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QR Network

QLD Competition Authority
Date Received
12-May-2008

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Mr John Hall
Chief Executive Officer
Queensland Competition Authority
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Dear John,

QR NETWORK's 2008 ACCESS UNDERTAKING

As you are aware, QR Limited (QR) recently announced a corporate restructure which will involve the creation of a number of subsidiaries wholly owned by QR.

As part of the restructure, substantially all of the assets associated with QR's below rail services will be transferred to a new subsidiary, QR Network Pty Ltd (QR Network), on 1 July 2008. Ownership of below rail assets not transferring to QR Network (e.g. stations and platforms) will be retained by QR.

The existing declaration under section 6 of the *Queensland Competition Authority Regulation 2007* will not change as part of the restructure. This impacts on the transfer of assets to QR Network in that from 1 July 2008 QR will cease to be the owner and manager of those assets and QR Network will become the owner and manager. QR will no longer be legally entitled to give an access undertaking in relation to the network to be owned and managed by QR Network.

As a result, QR believes that:

- In accordance with section 148 of the *Queensland Competition Authority Act 1997* (QCA Act), QR's 2005 Access Undertaking (the 2005 Undertaking) should be withdrawn; and
- In accordance with section 136 of the QCA Act, a new access undertaking (the 2008 Undertaking) must be submitted by QR Network in respect of the below rail assets it owns and manages, comprising the declared service.

It is expected that QR Network will be incorporated during May 2008. Once this has occurred, QR Network will be able to submit its draft 2008 Undertaking to the QCA in accordance with section 136.

QLD Competition Authority

In order to allow sufficient ~~Date For the QCA~~ to properly consider the draft 2008 Undertaking prior to its proposed commencement date of 1 July 2008, please find attached a preliminary submission by QR on the 2008 Undertaking to assist with the QCA's consultation process.

This preliminary submission comprises an explanatory document, a clean copy of the 2008 Undertaking, a copy of the 2008 Undertaking marked up against the 2005 Undertaking, clean copies of the Operator and Access Holder Standard Access Agreements and copies of those Access Agreements marked up against the agreements included in the 2005 Undertaking.

Upon its incorporation, QR Network will formally submit the draft 2008 Undertaking for approval by the QCA in accordance with section 136. This draft Undertaking will be in the same form as that attached to this letter, other than for a few minor consequential amendments relating to the creation of QR Network. The submission will be accompanied by QR's request for the QCA's consent to the withdrawal of its 2005 Undertaking.

Please contact Gayle Andrews on 3235 5476 should you have any queries regarding the 2008 Undertaking.

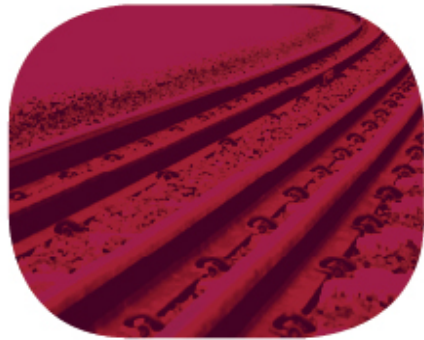
Yours faithfully



Michael Carter
Executive General Manager
QR Network

9 May 2008

QLD Competition Authority
Date Received
12-May-2008



QR Network
Access
Undertaking
(2008)

*Preliminary Submission
to the Queensland
Competition Authority*

9 May 2008



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ATTACHMENTS

- A. QR's proposed organisational structure effective 1 July 2008
- B. List of detailed amendments to QR Network's 2008 Access Undertaking relative to QR Limited's 2005 Access Undertaking
- C. Draft 2008 Access Undertaking (clean)
- D. Draft 2008 Undertaking (mark-up to the 2005 Access Undertaking)
- E. Clean copies of Access Holder and Operator Standard Access Agreements, together with a mark-up only of those pages which are amended relative to the 2005 Undertaking

1. INTRODUCTION

1.1 BACKGROUND

QR Network (previously QR Network Access) was formed in 1998 as a business group of Queensland Rail (now QR Limited – QR). QR Network operates independently of the other business groups within QR and, from 1 July 2008, will be run as a separately incorporated business within the QR portfolio.

