



QR Network's
Access
Undertaking
(2009)

*Statement of Regulatory
Intent –*

*Position in response to
QCA draft decision*

February 2010



Preamble

This document has been prepared to provide stakeholders with a broad view of QR Network's proposed response to the QCA's draft decision on its draft 2009 Access Undertaking. This may provide stakeholders with a basis on which to respond to the QCA's request for comment on its draft decision which closes on 12th February 2010.

It should be noted that in developing its resubmitted draft 2009 Undertaking, QR Network will respond to issues raised in the QCA's draft decision of December 2009 and provided detail on a minimal number of new amendments that have been included since the submission of its draft 2009AU in September 2008.

QR Network's intent is to minimise the number of new and contentious issues within this submission to enable the expeditious approval by the QCA.

Form of Document

This document provides a chapter by chapter response to the almost 80 decisions within the QCA draft decision. Where QR Network proposes to accept the QCA's decision no further information will be included. Where QR Network intends to reject or accept with amendment some additional explanation is included for stakeholders.

This document relates only to content in the QR Network Access Undertaking. It does not include reference to inputs relevant to determination of Reference Tariffs for the Central Queensland Coal Region and Western System.

Going Forward

Stakeholder views on the QCA's Draft Decision will be considered and reviewed for informing the development of the resubmitted Access Undertaking. Stakeholders may have some concerns as to whether QR Network's decision to withdraw and resubmit a revised Undertaking will recommence the regulatory approval process. This is not QR Network's intention. The need to withdraw and resubmit a new Draft Access Undertaking arises from the inclusion of additional matters, such as the new Part 11 – Supply Chain Principles and the Standard Access Agreement. As these matters have not been considered in detail in the Draft Decision or by Stakeholders, the legal requirements for the QCA's review of these new matters requires a withdrawal and resubmission.

To assist stakeholders in understanding the process for finalising the 2009 QR Network Access Undertaking, QR Network has prepared the following timetable:

Date	Event
December 2009	Operator consultation on draft Standard Access Agreement
18 December 2009	QCA release of Draft Decision
28 January 2010	Stakeholder release of Part 11 Exposure Draft
12 February 2010	Responses to Draft Decision
12-26 February 2010	Review of responses to Draft Decision and consultation with Stakeholders where necessary
Early March 2010	Submission of Revised Access Undertaking
Mid April 2010	Closing date for responses to resubmitted Access Undertaking
End May 2010	QCA release of Final Decision
Early June 2010	QR Network submits revised Access Undertaking
Late June 2010	QCA Final Approval

Should a stakeholder wish to discuss any aspect of the QCA's Draft Decision or QR Network's proposed position in relation to any of those decisions please contact:

Dean Gannaway
Director, Regulation and Policy
QR Network
(F) 07 3235 2055
(E) dean.gannaway@qr.com.au

2. Preamble (Part 1)

2.1 *Introduction*

No amendments have been made to Part 1: Preamble

3. Intent and Scope (Part 2)

3.1 Amendments/ Response to draft decision

The following table provides a reference to the decisions reached in the Draft Decision and QR Network’s proposed responses to those decisions:

Draft Decision Reference and Issue	QR Network Position
2.1 – Inclusion of clause 2.2 (f) – (i) in the 2009 DAU	Accept with amendment
2.2 – Procurement of Undertaking from QR Ltd	Accept with amendment
2.3 – Extension of application to QR Network related parties	Accept with amendment
2.4 – Intent of Undertaking	Reject
2.5 – Terminating date definition	Accept

3.1.1 Scope of Undertaking (Decisions 2.1 – 2.3)

QR Network rejects certain aspects of decisions 2.1 to 2.3 in QCA’s Draft Decision. QR Network accepts dot points three and four of decision 2.2 and will accept decisions 2.1 and 2.3 where they relate to those dot points. QR Network however rejects dot points one and two of decision 2.2 as QR Network does not believe it should be responsible for the obligations of a separate organisation.

While QR Network does not accept the provisions as proposed, it is willing to accept the provisions subject to using a “reasonable endeavours” clause to procure an Undertaking on the part of QR Ltd.

3.1.2 Intent of Undertaking

QR Network’s proposes to accept the QCA’s proposed drafting relating to QR Network’s recognition that it is part of a wider supply chain. It does not accept, however the proposed drafting to balance the pricing principles against business considerations in all other matters. QR Network has submitted its own drafting

including changes to better align the intent provisions with the QCA Act, specifically the pricing principles as set out in section 168A of the Act.

