

Standard Form Confidentiality Regime 2025

Explanatory note

Note on usage

In the interests of transparency and to promote informed discussion and consultation, in most cases the Authority will make submissions and other information it receives, that relates regulatory processes, publicly available.

However, in some cases it may be appropriate to withhold the publication of information provided to the Authority where it contains confidential information – for example where the disclosure of the information would damage the person's commercial activities and would not be in the public interest. Information on how to claim confidentiality over submissions can be found in the Authority's [submission policy](#). In these cases, it may be necessary to provide interested parties with access to the confidential information, subject to restrictions to protect the confidentiality of that information, in order to ensure procedural fairness.

This Standard Form Confidentiality Regime provides a framework to facilitate disclosure of information provided to the Authority (in the context of exercising its functions under the Act) to interested parties, while protecting the confidentiality of that information.

Confidentiality Claimants can consent to information provided to the Authority being disclosed to interested parties, subject to the Confidentiality Regime for the purposes of a specified Matter. The Regime sets out:

- the process for Confidentiality Claimants to determine and identify the category of different types of Confidential Information, and provide the Authority with non-confidential versions of partially confidential documents;
- the classes of person to which different categories of Confidential Information can be disclosed;
- general obligations with respect to maintaining the confidentiality of Confidential Information.

Where a Confidentiality Claimant has consented to information being disclosed subject to the Confidentiality Regime, interested parties, their employees, and advisors, can seek access to Confidential Information by providing the Undertaking set out in Schedule 1 of the Regime.

Undertakings are made to the Authority and the Confidentiality Claimant and must be executed by deed poll. The Undertaking requires the interested party to comply with the Confidentiality Regime and sets out obligations that are designed to protect the Confidential Information from unauthorised use or disclosure.

This Confidentiality Regime is not intended to apply to arbitrations or mediations under Part 5 of the Act. Information on how the Authority will treat confidentiality claims for arbitrations and mediations can be in the Authority's [Summary Guide to Access Disputes](#).

Important notice

The purpose of this Regime is to facilitate the timely and efficient disclosure of information to interested parties while protecting potentially confidential information.

The treatment of information as Confidential Information under this Regime does not constitute a determination of confidentiality, or the acceptance of a confidentiality request, by the Authority under the Act, or otherwise limit the Authority's powers with respect to the treatment or disclosure of information under the Act or any other Legislation (including the *Right to Information Act 2009* (Qld) or the *Information Privacy Act 2009* (Qld)).

Version history

The Authority may update this Regime from time to time. The parties may agree to update undertakings to refer to later version.

Version	Date	Description
1	September 2025	Original version

Queensland Competition Authority – Confidentiality Regime 2025

Confidentiality

- 1 The following defined terms apply for the purposes of this Confidentiality Regime:
- 1.1 **Act** means *Queensland Competition Authority Act 1997* (Qld).
 - 1.2 **Authority** means the Queensland Competition Authority.
 - 1.3 **Confidentiality Claimant** means, in respect of Confidential Information, the person or entity who made a claim of confidentiality in respect of that information.
 - 1.4 **Confidential Information** means information provided to the Authority for the purposes of the Matter, which is subject to a claim of confidentiality, but does not include:
 - (a) information subject to a claim of confidentiality, where that claim has been rejected by the Authority in accordance with paragraph 13; and
 - (b) information, which is already lawfully in, or lawfully enters, the public domain.
 - 1.5 **Category of Confidential Information** means, in respect of Confidential Information, information denoted as:
 - (a) Category A Confidential Information;
 - (b) Category B Confidential Information; or
 - (c) Category C Confidential Information;by the Confidentiality Claimant in accordance with paragraph 8.2, except where the Confidential Information has been denoted to be a different category by the Authority, in which case it means the category denoted by the Authority in accordance with paragraph 13.
 - 1.6 **Confidentiality Undertaking** means, an undertaking executed by deed poll on the terms set out in **Schedule 1** of this Regime, with respect to a Matter.
 - 1.7 **Contractor of the Authority**, means a person (other than a member or employee of the Authority) who performs services for the Authority in relation to the Matter:
 - (a) under a contract between the person and the Authority; or
 - (b) under an arrangement between the Authority and another person.
 - 1.8 **Interested Party** means, with respect to a Matter, any person whose interests may reasonably be expected to be materially affected by the outcome of the Matter, including its employees, officers, directors, and consultants engaged with respect to the Matter.
 - 1.9 **Matter** means a matter to which this Regime applies, as specified by the Authority and for which the Confidentiality Claimants have provided consent to the disclosure of Confidential Information under this Regime.
 - 1.10 **Party** means, in relation to the Matter, the relevant applicant for declaration and the provider of the service that is sought to be declared, as well as their Related Bodies Corporate

(together **Parties**), or as otherwise agreed between the Authority and the Confidentiality Claimants.