QR Network's primary function is to manage rail transport infrastructure in Queensland. QR Network is responsible for negotiating access with parties seeking to use its rail network, for maintaining and managing rail transport infrastructure assets, and for managing operations on the network such as organising the manner in which Train Services utilise network capacity.

QR's 2005 Access Undertaking (the 2005 Undertaking) was developed by QR Network, on behalf of QR, to provide a framework to manage negotiations with Access Seekers for access to Rail Infrastructure for the purpose of operating Train Services. The 2005 Undertaking also provides a framework for the funding, operation and maintenance of the Below Rail network.

The 2005 Undertaking commenced on 30 June 2006 upon its approval by the QCA. Pricing arrangements were backdated to 1 July 2005. The 2005 Undertaking was to be effective for the period 1 July 2005 to 30 June 2009. The 2005 Undertaking includes a number of amendments which were approved by the QCA subsequent to 30 June 2006 and relate to the following:

- QR's Proposed Schedule F Amendment regarding the form of regulation to apply to coal carrying Train Services in the Central Queensland Coal Region (CQCR), approved by the QCA on 29 June 2007; and
- QR's draft amending undertaking (DAU) on maintenance costs for the CQCR, approved by the QCA on 17 December 2007.

1.2 LEGISLATIVE PROVISIONS

On 1 April 2008, QR announced the formation of a new corporate restructure which will involve the creation of a number subsidiaries wholly owned by QR.

As part of the restructure, substantially all of the assets associated with QR's Below Rail services will transfer to a new subsidiary, QR Network Pty Ltd, on 1 July 2008. Ownership of rail transport infrastructure rail assets not transferring to QR Network (e.g. stations and platforms) will be retained by QR.

The existing declaration of services under section 6 of the *Queensland Competition Authority Regulation 2007* will not change as part of the restructure. This impacts upon the transfer of assets to QR Network in that from 1 July 2008 QR will cease to be the owner and manager of those assets and QR Network will become the owner and manager. QR cannot comply with the 2005 Undertaking in relation to the network to be owned and managed by QR Network.

QR and QR Network believe that to maintain an effective access undertaking in relation to the declared service:

- In accordance with section 148 of the *Queensland Competition Authority Act 1997* (QCA Act), QR's 2005 Access Undertaking (the 2005 Undertaking) should be withdrawn; and
- In accordance with section 136 of the QCA Act, a new access undertaking must be submitted by QR Network in respect of the Below Rail assets it owns and manages, comprising the declared service.

QR has confirmed to QR Network its intention to withdraw the 2005 Undertaking (with effect on and from 1 July 2008), subject to the QCA's written agreement to that withdrawal, under section 148(3)(a) of the QCA Act.

QR Network's first Access Undertaking (the 2008 Undertaking) will be submitted to the QCA in accordance with Clause 136(1) of the *Queensland Competition Authority Act 1997* which provides that:

"An owner or operator of a declared service may, without receiving an initial undertaking notice, give a draft access undertaking to the authority."

In this regard, QR Network (as owner and manager of the declared service) will submit a draft access undertaking (in the form of the 2008 Undertaking) to the authority (i.e. the QCA) on a voluntary basis.

It is expected that QR Network will be incorporated during May 2008. Once this has occurred, QR Network will be able to submit its draft 2008 Undertaking to the QCA in accordance with section 136.

In order to allow sufficient time for the QCA to properly consider the draft 2008 Undertaking prior to its proposed commencement date of 1 July 2008, this preliminary submission has been made by QR on the 2008 Undertaking to assist with the QCA's consultation process. Upon its incorporation, QR Network will formally submit the draft 2008 Undertaking for approval by the QCA in accordance with section 136. This draft Undertaking will be in the same form as in this preliminary submission, other than for a few minor consequential amendments relating to the creation of QR Network. The submission will be accompanied by QR's request for the QCA's consent to the withdrawal of its 2005 Undertaking.