4. Ringfencing (Part 3 and Schedule B)

4.1 *Amendments/ Responses to draft decision*

The following table provides a reference to the decisions reached in the Draft Decision and QR Network's proposed responses to those decisions:

Draft Decision Reference and Issue	QR Network Position
3.1 – Decision Making Audit	Reject
3.2 – Reinstatement of Confidentiality Deed	Accept
3.3 – Provision of deed/undertaking by QR parties	Accept
3.4 – Complaints handling on breach	Accept
3.5 – Major Yards Definition	Accept
3.6 – Joint review of yard control services	Reject
3.7 – Audited Financial Statements	Reject
3.8 – Reference Amendment	Accept
3.9- Costing Manual	Accept

4.1.1 *Decision Making Audit*

QR Network rejects the QCA's decision to reinstate the decision making audits under clause 3.5 of the 2009 Draft Undertaking, except under circumstances where a complaint is received by an access seeker/holder. It does however accept the reinstatement of the decision making principles from clause 3.4 of the 2008 Undertaking.

4.1.2 Joint Review of Yard Control Services

QR Network does not accept the joint review of yard control services proposed by the QCA as it is an operational matter that the QCA need not be involved in.

4.1.3 Audited Financial Statements

QR Network rejects the inclusion of general purpose financial statements as this exceeds QR Network's minimum accounting and legal requirements, particularly the requirement to disclose QR Network's debt and equity funding arrangements.

5. Negotiation Framework (Part 4)

5.1 Amendments/ Responses to draft decision

The following table provides a reference to the decisions reached in the Draft Decision and QR Network's proposed responses to those decisions:

Draft Decision Reference and Issue	QR Network Position
4.1 – Major Projects Allocation Process	Reject
4.2 – Major Projects Definition	Accept with amendment
4.3 – Major Projects Dispute Resolution Process	Reject
4.4 – QR Network's failure to comply with the queuing mechanism	Reject
4.5 – Rejection of Access Application	Accept
4.6 – Indicative access proposal and time frames	Accept
4.7 – Allocation of capacity rights at IAP stage	Accept
4.8 – Negotiation ceasing on reduction of available capacity	Accept
4.9 – Negotiation ceasing on reduction of available capacity: CNR	Accept
4.10 – Capacity Notification Register definition	Accept
4.11 – Notification on expression of interest for a major project	Accept

5.1.1 Major Projects Allocation Process/ Definition

QR Network accepts the QCA's decision to allow for the carving out of the major project provisions from other capacity expansion projects. While QR Network agrees with the principles and reasoning behind the majority of the QCA's decision, it opposes the prescriptive nature of the proposed drafting.

5.1.2 Major Projects Dispute Resolution Process

QR Network disagrees with the requirement to provide all access seekers with the ability to raise a dispute over the capacity allocation process.

5.1.3 QR Network's failure to comply with the queuing mechanism

QR Network rejects the QCA's decision to remove the additional provisions seeking to limit the enforcement regime from the 2009 Draft Undertaking. These provisions were in effect under part 7 of the 2008 Undertaking and were considered valid in limiting QR Network's liability when it acted in good faith.

5.2 Other Amendments

5.2.1 Capacity Notification Register

QR Network intends to modify this mechanism so that customers on the Capacity Notification Register must be able to show that they are at a similar point on the Port's queue for capacity.

6. Access Agreements (Part 5)

6.1 Amendments / Response to draft decision

The following table provides a reference to the decisions reached in the Draft Decision and QR Network's proposed responses to those decisions:

Draft Decision Reference and Issue	QR Network position
5.1 – Include Access Agreements in 2009 DAU	Accept
5.2 – Amend definition of Standard Access Agreement	Accept with amendment
5.3 – Introduction of new form of Standard Access Agreement	Accept with amendment
5.4 – Item 14 of Schedule E: Liability for carriage of dangerous goods	Accept
5.5 – Amendment of definition of consequential loss	Reject
5.7 – Withdrawal of Standard Access Agreement	Accept

6.1.1 Amend definition of standard access agreement

QR Network believes that the definition of Standard Access Agreement proposed by the QCA covers the key issues already within this definition. QR Network believes that the QCA's request to include clause 2.4 into the Access Undertaking may not cover the correct industry participants (ie Coal System Master Planning Forum). It also has the effect of stating that the agreements to be proposed as part of the alternate form of access agreement are akin to a 'Driver's License' model for train operations, when this is not the case.