- 1.11 **Recipient** means a person who receives Confidential Information under this Regime.
- 1.12 **Regime or Confidentiality Regime** means this confidentiality regime published on or around September 2025.
- 1.13 **Related Bodies Corporate** has the meaning given in the *Corporations Act 2001* (Cth).
- 1.14 **Support Staff** means persons providing administrative assistance and includes secretaries, administrative assistants, graduates, IT staff, print room staff, staff of external printing vendors, and any external document management service providers.

Access to Confidential Information

Access by the Authority

- 2 The following persons are permitted unrestricted access to any Confidential Information:
 - 2.1 the Authority, a member of the Authority, and Authority staff; and
 - 2.2 a Contractor of the Authority in relation to the Matter, including:
 - (a) the Authority's external barristers and solicitors;
 - (b) external expert advisors or proposed expert witnesses retained by the Authority for the purpose of the Matter and any associated legal proceedings; and
 - (c) Support Staff of those persons listed in paragraphs 2.2(a) and (b).

Access with consent of the Authority

- 3 A person is permitted access to any Confidential Information, provided such person has executed a Confidentiality Undertaking with respect to the Matter, where the Authority has consented to the disclosure of that Confidential Information in accordance with paragraphs 19.1 and 19.2.

Access to Category A, B & C Confidential Information

- 4 The following persons are permitted access to any Category A Confidential Information, Category B Confidential Information and Category C Confidential Information:
 - 4.1 provided that such persons have executed a Confidentiality Undertaking with respect to the Matter:
 - (a) external barristers and solicitors retained by the Parties for the purpose of the Matter;
 - (b) external expert advisors or proposed expert witnesses retained by the Parties for the purpose of the Matter;
 - (c) any other person, with the prior written consent of the Confidentiality Claimant; and
 - 4.2 Support Staff of the persons listed in paragraph 4.1.

Access to Category B & C Confidential Information

- 5 The following persons are permitted access to any Category B Confidential Information and Category C Confidential Information, provided that such persons have executed a Confidentiality Undertaking with respect to the Matter:
- 5.1 any person, with the prior written consent of the Confidentiality Claimant, but excluding Interested Parties; and
 - 5.2 any person with the prior written consent of the Authority in accordance with paragraphs 3, 19.1 and 19.2; and
- 6 Support Staff of the persons listed in paragraph 5.1.

Access to Category C Confidential Information

- 7 The following persons are permitted access to any Category C Confidential Information:
- 7.1 provided that such persons have executed a Confidentiality Undertaking with respect to the Matter:
 - (a) any employee, director, or officer of the Parties;
 - (b) an Interested Party, with the prior written consent of the Confidentiality Claimant;
 - (c) any person with the prior written consent of the Authority in accordance with paragraphs 3, 19.1 and 19.2; and
 - 7.2 Support Staff of the persons listed in paragraph 7.1(a) and 7.1(b).

Categorisation and Provision of Confidential Information to the Authority

- 8 If a Confidentiality Claimant provides a document to the Authority which contains Confidential Information, at the time the document is provided the Confidentiality Claimant must:
- 8.1 state the Confidentiality Claimant's belief that:
 - (a) the document provided contains information which it believes is confidential; and
 - (b) that the disclosure of the information is likely to damage the Confidentiality Claimant's commercial activities;
 - 8.2 denote Confidential Information as:
 - (a) Category A Confidential Information;
 - (b) Category B Confidential Information; or
 - (c) Category C Confidential Information; and
 - 8.3 ensure that the document is clearly marked to indicate the identity of the Confidentiality Claimant and the Category of Confidential Information, including whether:
 - (a) the whole document consists of Confidential Information; or
 - (b) parts of the document contain Confidential Information and, if that is the case, which parts contain Confidential Information.