The 2008 Undertaking covers the twelve (12) month period commencing 1 July 2009 and terminates on 30 June 2009. Consistent with the approach being previously adopted by QR, QR Network will submit a new draft access undertaking effective 1 July 2009 (the 2009 Undertaking) to the QCA following the QCA's approval of the 2008 Undertaking.

1.3 QR NETWORK'S APPROACH

QR Network recognises that the provision of access by QR Network, as a separate legal entity within the QR portfolio, will require a significant review of a number of elements of the 2005 Undertaking. However, QR Network acknowledges that:

- Such a review should not occur without consultation with key stakeholders;
- Both QR Network and key stakeholders are currently focused on the development of the 2009 Undertaking, and the need to focus on the 2008

Undertaking dealing with the consequences of QR's restructure will divert attention from the 2009 Undertaking and risk the timing and quality of that document; and

- QR has not intended its restructure to be a trigger for a review of the 2005 Undertaking.

Accordingly, QR Network's approach to the 2008 Undertaking is on the basis that the document should preserve, to the extent possible, the regulatory principles contained in the 2005 Undertaking for a term equivalent to the remainder of the 2005 Undertaking. This will allow a valid access undertaking to continue to apply in respect of the declared service immediately following QR's restructure, whilst providing an opportunity for comprehensive consideration of the implications of the change in legal structure as part of the consultation on the 2009 Undertaking.

The key aspects of approach are summarised below.

- References to QR and Network Access generally become references to QR Network. However, there are exceptions to this amendment, as in some instances the change may not be appropriate.
- Interpretative provisions have been included in circumstances where the transition from the 2005 Undertaking to the 2008 Undertaking results in some confusion regarding the working relationship between QR, QR Network and Access Seekers and Access Holders.
- As a last resort, specific amendments have been included where the interpretative provisions do not improve the application of specific provisions (for example, where obligations as drafted under the 2005 Undertaking do not carry forward to the 2008 Undertaking).

Where required, QR Network proposes to address these issues in further detail as part of its submission to the QCA on the 2009 Undertaking.

1.4 STAKEHOLDER ENGAGEMENT

1.4.1 Introduction

Given the tight timeframes associated with the submission, QR Network has held discussions in advance of the submission with a number of key industry stakeholders regarding QR's proposed corporate restructure and its implications for the 2005 Undertaking.

QR Network discussed the submission with the following stakeholders:

- The QCA Secretariat;
- Queensland Resources Council (QRC);
- Asciano Ltd (on behalf of Pacific National Pty Ltd);
- QR Coal, formerly QRNational Coal; and
- Queensland Government departments, including Treasury and Queensland Transport.

Drafts of the 2008 Undertaking were provided to the QCA Secretariat and the QRC for their review and comment prior to completion of the version contained in this preliminary submission.

1.4.2 Issues raised by the QRC

Following its receipt of a draft 2008 Undertaking, QRC raised a number of issues regarding the degree to which perceived problems with the 2005 Undertaking may be further complicated by QR's corporate restructure. The specific issues raised by the QRC included:

1. The transfer of Below Rail assets from QR Network to QR Coal (although the same concern would apply to transfers from QR Network to other QR business groups);
2. The replacement of the Internal Access Agreements between QR Network and QR Coal with new Access Agreements;
3. Uncertainty around the treatment of Access Rights where multiple Access Rights are contained within the same Access Agreement; and
4. Whether obligations under the 2001 Undertaking and 2005 Undertaking are correctly reflected in both the Internal Access Agreements and Standard Access Agreements.

In respect of the 1st issue, QR Network notes that the 2008 Undertaking rolls forward the 2005 Undertaking provisions in Part 2 which restrict such transfers without the QCA's consent in the form of an approved DAU.

In respect of the 2nd issue (and as confirmed at Section 2.4.2 below), the new Access Agreements will be:

- A necessary consequence of the corporate restructure in which separate legal entities are created;
- On the same terms and conditions as the existing Internal Access Agreements, other than consequential amendments which are required to give effect to the corporate restructure; and
- Consistent with the relevant Standard Access Agreement.