6.1.2 Introduction of new form of Standard Access Agreement

QR Network does not oppose the QCA including a timeline for the completion of the alternate form of agreement within its proposed clause 2.4. QR Network has however

proposed amended drafting to this clause which it believes enhances the consultation and approval process.

6.1.3 Amendment to the definition of Consequential Loss – Schedule E

QR Network does not accept the QCA's decision to change the definition of Consequential Loss in the Access Undertaking.

QR Network believes that this change would expose it to undue additional risk and is in contradiction to the principle accepted previously by the QCA within Access Agreements which referenced the 2005 Access Undertaking.

6.2 Other Amendments

6.2.1 Insurance amounts within the Standard Access Agreement

QR Network proposes to increase the insurance amounts within the Standard Access Agreement by \$100 million to \$350 million. This reflects the indexation of the initial amount which was established in 2001 and has not been amended until this point.

7. Pricing Principles (Part 6)

7.1 Amendments/Response to Draft Decision

The following table provides a reference to the decisions reached in the Draft Decision and QR Network's proposed responses to those decisions:

Draft Decision Reference and Issue	QR Network position
6.1 - Price Differentiation	Accept
6.2 - Private Infrastructure	Accept with amendment
6.3 - Access Conditions: Term of Rebate	Reject
6.4 - Access Conditions: Major Projects	Accept
6.5 - Access Conditions: Deeming	Accept but offer amended drafting
6.6 - Access Conditions: Sharing of Responsibility	Accept

7.1.1 Private infrastructure

QR Network does not accept the QCA's proposed drafting as it does not consider that it adequately satisfies the intention of the QCA or QR Network.

7.1.2 Access Conditions: term of rebate

QR Network does not accept this requirement. The current drafting addresses the concerns of the Authority.

7.1.3 Access Conditions: Deeming

QR Network rejects the QCA's decision and believes that its proposed change is sufficient.

8. Capacity Management and Network Management Principles (Part 7 and Schedule G)

8.1 Amendments / Response to draft decision

The following table provides a reference to the decisions reached in the Draft Decision and QR Network's proposed responses to those decisions:

Draft Decision Reference and Issue	QR Network Position
7.1 – Initial System Rules	Accept but propose amendment
7.2 – System Rules Amendment	Reject
7.3 – System Path definition	Reject
7.4 – Definition of Intermediate Train Plan	Accept
7.5 – Capacity resumption	Accept
7.6 – Competing Applications	Accept
7.7 – Competing Application consequential amendment	Accept
7.8 – End User can be an Access Seeker (Multiple amendments)	Accept
7.9 – Transfer Fee less than 2 years & impact of System rules	Accept but clarify
7.10 – First right of refusal on renewal	Accept
7.11 – Remove clause 7.4(d)(ii)	Accept
7.12 – Definition of Renewal Application	Accept with amendment
7.13 – Amend definition of Relinquishment Fee	Accept
7.14 – Differentiate between	Reject

transfer and relinquishment	
7.15 – Move definitions into Part 7 from Part 11	Accept
7.16 – Cancellation of Infrastructure Enhancement	Accept with minor amendment
7.17 – removal of 7.3.5(d)(iii)	Accept
7.18 – Definition of Available Capacity	Accept with amendment

8.1.1 Initial System Rules

QR Network recognises that the creation of System Rules can be useful in clarifying aspects of the daily running of different coal systems. However, it does not believe that it should be compelled to create System Rules where these would not add value to the customer or operator in understanding how the system operates.

8.1.2 System Rules Amendment

QR Network believes that the System Rules should be flexible enough to be able to be altered quickly with the approval of affected parties. Further, the process to amend these rules should allow parties to seek dispute resolution from a third party should they believe that the rules are not applied equitably.

8.1.3 System Path definition

QR Network rejects the QCA's definition of System Path within Decision 7.3. A system path is not a train service entitlement therefore does not need to be defined.

8.1.4 Transfer Fee less than 2 years & impact of System rules

Transfers of less than 2 years apply to UT3 agreements. UT1 and UT2 agreements will need to be amended to reflect newer capacity management provisions if transfers of less than 2 years are utilised.

