access Seeker includes a reference to that Customer; and
  - (ii) a Related Party for a Customer includes the Access Seeker for that Customer.

### **8.9.3 Operation of a User Funded Expansion and Capital Indicator allocation**

- (a) A User Funded Expansion will be owned or leased, and operated, by Aurizon Network in accordance with the provisions of the relevant User Funding Agreement and must constitute part of the Rail Infrastructure.
- (b) Subject to approval by the QCA, where a User Funded Expansion occurs, Aurizon Network will nominate the proportion (if any) of the relevant approved Capital Indicator to reflect the expected capital expenditure in relation to the User Funding Agreement(s) for that User Funded Expansion.

### **8.9.4 Capacity Shortfalls for User Funded Expansions**

Without limiting **clauses 8.4(c)(i)** and **8.6(c)(i)**, any Capacity and Capacity Shortfall issues as between Aurizon Network and the Funding Users (including all relevant Access Seekers or Access Holders) in relation to a User Funded Expansion will be dealt with in accordance with the terms of the relevant User Funding Agreement.

### **8.9.5 Inconsistency with a User Funding Agreement**

To the extent of any inconsistency, the terms of an executed User Funding Agreement prevail over the terms of this Undertaking as between Aurizon Network and the Funding Users (including any Access Seeker or Access Holder for which a Funding User is Customer in relation to the User Funded Expansion).

### **8.9.6 Regulatory pre-approval of scope**

Promptly after a written request from a Funding User, Aurizon Network must either seek:

- (a) a vote by Interested Participants under **clause 8.13** to accept; or
  - (b) approval from the QCA for,
- the scope and standard of work for the relevant Expansion.

***[Note from Aurizon Network: Aurizon Network's obligations in relation to seeking to have the capital expenditure for a User Funded Expansion included in the Regulatory Asset Base is set out in the SUFA.]***

## 8.9.7 Tax rulings

- (a) Where, after the terms of the User Funding Agreement between the Funding Users and Aurizon Network negotiated in accordance with **clause 8.9.1(a)(ii)** are substantially agreed, Aurizon Network is requested to do so by all Funding Users engaged in the process prescribed by **clause 8.9.1**, Aurizon Network must, subject to **clause 8.9.7(c)**:
- (i) prepare an application to the Commissioner (as defined in section 2 of the *Taxation Administration Act 1953* (Cth)) for a private ruling (as defined in section 359-5 of the *Taxation Administration Act 1953* (Cth)) in relation to the material income tax implications arising for Aurizon Network of the proposed User Funding Agreement (**Material Tax Matters**);
  - (ii) submit the application prepared in accordance with **clause 8.9.7(a)(i)** to the Commissioner, except where **clause 8.9.7(b)** applies; and
  - (iii) use reasonable endeavours to obtain a favourable private ruling in respect of the Material Tax Matters, except where **clause 8.9.7(b)** applies.
- (b) This clause applies where:
- (i) the Commissioner has indicated that a favourable private ruling (as defined in section 359-5 of the *Taxation Administration Act 1953* (Cth)) would not be provided or that the Commissioner would not provide a private ruling in respect of one or more of the Material Tax Matters; and
  - (ii) Aurizon Network has obtained advice from an appropriately qualified tax adviser that the Commissioner is unlikely to provide a favourable ruling in respect of the Material Tax Matters referred in **clause 8.9.7(b)(i)**.
- (c) Aurizon Network will consult (acting reasonably) with the Funding Users in relation to:
- (i) the Material Tax Matters to be included in the application for the private ruling contemplated by **clause 8.9.7(a)(i)** and the preparation of that application;
  - (ii) any proposal by Aurizon Network to not submit the application for the private ruling in the circumstances contemplated by **clause 8.9.7(a)(ii)**; and
  - (iii) the action required to be taken by Aurizon Network for the purposes of **clause 8.9.7(a)(iii)**.