QR Network will be pleased to provide copies of the new Access Agreements to the QCA in support of these statements, and acknowledges that the Access Agreement between QR Network and QR Coal may be published in accordance with Paragraph 5.4(a).

QR Network notes that the 3rd issue has existed since the 2001 Undertaking and relates to the following:

- Paragraphs 5.1(h) and 7.4.1(g);
- Subclauses 7.4.2 and 7.5.1; and
- Clause 10.1 in respect of the definition of "Evaluation Period".

QR Network's response has been to practically interpret the clauses on a case-by-case basis to ensure the management of access on an equitable basis consistent with the principles in the 2001 and 2005 Undertakings.

QR Network is not aware of any problems associated with its interpretation of these provisions. In addition, it is not clear to QR Network why the QRC believes that the conversion of Internal Access Agreements to Access Agreements should affect the practical application of these provisions, as QR Network has applied the Internal Access Agreements as if they were Access Agreements (notwithstanding their legal status).

QR Network believes that this issue is best addressed as part of its development of the 2009 Undertaking. Notwithstanding, QR Network has incorporated an amendment to clarify the interpretation of the 2008 Undertaking in the specific instances described above. The amendment also includes a specific exclusion in respect of Clause 5.2, Part B of Schedule F relating to QR Network's revenue cap arrangements.

With respect to the 4th issue, QR Network is not aware of any inconsistency between the 2001 and 2005 Undertakings and the relevant Internal Access Agreements.

1.4.3 Issues raised by the QCA Secretariat

QR Network has consulted with the QCA Secretariat on an ongoing basis regarding suggested changes to the 2008 Undertaking to ensure that the principles underlying obligations in the 2005 Undertaking carry forward to the 2008 Undertaking.

To the extent that substantive amendments have been made as a result of these discussions, they are summarised at Section 2 below and discussed in further detail in Attachment B.

In addition, a number of amendments have been made to the Standard Access Agreements relating to access to infrastructure and land controlled by a QR business group other than QR Network. These amendments:

- Roll forward the principles associated with the 2005 Undertaking, for the duration of the 2008 Undertaking; and
- Align QR Network's obligations with any change resulting from the development of the 2009 Undertaking.

The amendments affect clauses 1.1, in respect of the definitions of "Infrastructure" and "Land", and 22.18 of Schedule B of both the Operator and Access Holder Standard Access Agreements.

1.5 FORM OF SUBMISSION

This preliminary submission comprises an explanatory document, together with a number of attachments including:

- A. QR's proposed organisational structure;
- B. List of amendments to the 2008 Undertaking relative to the 2005 Undertaking;

- C. A clean copy of the 2008 Undertaking;
- D. A copy of the 2008 Undertaking marked up to the 2005 Undertaking; and
- E. Clean copies of Access Holder and Operator Standard Access Agreements, together with a mark-up only of those pages which are amended relative to the 2005 Undertaking.

QR confirms that the information contained in the preliminary submission is suitable for publication by the QCA.

QR Network's submission will be as per the preliminary submission except for the explanatory document which will not be provided. The information contained in the submission will also be suitable for publication by the QCA. QR Network expects to provide further information on QR's corporate restructure to the QCA between the date of the submission and the date of the QCA's approval of the 2008 Undertaking. Unless otherwise advised, this information will be provided on a commercial-in-confidence basis.

QR Network's submission will be accompanied by QR's request for the QCA's consent to the withdrawal of the 2005 Undertaking in accordance with section 148 of the QCA Act.

In this preliminary submission:

- References to the 2001 and 2005 Undertakings are to QR's Access Undertakings effective 1 July 2001 and 1 July 2005, respectively;
- References to the 2008 and 2009 Undertakings are to QR Network's Access Undertakings which are expected to commence on 1 July 2008 and 1 July 2009, respectively; and
- Defined terms have the meaning given in the 2008 Undertaking.