8.1.5 Definition of Renewal Application

QR Network believes that the right of renewal for these tonnes should vest with the original owner of the tonnes not the transferee. By issuing a renewal application for transfer tonnes to the transferee this effectively creates a secondary market for the trade of tonnages and rolling transfer arrangements which would allow customers to circumvent the queuing process.

8.1.6 Differentiate between transfer and relinquishment

QR Network does not accept the QCA's decision 7.14 which requires it to differentiate between transfer and relinquishment. QR Network believes that any transfer of rights is effectively a relinquishment of those rights (whether it be short or long term).

8.1.7 Definition of Available Capacity

QR Network will assess the QCA's decision on this matter in reviewing all its capacity related definitions.

9. Interface Considerations (Part 8)

9.1 Amendments/Response to draft decision

The following table provides a reference to the decisions reached in the Draft Decision and QR Network's proposed responses to those decisions:

Draft Decision Reference and Issue	QR Network Position
8.1 – Consequential amendments	Reject
8.2 – Removal of Schedule HA	Accept
8.3 – Alignment of references	Accept

9.1.1 Consequential amendments

QR Network rejects the QCA's decision on this matter but commits to including the required changes to Part 8 as part of the Draft Amending Undertaking process when the alternate form of agreement is approved by the QCA.

Currently there is no agreed form for the alternate form of agreement and amending the Undertaking may have the effect of pre-empting the use of a particular model for the form of agreement.

10. Reporting (Part 9)

10.1 Amendments/Response to draft decision

The following table provides a reference to the decisions reached in the Draft Decision and QR Network's proposed responses to those decisions:

Draft Decision Reference and Issue	QR Network Position
9.1 – Quarterly reporting indicators	Accept
9.2 – MCI reporting	Accept with amendment
8.3 – Provision of official statement by EGM QR Network	Accept

10.1.1 MCI reporting

QR Network believes that it is able to meet the majority of the requirements set out in the QCA's decision 9.2. However, it believes that the reporting should be limited to the weightings of the MCI only.

QR Network will also seeks to amend the QCA's proposed drafting to limit the reporting of derailments and impact on planned maintenance works:

- to the Central Queensland Coal Region and the Western System; and
- subject to a materiality threshold for the derailment event.

11. Dispute Resolution and Amendment processes (Part 10)

QR Network does not propose any amendments to those included in its draft 2009AU. The QCA has not required any amendment to these terms within its draft decision.

12. Co-ordination and Planning (Part 11)

12.1 Introduction

QR Network within its draft 2009AU proposed clauses relating to master planning and maintenance of the Regulatory Asset Base within Schedule A. Since this time QR Network has been involved with supply chain co-ordination groups and has discussed expansion planning with key industry stakeholders. As such, the clauses contained in Schedule A are now split between Part 11 – Co-ordination and Planning and Schedule A – Maintenance of the Regulatory Asset Base.

For simplicity all amendments required as a result of the draft decision which relate to either section will be referenced in this chapter.

12.2 Amendments/Response to draft decision

The following table provides a reference to the decisions reached in the Draft Decision and QR Network's proposed responses to those decisions:

Draft Decision Reference and Issue	QR Network Position
10.1 – Removal of definition of Carryover Discount rate	Accept
10.2 – Carryover Discount consequential amendment	Accept
10.3 – Inclusion of reference to Asset Management Plan	Accept with amendment
10.4 – Reinstatement of references to replacement capital	Accept with amendment
10.5 – Capital expenditure scope pre-approval	Reject
10.6 – Procurement strategy pre-approval	Accept
10.7 – Master Plan timing and	Accept

consultation	
10.8 – System Master Planning and coal system participation	Accept

12.2.1 Inclusion of reference to Asset Management Plan

QR Network accepts the QCA's decision on this matter but notes that it sought to remove references to the Asset Management Plan because the QCA had not previously cited nor used this plan in its consideration of the scope of works claimed by QR Network.

QR Network seeks to amend the QCA's required drafting of clause 3.1.1(a)(i) such that the approval of asset replacement expenditure is not only based on the inclusion in the asset management plan.

12.2.2 Reinstatement of references to replacement capital

QR Network accepts the majority of decision 10.4 but seeks to amend the QCA's requirement to include asset replacement expenditure in clause 3.1.1 of Schedule A.