### 8.9.8 Review of the SUFA

Promptly after executing the first User Funding Agreement in the form of the SUFA, Aurizon Network will:

- (a) review the SUFA; and
- (b) consult with the Funding Users and Access Seekers about the workability of the SUFA for User Funding,

and, after doing so, submit to the QCA any amendments that Aurizon Network (acting reasonably) considers will improve the workability of the SUFA in the form of a draft amending access undertaking under the Act.

## 8.10 Contracting for Capacity

### 8.10.1 Access Agreements conditional on an Expansion or Customer Specific Branch Line

If Access Rights sought by an Access Seeker require an Expansion or Customer Specific Branch Line, then Aurizon Network must only enter into an Access Agreement with that Access Seeker if that Access Agreement:

- (a) is subject to a condition precedent that requires the relevant Expansion or Customer Specific Branch Line to have been completed and commissioned; and
- (b) includes terms and conditions so that the Access Rights relevant to the Expansion or Customer Specific Branch Line are limited to the available Capacity for the Expansion or Customer Specific Branch Line.

***[Note from Aurizon Network: The Standard Access Agreements (SAAs) already includes provision for the inclusion of a description of an Expansion that is a condition precedent to Train Services commencing. Under the SAAs that description is part of the access agreement and currently can only be amended by agreement.]***

### 8.10.2 Capacity Shortfalls

- (a) If Aurizon Network grants Access Rights (**Conditional Access Rights**) to Access Seekers (**Conditional Access Holders**) that are conditional on an Expansion being completed and commissioned, then Aurizon Network will, no more than six months following commissioning of the Expansion and subject to **clause 8.10.2(b)**, undertake an assessment of the change in Capacity arising as a result of that Expansion (**Capacity Change**) after the Expansion is commissioned by calculating the Capacity Change as:
  - (i) the Existing Capacity at the time; less
  - (ii) the Existing Capacity of the system in the absence of the Expansion,

using consistent System Operating Assumptions. Aurizon Network must notify all of the relevant Conditional Access Holders of the conclusions of that assessment and the basis for those conclusions.

- (b) Aurizon Network may by written notice to all relevant Conditional Access Holders defer an assessment for the purposes of **clause 8.10.2(a)** until such time as Aurizon Network reasonably considers that the relevant Expansion is fully operational and the demand conditions are such that a reasonable assessment can be undertaken.
- (c) If a Conditional Access Holder disputes an assessment by Aurizon Network under **clause 8.10.2(a)**, the Conditional Access Holder may refer that dispute to an expert in accordance with **clause 11.1.4**. The expert will determine which party or parties should bear the costs of the expert.
- (d) If Aurizon Network's assessment under **clause 8.10.2(a)** indicates that there is a Capacity Shortfall in relation to Conditional Access Holders, then:
  - (i) the Conditional Access Rights of each Conditional Access Holder are reduced in accordance with its Access Agreement; and
  - (ii) subject to **clause 8.10.2(e)**, where those Conditional Access Rights are reduced, each Conditional Access Holder will be taken to have lodged an Access Application with Aurizon Network for Access Rights equivalent to that reduction if they notify Aurizon Network within 20 Business Days after the reduction occurs that they wish to seek Access Rights equal to that reduction (unless their Access Agreement provides to the contrary).
- (e) For the purpose of a Conditional Access Holder's Access Application under **clause 8.10.2(d)**:
  - (i) the Access Application is taken to be on the same terms as the previous Access Application made by that Conditional Access Holder for those Conditional Access Rights but only to the extent that its Conditional Access Rights have been reduced in accordance with its Access Agreement as a result of the Capacity Shortfall;
  - (ii) Aurizon Network and the Conditional Access Holder are taken to have complied with **clauses 4.2 to 4.4(b)**; and
  - (iii) **clause 4.4(c)** applies to the Access Application.