2. QR'S CORPORATE RESTRUCTURE

2.1 INTRODUCTION

As previously discussed, QR has announced a new corporate restructure, effective 1 July 2008, which will involve the creation of a number subsidiaries wholly owned by QR.

2.2 CREATION OF NEW SUBSIDIARIES

Five (5) key subsidiaries will be created in accordance with Section 163 of the *Government Owned Corporations Act 1993* (GOC Act) and registered with the Australian Securities and Investment Commission. The subsidiaries are set out below.

- QR Network, to become QR Network Pty Ltd;
- QR's Infrastructure Services Group, to be combined with QR's Rollingstock & Component Services and Rollingstock Engineering business groups to become QR Services Australia Pty Ltd (QR Services);
- QR's Passenger Services Group, to become QR Passenger Pty Ltd (QR Passenger);
- QRNational Regional Freight, to become QR Regional Freight Pty Ltd (QR Freight); and
- QRNational Coal, to become QR Coal Pty Ltd (QR Coal).

More detailed information on QR's proposed structure and the relationship between subsidiaries is provided at Attachment A.

QR Network, QR Passenger and QR Services will commence operation on 1 July 2008. QR Coal and QR Freight will commence on 1 August 2008.

2.3 BOARD MEMBERSHIP

The members of each of the subsidiary Boards will comprise QR's Chief Executive Officer (CEO), QR's Chief Financial Officer (CFO) and the Executive General Manager (EGM) of each of the QR business groups.

In respect of QR Network, the Board members are:

- Lance Hockridge (CEO, QR);
- Deborah O'Toole (CFO, QR); and
- Michael Carter (EGM, QR Network).

2.4 TRANSFER OF QR'S BELOW RAIL BUSINESS

Substantially all of QR's Below Rail assets, together with employee liabilities, employees, contracts and other instruments will be transferred from QR to QR Network on 1 July 2008 under one or more regulations under the GOC Act.

2.4.1 Transfer of assets to QR Network

The following Below Rail assets will transfer (at accounting book value) from QR Limited to QR Network:

- Rail Infrastructure, being associated with the 'red roads' in the Line Diagrams and including electrification infrastructure;
- QR's telecommunications backbone; and
- Assets required for management and control of all Train Services including the Mayne Control Centre.

Ownership of stations and platforms will not transfer to QR Network. However, QR Network proposes that for the 2008 Undertaking and consistent with Subparagraph 3.1(b)(i) it will continue to negotiate for Access to those facilities as agent for QR Passenger.

In addition, consistent with QR Network's objective to retain the same regulatory policy outcomes as the 2005 Undertaking, the 2008 Undertaking will substantially roll forward the provisions in clause 2.2 of the 2005 Undertaking relating to the review of Rail Infrastructure. The effect of this is that, until the expiry of the 2008 Undertaking, assets which are currently classified as 'blue roads' in the Line Diagrams (i.e. which are not managed by QR Network) may be transferred following a written request by an Access Seeker.

2.4.2 Access Agreements

To make the existing Internal Access Agreements legally binding, new Access Agreements are being prepared and when executed will be effective from 1 July 2008. The new Access Agreements are a necessary consequence of the corporate restructure in which separate legal entities are created.

These new Access Agreements will be on the same terms and conditions as the existing Internal Access Agreements, other than consequential amendments which are required to give effect to the corporate restructure.

2.4.3 Other arrangements

Other key instruments that will transfer to QR Network include:

- The rail corridor sublease from Queensland Transport; and
- Contracts for the supply of electric energy for traction.

Service agreements between QR Network and other QR subsidiaries will be entered into for services provided. The most significant of these services will be with QR Services, who will provide maintenance and construction services to QR Network.

In addition, a deed of cross guarantee, governance agreement and management agreement between QR and QR Network will be entered into to govern the relationships between the entities. Where applicable, these arrangements will include reference to QR Network's obligations under Parts 2 and 3 regarding the review of Rail Infrastructure and Confidential Information, respectively.