12.2.3 Capital expenditure scope pre-approval

QR Network rejects decision 10.5 in its proposed form. However, QR Network proposes an amendment that it believes would in-principle meet the QCA's requirements.

13. Regulatory Asset Base (Schedule A)

13.1 Introduction

QR Network proposes some substantive movement of clauses submitted within Schedule A of the draft 2009 Access Undertaking. This reflects QR Network's desire to separate planning and coordination processes from the actual approval mechanisms and the integration with supply chain planning processes raised after the submission of QR Network's draft 2009 Access Undertaking.

Further, this approach provides for cleaner reading of industry processes as well as the steps required for approval. This has been an issue raised by both the QCA and stakeholders in the past.

A list of amendments to Schedule A has been included in Part 12 of this document to ensure clarity of changes to both Schedule A and the new Part 11 of the resubmitted draft 2009AU. Part 11 of the resubmitted draft 2009AU includes information on QR Network's participation in supply chain groups and its role in aligning system capacity.

14. Reference Tariff Schedules (Schedule F)

14.1 Amendments/Response to Draft Decision

Responses to the QCA's decisions 6.1 through to 6.6 were set out in section 7 of this document. The following table provides a reference to the decisions reached in the Draft Decision and QR Network's proposed responses for the remaining decisions in Chapter 6 of the Draft Decision:

Draft Decision Reference and Issue	QR Network position
6.8 - Treatment of cross system traffics	Accept but offer amended drafting
6.9 – Single AT5	Accept
6.10 – Revenue cap	Accept
6.11 – Revenue cap: Disincentives for breach and negligence	Reject
6.12 – Revenue cap: draft incentive mechanism	Reject
6.13 – Take or pay: reallocation within portfolio	Reject
6:14 – Take or pay: Total Actual Revenue	Accept
6.15 – Annual review process: timing	Accept
6.16 – Annual review process: annual Reference Tariffs	Accept
6.17 – Non-reference tariffs	Accept
6.18 – MCI: composition	Accept but offer amended drafting
6.19 – MCI: interim review	Accept
6.20 – MCI: application	Accept but offer amended drafting
6.21 – New spurs, electrical feeder	Reject

stations and electricity charges	
6.22 – Review event for maintenance scope change	Accept
6.23 – Variations to Reference Train Service	Accept

14.1.1 Treatment of cross-system traffics

QR Network accepts the QCA's decision on this matter but will offer amendments to clarify the minimum contribution to common costs required for cross-system services and the related revenue attribution of these services to coal systems.

14.1.2 Single AT₅

While QR Network could accept the QCA's decision, QR Network notes the decision will have consequential effects on future investment in electrical overhead assets and will be strongly guided by Stakeholder views on this issue,

14.1.3 Revenue cap: disincentives for breach and negligence

QR Network rejects the QCA's decision and will propose an alternate threshold which will apply at much lower threshold and at a whole of system level.

14.1.4 Revenue cap: draft incentive mechanism

QR Network rejects the QCA's decision on this matter and is concerned that the debate regarding an appropriate incentive mechanism has now evolved to the point where the fundamental purpose of such a mechanism has been lost, particularly given the nature of QR Network's business and its regulatory framework.

14.1.5 Take or pay: reallocation within portfolio

QR Network rejects the QCA's decision as it involves significant logistical effort given the mine ownership arrangements and would operate inequity between small and large industry participants. QR Network notes that various amendments to transfer arrangements remove key hurdles in expediting capacity transfers.

QR Network is prepared to look further into the capping of take-or-pay obligations by mine with multiple access agreements if this would promote competition in the market for coal haulage.

14.1.6 Maintenance Cost Index: composition

QR Network accepts the MCI and its components but notes the base maintenance costs and the maintenance costs index which will apply to those costs are incompatible with respect to maintenance asset charges for investments made after 2007/08.

14.1.7 MCI: application

QR Network believes that forecast revenues need to include the impact of an X-factor. QR Network supports streamlining of the adjustment process and consideration of the MCI adjustment in a single annual process..

14.1.8 New spurs, electrical feeder stations and electricity charges

QR Network's main concern with the QCA's required amendment is that the inclusion of a process that reviews the actual maintenance cost of each new spur line will only extend (and further complicate) the annual revenue cap approval.

QR Network proposes to accept GHD's proposed allowance of \$15,000 per track kilometre per annum but proposes further amendments to also include the ability to seek to increase this allowance if the actual costs prove materially higher than this amount.