- (f) Aurizon Network is only obliged to comply with this **clause 8.10** to the extent that such compliance:
- (i) is consistent with Aurizon Network's commercial objectives; and
  - (ii) does not (and Aurizon Network is not compelled to do anything that would) inhibit, restrict, fetter or adversely affect Aurizon Network's ability:
    - (A) to exercise any discretion, power, function or right; or
    - (B) to comply with any obligation or to do anything, in accordance with this Undertaking or an Access Agreement.
- (g) Subject to any agreement with the relevant Conditional Access Holders, where an Expansion (**Shortfall Expansion**) is required as a result of a Capacity Shortfall arising in respect of an earlier Expansion (**Earlier Expansion**) and that Shortfall Expansion is technically and economically feasible:
- (i) subject to **clause 8.10.2(g)(ii)**, if the Earlier Expansion:
    - (A) was funded by Aurizon Network, Aurizon Network will bear the cost of the Shortfall Expansion;
    - (B) was partly funded by Aurizon Network:
      - (1) Aurizon Network will bear the proportion of the cost of the Shortfall Expansion that represents the proportion of the Earlier Expansion that was funded by Aurizon Network; and
      - (2) the Conditional Access Holder(s) who (or whose Customers) provided funding in respect of the Earlier Expansion will bear the remainder of the cost of the Shortfall Expansion if they require it (in which case Aurizon Network and the Conditional Access Holder(s) (or their Customers) will promptly enter into User Funding Agreements on the same terms); or
    - (C) was not funded (in whole or part) by Aurizon Network, a Conditional Access Holder will bear the cost of the Shortfall Expansion if they require it; and
  - (ii) if the Capacity Shortfall was caused by any default or negligent act or omission of Aurizon Network, Aurizon Network will bear the cost of the Shortfall Expansion.



**[Note from Aurizon Network: The remainder of this Part 8 has not been considered for the purpose of this draft.]**

## 8.11 Coal supply chain coordination

### 8.11.1 Supply chain coordination

- (a) Aurizon Network will use reasonable endeavours to participate:
  - (i) in a Supply Chain Group in relation to:
    - (A) the coordination and effective performance of a relevant coal supply chain; and
    - (B) if applicable, the development of a Supply Chain Master Plan; and
  - (ii) in discussions with other service providers and participants in the coal supply chain, on request, with a view to the coordination of maintenance activities in the relevant supply chain.
- (b) Aurizon Network will not be obliged to make any binding commitment or to take any action as a result of its participation and discussions referred to in **clause 8.11.1(a)**.

### 8.11.2 System Operating Assumptions

- (a) In reviewing the System Operating Assumptions for a Coal System, Aurizon Network will:
  - (i) notify the applicable Supply Chain Group (if any) of the relevant System Operating Assumptions and the time in which to make submissions;
  - (ii) consider any submissions from the Supply Chain Group in respect of the proposed System Operating Assumptions or whether any variation of the System Operating Assumptions is required (as applicable); and
  - (iii) respond to any such submissions as soon as reasonably practicable including whether and, if so, how Aurizon Network has varied the proposed or existing System Operating Assumptions (as applicable) in response to those submissions.
- (b) Without limitation to **clause 8.11.2(a)**, Aurizon Network will use reasonable endeavours to review the System Operating Assumptions for a Coal System as soon as practical after Aurizon Network becomes aware that any permanent change has occurred, or will occur, to that Coal System that materially adversely affects the System Operating Assumptions.
- (c) Nothing in this **clause 8.11.2** obliges Aurizon Network to vary the System Operating Assumptions.

- (d) Aurizon Network will use reasonable endeavours to keep its most current System Operating Assumptions available on the Website (including with the redaction of any information that is confidential or which, if so published, would give rise to a breach by Aurizon Network of a confidentiality obligation).

### 8.11.3 Capacity review

- (a) Aurizon Network may undertake a review of Capacity for a Coal System in conjunction with the development or review of the Network Development Plan.
- (b) Aurizon Network will undertake a Capacity review for a Coal System if the System Operating Assumptions are varied as a result of a review under **clause 8.11.2(b)** or are otherwise varied in a way that materially decreases the Existing Capacity in that Coal System.
- (c) If a Capacity review reveals that there is a deficit in the Capacity for a Coal System at a particular point in time (**Deficit**), then Aurizon Network will have regard to that Deficit prior to executing an Access Agreement that would increase the size of that Deficit and prior to constructing any relevant Expansion for that Coal System.