3. AMENDMENTS TO THE 2005 UNDERTAKING

3.1 INTRODUCTION

As indicated above, the key objective for QR Network's 2008 Undertaking is to ensure the regulatory principles underlying QR's 2005 Undertaking are preserved for the short period until a new QR Network access undertaking (the 2009 Undertaking) can be approved by the QCA.

Accordingly, the 2008 Undertaking is in the same structure as the 2005 Undertaking in that:

- Parts 1 to 10 of and the schedules to the 2005 Undertaking carry forward to the 2008 Undertaking, subject to the amendments summarised below; and
- The Standard Access Agreements for Access Holders and Operators have been retained subject only to very minor amendments to reflect QR Network as the contracting party and to ensure that QR Network retains a consistent legal exposure under both agreements.

Sections 3.2 to 3.14 summarise the substantive amendments to the 2008 Undertaking (including Standard Access Agreements) relative to the 2005 Undertaking. A detailed list of these amendments is provided at Attachment B.

The submission does not provide information on a number of consequential amendments which have been made to the 2005 Undertaking and the Standard Access Agreements. These amendments are set out in the marked-up versions of the 2008 Undertaking and Standard Access Agreements and are summarised below.

- References to QR and Network Access in the 2005 Undertaking have generally become references to QR Network;
- In respect of the ringfencing arrangements in Part 3, references to QR have generally been revised to a "Related Party of QR Network";
- References to specific QR Business Groups and positions within and arrangements between QR, QR Network and the QR Business Groups have been updated to reflect their current status;
- References to QR's Chief Executive Officer have generally been amended to QR Network's Executive General Manager; and
- In some places, the "Commencing Date" has been amended to "30 June 2006" for arrangements which should carry forward from the beginning of the regulatory period covered by the 2005 Undertaking, rather than the Commencing Date for the 2008 Undertaking.

3.2 PART 1 - PREAMBLE

No substantive amendments have been made to this Part.

3.3 PART 2 – SCOPE AND ADMINISTRATION

The main amendments to the 2008 Undertaking, relative to the 2005 Undertaking, have been made to this Part and are summarised below.

3.3.1 Scope – Clause 2.1

Access to land not owned by QR Network – 2.1(c) and (f)

References to Third Party Access Seekers have been amended to include all Access Seekers (i.e. to include a Related Party of QR Network).

The change affects only QR Operational Business Groups and requires of them the same arrangements for Access to land not owned by QR Network (including land owned by QR Operational Business Groups other than the Access Seeker) and reflects the independent operation of the subsidiaries under QR's new corporate structure.

In addition and consistent with the provisions of the 2005 Undertaking, the 2008 Undertaking provides a right for Third Parties to access land essential for the operation of rail services, even if this land is held by a QR business other than QR Network.

QR Network to provide electricity supply if requested – 2.1(h)

As indicated at section 2.4.3 above, QR Network will be responsible for the supply of electric energy to all Access Holders. Notwithstanding, QR Network recognises that some stakeholders may have a concern regarding the supply of electric energy to Third Parties in the circumstance where the supply contract is held by another QR Business Group. Accordingly and for the avoidance of doubt, QR Network has included an amendment to this clause to deal with the circumstance where another QR Business Group holds the supply contract.

3.3.2 Review of Rail Infrastructure – Clause 2.2

A number of amendments have been made to ensure the operation of this clause consistent with the 2005 Undertaking under QR's new corporate structure. The amendments include:

- To clarify that assignments of assets between QR Network and a Related Party of QR Network effectively represent a transfer of those assets; and
- To recognise that under QR's new corporate structure responsibility for certain assets may be assigned to another QR Business Group, but that such assignments will be subject to arrangements whereby QR Network's compliance with the 2008 Undertaking will be recognised.

QR Network notes (and accepts) that the effect of the drafting is to hold QR Network accountable for the transfers of Rail Transport Infrastructure from QR (being the only other owner of QR's Below Rail assets) to QR Network where such transfers are required to allow QR Network to provide the declared service.

3.3.3 Duration of Undertaking – Clause 2.3

This clause has been amended to ensure that Reference Tariffs can be retrospectively applied should the QCA's approval of the 2008 Undertaking occur on or after 1 July 2008.