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- 9 Confidentiality Claimants must comply with any process that the Authority reasonably requires, having first made reasonable efforts to consult with potential Confidentiality Claimants in respect of the workability of the process, for the purposes of identifying and marking Confidential Information or the Category of Confidential Information.
- 10 Any Confidentiality Claimant or Recipient providing documents to the Authority which contain Confidential Information that is already subject to a claim of confidentiality under paragraph 8, must ensure that such documents are clearly marked so as to indicate which parts of the document contain Confidential Information, the identity of the Confidentiality Claimant, and the Category of Confidential Information.
- 11 A Confidentiality Claimant or Recipient providing a document to the Authority that contains Confidential Information must, at the same time as providing the document, provide the Authority with redacted copies of the document suitable for:
- 11.1 disclosure to persons permitted access to the Confidential Information under paragraphs 3-7; and
- 11.2 publication on the Authority's website.
- 12 Nothing in the foregoing paragraphs prevents a Confidentiality Claimant from making a supplementary claim in respect of information provided to the Authority, including in the event of inadvertent omission.
- 13 The Authority may, acting reasonably, reject a claim of Confidentiality or denote Confidential Information to a different Category of Confidential Information (to the extent permitted under the Act), in which case the information will not be Confidential Information or will be the Category of Confidential Information specified by the Authority.
- 14 Without limiting the discretion of the Authority under paragraph 13, before rejecting a claim of Confidentiality or denoting Confidential Information to a different Category of Confidential Information, the Authority will use reasonable endeavours to first:
- 14.1 provide written reasons to the Confidentiality Claimant as to why the Authority proposes to reject the claim or denote the Confidential Information to a different Category of Confidential Information, including:
- (a) why potential disclosure of the relevant Confidential Information, or disclosure to the recipients permitted access to the relevant Category of Confidential Information, is not likely to damage the Confidentiality Claimant's commercial activities; or
- (b) why disclosure is otherwise in the public interest;
- 14.2 provide the opportunity, within a reasonable period of time, for the Confidentiality Claimant to either agree to the Authority's position or otherwise provide written representations to the Authority in respect of the reasons for the claim or the Category of Confidential Information; and
- 14.3 if the Authority receives written representations in response to paragraph 14.2:
- (a) consider those representations; and
- (b) if the Authority decides to reject the claim or denote a different Category of Confidential Information, provide its decision to the Confidentiality Claimant in writing together with written reasons explaining the Authority's decision.
- 15 Nothing in this Regime compels or prevents the disclosure of documents by the Authority as permitted under the Act, including the disclosure of Confidential Information as permitted under sections 187 and 239 of the Act, where applicable.
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- 16 The Authority intends to maintain a register of persons who have executed Confidentiality Undertakings in respect of the Matter, which shall be made available on request to a Confidentiality Claimant in respect of that Confidentiality Claimant's own Confidential Information.

Access to Confidential Information as approved by Authority

- 17 A person may apply to the Authority for access to Confidential Information.
- 18 An application under paragraph 17 must:
- 18.1 specify the person seeking access to Confidential Information (**Applicant**);
 - 18.2 specify the Confidential Information to which access is sought (**Requested Information**);
 - 18.3 explain why the person seeking access requires access to the Confidential Information; and
 - 18.4 attach a Confidentiality Undertaking executed by the person seeking access to Confidential Information.
- 19 If the Authority receives an application under paragraph 18:
- 19.1 the following process will apply:
 - (a) within 2 business days of receiving the application, the Authority must notify the Confidentiality Claimant about the application and provide a copy of the application to the Confidentiality Claimant, including the information and documents in paragraph 18;
 - (b) the Confidentiality Claimant must notify the Authority whether it consents to the Applicant accessing all or part of the Requested Information within 7 business days of receiving the notification from the Authority;
 - (c) if the Confidentiality Claimant does not consent to all or part of the Requested Information being provided to the Applicant, it must provide the Authority with written reasons at the same time it provides notification under paragraph (b), setting out its reasons for refusing consent, including:
 - (i) how the disclosure of the Requested Information to the Applicant is likely to damage the Confidentiality Claimant's commercial activities; and
 - (ii) why disclosure would not be in the public interest;
 - (d) where a Confidentiality Claimant provides consent under paragraph (b), the Authority will provide the Confidential Information to the Applicant as soon as practicable;
 - (e) where a Confidentiality Claimant does not provide consent, the Authority will notify the Applicant and provide a copy of the Confidentiality Claimant's written reasons. The Applicant may object by providing a submission to the Authority explaining why disclosure should be permitted within 7 business days of receiving notification that the Confidentiality Claimant does not provide consent;
 - 19.2 where a Confidentiality Claimant does not consent to the Applicant accessing the Requested Information under paragraph 19.1(c), and the Applicant has objected under paragraph 19.1(e), the Authority may:
 - (a) reject the request for access to Confidential Information; or
 - (b) consent to and/or require, the disclosure of the Confidential Information, subject to any conditions that the Authority imposes, provided that the Authority is satisfied,

acting reasonably and having regard to any written reasons provided by the Confidentiality Claimant pursuant to paragraph 19.1(c), that disclosure of the information:

- (i) would not damage the Confidentiality Claimant's commercial activities; or
- (ii) is otherwise in the public interest;

having first provided written notice to the Confidentiality Claimant of its intention to disclose the Confidential Information to the Applicant and the reasons for doing so.

- 19.3 For the avoidance of doubt, the consents to the disclosure of certain Confidential Information under clause 19.1 or 19.2 may be subject to conditions imposed by the Claimant or the Authority respectively, each acting reasonably. These conditions may include limiting disclosure to specific subsets of information within a defined Category of Confidential Information.