## 8.12 Network Development Plan

- (a) Aurizon Network will develop a Network Development Plan and use reasonable endeavours to keep its most current Network Development Plan available on the Website.
- (b) The Network Development Plan will identify possible options for increasing Capacity and may include possible options for otherwise developing or improving a Coal System's performance.
- (c) Aurizon Network will review and update the Network Development Plan annually or more frequently as it considers necessary, including if circumstances change in a way that Aurizon Network expects will materially adversely affect the Network Development Plan.
- (d) In developing or reviewing the Network Development Plan, Aurizon Network:
  - (i) will from time to time, inform and otherwise consult with, and consider submissions from, Access Holders, Access Seekers and other interested parties identified by Aurizon Network in relation to the proposed Network Development Plan; and
  - (ii) will have regard to:
    - (A) forecast changes in demand for Queensland coal exports;
    - (B) any Expression of Interest submissions;
    - (C) any relevant Access Applications;

- (D) any relevant port terminal developments;
  - (E) any previous or current studies undertaken by Aurizon Network;
  - (F) any supply chain master plan;
  - (G) relevant System Operating Assumptions, System Rules and maintenance plans; and
  - (H) other developments or circumstances which in Aurizon Network's opinion are relevant to the Network Development Plan.
- (e) Aurizon Network will:
- (i) make available to the parties consulted with as contemplated by **clause 8.12(d)(i)**, a draft of a new Network Development Plan at least [40] Business Days before publishing the Network Development Plan on the Website; and
  - (ii) will consider any written submissions from those parties which are received no later than [20] Business Days before the intended publication date for the Network Development Plan before finalising and publishing the Plan. (Parties sent the draft Network Development Plan will be told at the time the intended publication date for the finalised Plan).
- (f) Neither anything in this **clause 8.12** nor the development, review or notification of a Network Development Plan gives rise to any commitment, representation or obligation in relation to funding, constructing, permitting or otherwise implementing any aspect of the Network Development Plan.

## 8.13 Acceptance of capital expenditure projects by Interested Participants

### 8.13.1 Purpose

- (a) This **clause 8.13** sets out a voting process for relevant Access Holders, Customers and Access Seekers to accept any one or more of:
- (i) the prudence of scope of a capital expenditure project;
  - (ii) the prudence of standard of works of a capital expenditure project; and
  - (iii) the cost allocation principles for a proposed Reference Tariff variation under **clause 6.2.4(a)(iv)(A)**.
- (b) The voting process is an alternative to seeking acceptance of those matters by the QCA under **clauses 3 or 4 of schedule E** (as applicable). However, an unsuccessful vote does not prevent Aurizon

Network from seeking the QCA's acceptance on the same matter or a future vote.

- (c) A capital expenditure project referred to in relation to this **clause 8.13** includes all projects of any kind that involve capital expenditure including capital expenditure projects required for safety reasons or for Expansions.

### 8.13.2 Application

- (a) This **clause 8.13** applies where Aurizon Network seeks acceptance of:
  - (i) the scope or standard (as applicable) of a capital expenditure project;
  - (ii) a change to the scope or standard (as applicable) of a capital expenditure project where:
    - (A) Aurizon Network previously obtained the acceptance of Interested Participants for that scope or standard (as applicable); and
    - (B) that change is a material change; or
  - (iii) the cost allocation principles for the purposes of developing a proposed Reference Tariff variation under **clause 6.2.4(a)(iv)(A)**,  
**(Voting Proposal)** by a vote of Interested Participants under this **clause 8.13**.
- (b) Aurizon Network must notify the QCA of the outcome of a vote under this **clause 8.13**.
- (c) Nothing in this **clause 8.13**:
  - (i) obliges Aurizon Network to seek acceptance of the scope or standard of a capital expenditure project, or the development of a Reference Tariff variation, under this **clause 8.13**; or
  - (ii) prevents Aurizon Network from seeking the QCA's acceptance of any or all of the scope or standard of a capital expenditure project, or the development of a Reference Tariff variation, even if a vote seeking the acceptance of the same under this **clause 8.13** has been unsuccessful or if Aurizon Network has sought a vote on, for example, scope but not on standard.
- (d) Aurizon Network does not have an obligation to construct or fund a capital expenditure project as a result of seeking or obtaining any acceptance of the scope or standard of a capital expenditure project, or the development of a Reference Tariff variation, under this **clause 8.13**.