3.3.4 Contractual Arrangements – Clause 2.4

This clause has been amended to reflect that QR Network is not a party to any rail haulage agreement.

3.3.5 Transitional provisions – Clause 2.5

As indicated at Section 1.3 above, interpretative provisions have been included as a new Subclause 2.5.2 (the original clause has been renumbered as Clause 2.5.1) in circumstances where the transition from the 2005 Undertaking to the 2008 Undertaking results in some confusion regarding the working relationship between QR, QR Network and Access Seekers and Access Holders.

A detailed explanation of each of the amended paragraphs is provided at Attachment B.

3.4 PART 3 – RINGFENCING

3.4.1 Organisational Structure – Clause 3.1

Yard Control services – 3.1(b)(iv) and 3.1(c)(iv)

This clause has been amended to reflect the revised management arrangements for Yard Control services. In principle, QR Network has delegated responsibility for Yard Control services at all but the largest yards to that QR Business Group which is the largest operator in the yard. QR Network has determined that these responsibilities are most efficiently discharged by the QR Business Group pursuant to a yard management agreement.

At the commencing date of the 2005 Undertaking, Yard Control services had been delegated to the appropriate QR Business Group at all locations except Callemondah. Since 1 July 2005 QR Network has resumed control of a number of other yards including:

- Acacia Ridge (intermodal);
- Fisherman Islands (coal and intermodal);
- Rockhampton, Jilalan and Coppabella (coal); and
- Paget (Mackay), Townsville and Portsmith (freight).

Rather than list these yards in the relevant sections within Clause 3.1, a new definition ("Major Yards") has been inserted in Part 10.

Structural changes – 3.1(e)

Amendments have been made to reflect the type of arrangements which would occur under QR's new corporate structure.

3.4.2 Accounting Separation – Clause 3.2

As indicated at Section 2.4.3 above, QR and certain QR subsidiaries (including QR Network) will enter into a deed of cross guarantee.

Concurrent with this arrangement, the subsidiaries will apply for a class order relieving eligible subsidiaries from preparing and lodging audited financial statements under Chapter 2M of the *Corporations Act* (Class order 98/1418).

If the order is granted, QR Network will not be required to prepare audited general purpose financial reports. As the granting of the order is yet to occur, QR Network has reflected the following arrangements in the 2008 Undertaking:

- If the order is not granted, QR Network will prepare audited general purpose financial statements and a set of audited ringfenced accounts (Financial Statements) which provide information on the Central Queensland Coal Region separate to the rest of the network, and which reconcile to the general purpose financial statements. Both the general purpose financial statements and Financial Statements will be published.
- If the order is granted, the existing arrangements will continue to apply.

3.4.3 Management of Confidential Information and Compliance and Enforcement – Clauses 3.3 and 3.5

QR Network has made a number of amendments to this clause to give effect to the ringfencing obligations under the 2005 Undertaking under the revised corporate restructure. In principle:

- QR and its subsidiaries will be obliged to comply with the ringfencing provisions;
- QR Network, rather than QR, will be accountable for QR's compliance with the provisions;
- QR Network will enforce the obligations on the other QR entities by way of confidentiality provisions contained in the relevant governance agreement, management agreement and service agreements between QR Network, and QR or other QR subsidiaries;
- QR Network will advise the QCA of any breach of these provisions (including by another QR entity) and the actions taken, or to be taken, to remedy the breach; and
- QR Network will maintain one ringfencing register recording those employees of QR subsidiaries to which it has provided Confidential Information.

QR Network confirms that the effect of the last principle is that ringfencing registers will not be maintained by other QR Business Groups.

A detailed explanation of each of the amended paragraphs is provided at Attachment B.

Where required, equivalent amendments have been made to the standard Confidentiality Deed (Schedule B).

3.5 PART 4 – NEGOTIATION FRAMEWORK

No substantive amendments have been made to this Part and to Schedule C (Summary of Information Requirements).