Date Approved: 4 September 2025



Charles Millstead
CEO
Queensland Competition Authority

Schedule 1 – QCA Confidentiality Undertaking

Undertaking pursuant to Queensland Competition Authority Confidentiality Regime 2025

Queensland Competition Authority

Application by QCoal Pty Ltd and Byerwen Coal Pty Ltd for a recommendation to declare the coal handling service at the North Queensland Export Terminal

I, [name], [occupation], of [address], on [date] hereby undertake to the Authority and to each Confidentiality Claimant (but in relation to that Confidentiality Claimant's Confidential Information only) as follows:

Definitions

- 1 In this undertaking:
- 1.1 **Authority** means the Queensland Competition Authority.
 - 1.2 **Confidential Information** means information provided to the Authority for the purposes of the Matter for which a confidentiality claim has been made, which has not been rejected by the Authority in accordance with paragraph 13 of the Regime, or any information provided to me by someone who did not obtain or derive that information from any information provided by the Confidentiality Claimant or in breach of any obligation under the Confidentiality Regime, but does not include information, which is already lawfully in, or lawfully enters, the public domain.
 - 1.3 **Confidentiality Claimant** means, in respect of specific Confidential Information, the person or entity who made a claim of confidentiality in respect of that information.
 - 1.4 **Regime** means this confidentiality regime to which the Confidentiality Claimants have consented to the disclosure of Confidential Information for the purposes of the Matter, as annexed at Annexure A of this undertaking.
 - 1.5 **Final Determination** means the latter of:
 - (a) the conclusion of the Matter as advised in writing by the Authority; or
 - (b) the conclusion of any associated legal proceedings.
 - 1.6 **Matter** means a matter to which this Regime applies, as specified by the Authority and to which the Confidentiality Claimants have provided consent to the disclosure of Confidential Information under this Regime, being the Application by QCoal Pty Ltd and Byerwen Coal Pty Ltd for a recommendation to declare the coal handling service at the North Queensland Export Terminal.

Use and disclosure of Confidential Information

- 2 I will not use the Confidential Information for any purpose other than my work in respect of the Matter.
- 3 I will keep the Confidential Information confidential and will not disclose the Confidential Information directly or indirectly to any person, other than the persons permitted to access such information under the Regime.

Exceptions

- 4 Nothing in this undertaking limits any use or disclosure that I may make of Confidential Information:
- 4.1 that is authorised in writing by the relevant Confidentiality Claimant, to the extent of that authorisation; or
 - 4.2 that is authorised or required by an order of any court or by law, but I undertake to notify the Confidentiality Claimant and Authority of any such use or disclosure, where practicable before using or disclosing the Confidential Information, and otherwise as soon as reasonably practicable afterwards.

Confidentiality protections

- 5 To the extent that I have Confidential Information, I will:
- 5.1 establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access or use;
 - 5.2 keep the Confidential Information under my effective control;
 - 5.3 immediately notify the Confidentiality Claimant and Authority in writing of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information, of which I become aware and provide any reasonable assistance requested by the Confidentiality Claimant or Authority in relation to any action that the Confidentiality Claimant or Authority may take against any person for such unauthorised use or disclosure; and
 - 5.4 comply with the terms of the Regime.

Post-determination

- 6 Following the Final Determination of the Matter, I will do one of the following:
- 6.1 continue to maintain the Confidential Information under my effective control and safeguard it from unauthorised access or use; or
 - 6.2 destroy the Confidential Information in my possession, custody or control; or
 - 6.3 return or cause to be returned the Confidential Information in my possession, custody or control, to the Confidentiality Claimant (or its solicitors).

Variations

- 7 I may only vary the terms of this undertaking with the prior written consent of:
- 7.1 the Confidentiality Claimant (or its solicitors), with respect to the Confidentiality Claimant's Confidential Information; or
 - 7.2 the Authority (or its solicitors), provided the Authority has first consulted with any Confidentiality Claimant affected by the amendments.

Survival

- 8 I acknowledge that my obligations in paragraphs 2, 3, 5, 6, 7, 9 and 10 of this undertaking will continue after the Final Determination of the Matter and the destruction or return of the Confidential Information to the Confidentiality Claimant (or its solicitors).

Relief

- 9 I acknowledge that damages are not an adequate remedy for the breach of my obligations in this undertaking and that the Confidentiality Claimant shall be entitled to equitable relief (including, without limitation, injunctive relief) in respect of any threatened or actual breach of my obligations in this undertaking.

Jurisdiction

- 10 I irrevocably submit to the jurisdiction of the Supreme Court of Queensland for the purposes of enforcing the terms of this undertaking, which are governed by the laws of the State of Queensland.

Execution

Executed as a deed

Executed by [print name]

[Signature]

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Name (print)

Date: [insert date]