- (e) This **clause 8.13** must be read in conjunction with **clauses 2.2(g)** and **(h)** of **schedule E** (as though those provisions were part of this **clause 8.13**) to the extent that those provisions refer to this **clause 8.13**.

### **8.13.3 Identification of Interested Participants**

- (a) For a vote called by Aurizon Network regarding the acceptance of the scope or standard of that capital expenditure project, the persons eligible to participate in that vote (referred to as **Interested Participants** in respect of that vote) are Customers, and Access Holders and Access Seekers without Customers, where the Access Charges (or likely Access Charges) relevant to the person:
- (i) are (or will be) determined by reference to a Reference Tariff; and
  - (ii) would be affected by including the amount of capital expenditure for a capital expenditure project into the Regulatory Asset Base.
- (b) For a vote called by Aurizon Network regarding the acceptance of the development of a Reference Tariff variation, the persons eligible to participate in that vote (referred to as **Interested Participants** in respect of that vote) are the relevant Affected Parties (referred to under **clause 6.2.4(a)(iv)(A)**).
- (c) Despite **clauses 8.13.3(a)** and **(b)**:
- (i) Aurizon Network will not identify any person as an Interested Participant if that would result in any 'double counting' of votes – for example, where two Access Seekers are competing to provide rail haulage services to a prospective Customer only that Access Seeker nominated by the prospective Customer will be eligible to vote; and
  - (ii) if:
    - (A) a person has not been invited to participate as an Interested Participant; and
    - (B) that person believes that it is entitled to participate,then:
    - (C) that person may request to be allowed to participate by notifying Aurizon Network including setting out reasons why it should be allowed to do so; and
    - (D) Aurizon Network will use its reasonable endeavours to accommodate that request if it is appropriate to do so.

#### 8.13.4 Voting rights

- (a) In this **clause 8.13.4, Affected Train Path** means a Train Path where the applicable Reference Tariff for a Train Service using that Train Path would be affected by:
- (i) where the Voting Proposal relates to the scope or standard of works for a capital expenditure project, including the amount of capital expenditure for the relevant capital expenditure project into the Regulatory Asset Base; or
  - (ii) where the Voting Proposal relates to the cost allocation principles for proposed Reference Tariff variation, the proposed Reference Tariff variation.
- (b) Each Interested Participant's vote will be weighted by multiplying its vote by the number of Affected Train Paths for that Interested Participant as determined by Aurizon Network based on the relevant Access Rights (whether under an Access Agreement or the subject of an Access Application) in accordance with the principles under **clause 8.13.4(c)**.
- (c) Aurizon Network must determine Affected Train Paths for the purpose of **clause 8.13.4(b)** in a manner consistent with the following principles:
- (i) where the Access Agreement in relation to that Interested Participant:
    - (A) will be in force at the time that is five years after acceptance is sought under this **clause 8.13**; or
    - (B) is subject to a legally binding commitment (even if conditional on the completion of an Expansion or Customer Specific Branch Line or other conditions which are Aurizon Network's responsibility to satisfy or can be waived by Aurizon Network),the Affected Train Paths must be determined based on the Access Rights specified in that Access Agreement for a 12 month period starting five years after the first day of the month in which acceptance is sought under this **clause 8.13**;
  - (ii) where:
    - (A) the Access Agreement is due to expire within five years after acceptance is sought under this **clause 8.13**; and
    - (B) Aurizon Network reasonably expects that a Renewal will occur in relation to the relevant Access Rights under that Access Agreement,

the Affected Train Paths must be determined based on the Access Rights specified in that Access Agreement for the last period of 12 months of that Access Agreement;