An amendment to Schedule D (Preliminary and Additional Information) has been made to reflect the revised arrangements for access to land, per the discussion at Section 3.3.1 above.

3.6 PART 5 – ACCESS AGREEMENTS

No substantive amendments have been made to this Part, including Schedule E (Principles for Inclusion in Standard Access Agreement), other than to Clauses 5.3 and 5.4 to reflect the execution of new Access Agreements to replace Internal Access Agreements between QR Network and the QR Operational Business Groups.

3.7 PART 6 – PRICING

The only amendment in relation to Part 6 relates to a matter which, as at the commencement date for the 2005 Undertaking was yet to be resolved in discussions between QR Network and the QCA.

QR Network confirms that the matter was referred for expert determination and resolved. Accordingly, Subclause 6.4.4 has been amended to:

- No longer require the matter to be referred for expert determination; and
- For the relevant drafting to reflect the interpretation of the expert.

A discussion of amendments to Schedule F is provided below.

3.8 PART 7 – CAPACITY MANAGEMENT

No substantive amendments have been made to this Part, including to Schedules G (Network Management Principles) and M (Transfer Fee – Worked Example).

3.9 PART 8 – INTERFACE CONSIDERATIONS

No substantive amendments have been made to this Part, including to Schedules HA (Sample IRMP), J (Issues for EIRMR) and K (Operating Plan).

3.10 PART 9 – PERFORMANCE REPORTING

No substantive amendments have been made to this Part, other than to:

- Subclause 9.2.1 to require that should audited general purpose financial statements be required for QR Network then they are published together with the Financial Statements. This amendment is discussed in further detail at Section 3.4.2 above.
- To recognise the appointment of QR's Compliance Officer in accordance with Paragraph 9.4(a) of the 2005 Undertaking.

No substantive amendment has been made to Schedule MB (Reporting to the QCA).

3.11 PART 10 - DEFINITIONS

Consequential amendments have been made to the following:

- Access Agreement, per Section 1.4.2 and 3.6 above;
- Authority, to confirm for the avoidance of doubt that QR is not an authority that can lawfully exercise jurisdiction over QR Network (consistent with the relevant provisions); and
- Compliance Officer, per the discussion at Section 3.10 above.

New definitions have been included for the following terms:

- 2005 Undertaking;
- Internal Access Agreement;
- QR Network and QR Services; and
- QR Train Services.

The definition for Network Access in the 2005 Undertaking has been deleted.

3.12 SCHEDULE F – REFERENCE TARIFF SCHEDULES

A number of amendments have been made to Schedule F:

- To remove Paragraphs 3.1(b) and (c) of Part B relating to the QCA's approval of QR's DAU on maintenance costs. This process has been completed, the relevant amendments have been incorporated in the 2005 Undertaking and the associated obligations have been discharged.
- To remove Clauses 3.2 to 3.19 of Part B relating to QR's Proposed Schedule F Amendment, as this process has been completed and the relevant amendments have been incorporated in the 2005 Undertaking.

3.13 SCHEDULE FB – MAINTENANCE OF REGULATORY ASSET BASE FOR THE CQCR

A minor amendment has been made to Paragraph 2.3.4(c) to reflect the fact that QR Network is currently in breach of the provision in the 2005 Undertaking regarding provision to the QCA of a Procurement Policy document.

The revised drafting ensures that the breach is carried forward to the 2008 Undertaking and reported in accordance with Part 9. QR proposes to address this issue as part of its development of the 2009 Undertaking.

3.14 STANDARD ACCESS AGREEMENTS

QR Network has made only one substantive amendment to the Standard Access Agreements, in respect of the liability of QR Network to Customers. The amendment is restricted to clauses 14 to 17 of Schedule B of the Operator Standard Access Agreement.

The purpose of this amendment is to ensure that, in an environment where access and rail operations will be undertaken by separate legal entities, QR Network is

subject to a consistent liability exposure under either the Operator Standard Access Agreement or the Access Holder Standard Access Agreement.

QR Network does not propose to reflect this amendment in the new Access Agreements that are replacing the existing Internal Access Agreements.