- (iii) to the extent that the Interested Participant is (or is also) an Access Seeker or an Access Seeker's Customer:
  - (A) where the Available Capacity, plus the Capacity expected to be created by the capital expenditure project, that may potentially be used for Affected Train Paths (**Total Available Capacity**) is less than that needed by Aurizon Network to provide all of the Access Rights sought by Access Seekers (who, or whose Customers, are Interested Participants) for Affected Train Paths (**Requested Capacity**), the Affected Train Paths must be calculated as the Access Seeker's proportion of the Total Available Capacity calculated on a pro rated basis by reference the Access Seeker's proportion of the Requested Capacity; or
  - (B) where the Total Available Capacity is greater than the Requested Capacity, the Affected Train Paths sought by the Access Seeker,

in either case, for a 12 month period starting five years after the first day of the month in which acceptance is sought under this **clause 8.13**; and

- (iv) if more than one of **clauses 8.13.4(c)(i) to (iii)** apply in respect of an Interested Participant, then the Affected Train Paths calculated under those clauses will be aggregated for that Interested Participant.

### **8.13.5 Acceptance process**

- (a) If Aurizon Network seeks a vote from Interested Participants on a Voting Proposal, then Aurizon Network will:
  - (i) identify the Interested Participants and notify each identified Interested Participant of the vote; and
  - (ii) make available information relevant to the Voting Proposal and the voting process to those Interested Participants.
- (b) A notice under **clause 8.13.5(a)(i)** must specify the period within which the vote will occur being at least six weeks after the notice is given (**Voting Period**).
- (c) During the Voting Period:
  - (i) Aurizon Network will use reasonable endeavours to provide information, forums and engage in discussions with Interested Participants in relation to the relevant Voting

- Proposal if it chooses to do so or if reasonably requested by any Interested Participants; and
- (ii) Interested Participants are to notify Aurizon Network of whether they accept or do not accept the Voting Proposal by voting 'yes' or 'no'.
- (d) If an Interested Participant votes 'no' on the basis of any of the following:
- (i) where the vote relates to the scope of a capital expenditure project, the capital expenditure project:
    - (A) is not technically and/or economically feasible or is inconsistent with the safe and reliable operation of the Rail Infrastructure;
    - (B) would materially adversely affect the Interested Participant's access rights, providing evidence of how those rights would be affected; or
    - (C) is inefficient, including having regard to the System Operating Assumptions referred to by Aurizon Network;
  - (ii) where the vote relates to the standard of works of a capital expenditure project, the standard of works:
    - (A) is unreasonable based on the project's scope;
    - (B) is inconsistent with relevant standards, including:
      - (1) the standard of existing or adjacent Rail Infrastructure (except to the extent that the project's scope requires a higher standard); and
      - (2) relevant Australian standards or Codes of Practice; or
    - (C) does not reflect an appropriate balance between capital and operating expenditure; or
  - (iii) where the vote relates to the cost allocation principles for a proposed Reference Tariff variation:
    - (A) the proposed cost allocation principles do not satisfy the pricing principles in section 168A of the Act;
    - (B) a proposed Reference Tariff variation based on the cost allocation principles would adversely impact on that Interested Participant's ability to compete in a relevant market; or



- (C) the Interested Participant should not contribute towards the cost of the capital expenditure project now or at any time in the future,

then that 'no' vote must be accompanied by detailed reasons in relation to those matters. For clarity, **clauses 8.13.5(d)(i) to (iii)** do not prevent a 'no' vote from being made on a different basis – although, any such vote must still be accompanied by detailed reasons.

- (e) If an Interested Participant does not respond within the Voting Period or does not respond in a way that is a clear 'yes' or 'no' vote, then the Interested Participant is deemed to have accepted the relevant Voting Proposal – that is, voted 'yes'.
- (f) If an Interested Participant responds with a 'no' vote, but:
  - (i) that vote does not comply with **clause 8.13.5(d)**; or
  - (ii) the reasons provided with that vote cannot reasonably be regarded as appropriate grounds for, or as relevant to, such a vote,then Aurizon Network may exclude that Interested Participant's vote.
- (g) The Interested Participants will be deemed to have accepted the relevant Voting Proposal if Interested Participants for at least 60% of the aggregated Affected Train Paths for all Interested Participants (other than those excluded under **clause 8.13.5(f)**) have, or are deemed to have, voted 'yes'.
- (h) Aurizon Network will notify each of those Interested Participants of the results of the vote within five Business Days after Aurizon Network has determined those results.

#### **8.13.6 Information and materials relating to acceptance votes**

- (a) Aurizon Network will make available information, when it considers it relevant or necessary to do so, to participants in the coal supply chains relating to Coal Systems (as well as the QCA, Queensland Rail Limited and the DTMR) relating to proposed capital expenditure projects relevant to Coal Systems.
- (b) If a capital expenditure project, the scope of which is being voted on by Interested Participants under **clause 8.13.5**, is a General Expansion Capital Expenditure project, then Aurizon Network will use reasonable endeavours to cooperate with a consultant jointly appointed by, and at the cost of, those Interested Participants for a peer review of Aurizon Network's capacity planning inputs and processes and capacity model outputs in respect of the capital expenditure project. Aurizon Network will run a range of scenarios in that model, as requested by that consultant (acting reasonably). Aurizon Network's obligations under this **clause 8.13.6(b)** do not

include any obligation to provide the consultant with access to the capacity analysis model, confidential information or any other information or thing in respect of which Aurizon Network has any intellectual property<sup>1</sup>.

- (c) Aurizon Network will make available to Interested Participants information on the capital expansion project, or the development of a Reference Tariff variation, where those Interested Participants have been asked to vote on the scope or standard (as applicable) of that capital expenditure project, or the development of that Reference Tariff variation, including a working paper the requirements for which are referred to in **clauses 8.13.6(d) to (f)** (as applicable). For clarity, a working paper may relate to more than one capital expenditure project.
- (d) A working paper relating to a capital expenditure project's proposed scope as developed in the Feasibility Study will set out the following information in relation to that capital expenditure project:
  - (i) information on the following:
    - (A) the reason for the project including relevant capacity planning information;
    - (B) the project's scope and general standard of works;
    - (C) the additional capacity expected to be delivered by the project;
    - (D) the project's preliminary cost;
    - (E) the potential impact of project construction on Existing Capacity;
    - (F) the relevant System Operating Assumptions;
    - (G) the aggregated contracted Train Paths for Train Services on the relevant Rail Infrastructure; and
    - (H) rationale for the choice of scope for the project with reference to the Pre-feasibility Study and the Network Development Plan (where relevant); and
  - (ii) where the project's scope has materially varied since a vote of Interested Participants accepting the scope:
    - (A) the scope variations and the reasons for them; and
    - (B) the relevant changes in the working paper compared to the working paper made available to Interested Participants for the previous vote.

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<sup>1</sup> Intellectual property includes any intellectual and industrial property rights conferred or recognised by any law anywhere throughout the world, including rights in relation to copyright, trade marks, trade secrets and patent rights (including the right to apply for registration of any such rights) and know-how that is confidential.

- (e) A working paper relating to a capital expenditure project's standard will set out the information referred to in **clause 8.13.6(d)(i)** plus information in relation to that capital expenditure project:
  - (i) demonstrating that the proposed standard is reasonable based on the project's scope;
  - (ii) regarding its consistency with:
    - (A) the standard of existing or adjacent infrastructure with similar usage levels, or its modern engineering equivalent;
    - (B) Aurizon Network's and established Australian design, engineering, safety and construction standards for similar purpose assets and meeting all relevant legislative requirements; and
    - (C) relevant codes of practice; and
  - (iii) regarding any relevant substitution possibilities between capital and operating expenditure.
- (f) A working paper relating to the cost allocation principles for a proposed Reference Tariff variation under **clause 6.2.4(a)(iv)(A)** will set out the following information:
  - (i) an indicative estimate of the System Allowable Revenue associated with the relevant capital expenditure project;
  - (ii) the indicative impact on an existing relevant Reference Tariff from including the value of the relevant assets in the Regulated Asset Base;
  - (iii) an indicative estimate of the economic benefits (including avoidable costs) to existing Access Holders arising from the relevant capital expenditure project; and
  - (iv) Aurizon Network's proposed cost allocation principles for the Expansion or Customer Specific Branch Line (as applicable), including the relevant Distance Discount.
- (g) If Aurizon Network is seeking a vote of Interested Participants on more than one aspect of the same capital expenditure project, then Aurizon Network may issue a single working paper that satisfies the requirements of each of **clauses 8.13.6(d) to (f)** (as applicable).

### 8.13.7 Compliance

- (a) Any person who is an Interested Participant, or is entitled to be an Interested Participant, in respect of a proposed vote to be conducted under this **clause 8.13** who has any concerns about Aurizon Network's compliance with this **clause 8.13** in respect of the proposed vote may notify Aurizon Network of those concerns in

writing including providing reasons or other information in support of those concerns prior to the end of the Voting Period.

- (b) Aurizon Network may take whatever action is reasonably required to address any concerns notified to it under **clause 8.13.7(a)** to achieve substantial compliance with this **clause 8.13**. Aurizon Network is not obliged to repeat a vote process where a valid concern is raised:
  - (i) if remedying the concern would not be expected to change the outcome of the vote; or
  - (ii) if it can remedy the concern in a way that achieves substantial compliance.<sup>2</sup>
- (c) An audit of Aurizon Network's compliance this **clause 8.13** in relation to a vote will be procured by Aurizon Network:
  - (i) prior to Aurizon Network relying on that vote for the purposes of the QCA's acceptance of prudence of scope or standard of capital expenditure project; and
  - (ii) subject to **clauses 8.13.7(d) to (f)**, in accordance with **clauses 10.8(a) to (d)** and **10.8(g) to (j)**.
- (d) Where an audit is required under **clause 8.13.7(c)**:
  - (i) Aurizon Network must provide to the auditor copies of all concerns notified to it under **clause 8.13.7(a)** in relation to the relevant vote for the purpose of the audit certificate's preparation; and
  - (ii) the auditor will compile an audit report identifying:
    - (A) whether Aurizon Network has complied in all material respects with this **clause 8.13** and, if not, details as to the relevant non-compliance; and
    - (B) the process adopted for the conduct of the audit.
- (e) If, in preparing an audit certificate, the auditor identifies flaws in the calculation of the Access Train Paths, then:
  - (i) Aurizon Network may recalculate the Access Train Paths and recount the votes in a manner consistent with the auditor's findings;
  - (ii) the auditor will take that recalculation and recount into account in preparing the audit certificate; and
  - (iii) to the extent that the Aurizon Network has already notified Interested Participants of the outcome of the vote, Aurizon

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<sup>2</sup> For example, if a person notifies Aurizon Network that it should be Interested Participant but the Voting Period has already commenced, then one remedy might be for Aurizon Network to provide all of the relevant notices, information and other material already provided to the other Interested Participants to that person and allow that person an extension of the Voting Period so that person can participate in the vote.

Network will notify the Interested Participants as soon as reasonably practical of the recounted vote.

- (f) If:
  - (i) in preparing an audit certificate, the auditor identifies a flaw in a vote of Interested Participants under this **clause 8.13**; and
  - (ii) either:
    - (A) Aurizon Network cannot remedy the flaw in a way that achieves substantial compliance with this **clause 8.13**; or
    - (B) the flaw would be expected to change the outcome of the vote,

then Aurizon Network may, but is not obliged to, redo the voting process.

New Definitions for Clause 12

**Demand Assessment** [*Note: Definition to be determined.*]

**Pre-feasibility Study** [*Note: Definition to be determined.*]