



**Consultation paper on
QR's 2001 Draft Access Undertaking**

October 2001

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CONFLICT OF INTEREST

In its Draft Decision of 20 December 2000, the QCA notified that the Chairman of the QCA, Mr R M Wylie, had disclosed a conflict of interest in respect of the QR 1999 draft access undertaking and, in particular, as to reference tariffs affecting the rail freight costs for the North Goonyella Mine. The conflict arose from the fact that Mr Wylie was the non-Executive Chairman of Thiess Pty Ltd and Deputy Chairman of its holding company Leighton Holdings Limited. Thiess Pty Ltd and another company had in late 2000 purchased the North Goonyella Coal Mine, with Thiess Pty Ltd having an initial minority interest of 40% in the mine. In addition, Mr Wylie holds shares in Leighton Holdings Limited. Those shares do not constitute a material proportion of his investment portfolio.

The notification contained in the Draft Decision also outlined the basis upon which it was proposed the QCA would manage the conflict of interest. The notice invited interested parties to make any submissions in relation to the matter.

On 20 April 2001, the Rail Tram and Bus Union advised that it formally objected to Mr Wylie having any further role in the Authority's consideration of QR's 1999 draft access undertaking. An excerpt from the letter received from the Rail Tram and Bus Union was included in the Final Decision of the QCA dated July 2001. The QCA took advice in respect of the position of Mr Wylie. That advice was to the effect there was no legal need for Mr Wylie to stand aside. The QCA was advised by QR that it wished him to remain involved.

Nevertheless, Mr Wylie decided to stand aside from any further participation in the matter and did so. Mr Wylie reached that decision so as to avoid any potential distraction which his continued involvement may attract. His decision to stand aside, in circumstances where he believed he is not required to, involved balancing the importance of satisfactory completion of the processes relevant to the 1999 draft access undertaking, the extent of the potential to disrupt completion of the process by his premature withdrawal and the desirability of avoiding, where reasonably possible, continuation of an issue of controversy.

Mr Wylie is no longer on the board of Leighton Holdings and will cease to be member of the board of Thiess on 26 October 2001. Despite this, Mr Wylie has advised that he does not intend to participate in the decision of the Authority relevant to the draft access undertaking now provided by QR.

SUBMISSIONS

Public involvement is an important element of the decision-making processes of the Queensland Competition Authority (the Authority). It therefore invites submissions from interested parties concerning its assessment of the draft access undertaking submitted by Queensland Rail on 2 October 2001 ('2001 draft access undertaking').

Written submissions should be sent to the address below. While the Authority does not necessarily require submissions in any particular format, it would be appreciated if two printed copies are provided together with an electronic version on disk (Microsoft Word format) or by e-mail. Submissions, comments or inquiries regarding this paper should be directed to:

Queensland Competition Authority
GPO Box 2257
Brisbane QLD 4001
Telephone: (07) 3222 0526
Fax: (07) 3222 0599
Email: rail.submissions@qca.org.au

The **closing date** for submissions is 2 November, 2001.

The Authority regrets that the consultation period is short, however, the timing has been driven by the legislative requirement for the Authority to respond to QR's 2001 draft access undertaking within 60 days of the date of its submittal. As a result, the Authority will not be in a position to provide extensions of time for the receipt of submissions.

Confidentiality

In the interests of transparency and to promote informed discussion, the Authority would prefer submissions to be made publicly available wherever this is reasonable. However, if a person making a submission does not want that submission to be public, that person should claim confidentiality in respect of the document (or any part of the document). Claims for confidentiality should be clearly noted on the front page of the submission and the relevant sections of the submission should be marked as confidential, so that the remainder of the document can be made publicly available. It would also be appreciated if two copies of each version of these submissions (ie the complete version and another excising confidential information) could be provided. Again, it would be appreciated if each version could be provided on disk. Where it is unclear why a submission has been marked "confidential", the status of the submission will be discussed with the person making the submission.

While the Authority will endeavour to identify and protect material claimed as confidential as well as exempt documents (within the meaning of the *Freedom of Information (FOI) Act 1989*), it cannot guarantee that submissions will not be made publicly available. As stated in s187 of the *Queensland Competition Authority Act 1997* (the QCA Act), the Authority must take all reasonable steps to ensure the information is not disclosed without the person's consent, provided the Authority is satisfied that the person's belief is justified and that the disclosure of the information would not be in the public interest.

Public access to submissions

Subject to the above, submissions will normally be made available for public inspection at the Brisbane office of the Authority (see below), or on its website at www.qca.org.au.

Information about the role and current activities of the Authority, including copies of reports, papers and submissions can also be found on the Authority's website.

1. INTRODUCTION

On January 23, 1999, QR voluntarily submitted to the Authority a draft access undertaking ('1999 draft access undertaking') covering certain services relating to the use of the rail transport infrastructure it owns.

In order to acquit its legislative and other responsibilities, the Authority undertook an extensive consultation process.¹ That process culminated in the Authority issuing a Draft Decision ('Draft Decision') in December 2000. The Authority refused to approve the 1999 draft access undertaking and explained the reasons for the refusal and the way in which the Authority considered it should be amended. The Authority invited all interested parties to respond to the Draft Decision.

In July 2001, the Authority issued its Final Decision ('Final Decision') in respect of the 1999 draft access undertaking, following consideration of stakeholder comments received in response to the Draft Decision.² In its Final Decision, the Authority refused to approve the 1999 draft access undertaking. The reasons for that refusal were set out in the Final Decision, which incorporated into it by reference the content of the Draft Decision.

Following the Authority's decision to reject QR's 1999 draft access undertaking, the Authority formally requested that QR submit to the Authority another draft access undertaking, in accordance with the provisions of s133 of the QCA Act. QR did so on 2 October and it is in respect of this 2001 draft access undertaking that the Authority is currently seeking comments.

In this regard, the Authority has identified a number of significant matters in the 2001 draft access undertaking that either stakeholders have not previously had the opportunity to comment on and/or the Authority considers it would be able to make a more informed assessment of the matters with the benefit of stakeholder input. In addition, the Authority welcomes comments on any other issues raised by the 2001 draft access undertaking that have not previously been canvassed.

The significant matters identified by the Authority are as follows:

- Rail Access Line Diagrams for QR's rail infrastructure south of Gladstone (*Sub-clauses 2.1 & 2.2 of Part 2 & Schedule A*);
- Network Management Principles (formerly known as the Scheduling and Train Control Principles) (*Sub-clauses 7.1 & 7.2 of Part 7 & Schedule G*);
- confidentiality deed (*Clause 3.3 of Part 3 & Schedule B*);
- disclosure of coal access agreements (*Clause 5.3 of Part 5*);
- capacity resumption and secondary trading arrangements (*Sub-clauses 7.4.2, 7.4.4 & clause 7.5 of Part 7*); and
- safety, including rollingstock interface standards (*Clause 8.1 of Part 8 and clause 5 of Schedule E*).

A glossary has been posted on the QCA's web-site which may assist readability of this paper.

¹ Details of a series of papers produced by the QCA and the submissions received in response to those papers were set out in the Draft Decision: see particularly Tables 4 and 5 at pages 39 and 40 of Volume 2.

² Submissions in response to the Draft Decision were set out in Table 2 of Volume 1 of the Final Decision.

2. ACCESS LINE DIAGRAMS

2.1 Background

In its Final Decision, the Authority proposed certain principles that should apply for the assignment of management responsibility for QR's declared rail infrastructure and that these should be included as a schedule to the Undertaking (pp 109-11, Vol 2). These principles state that the overall objective of the assignment process is to ensure that access seekers are not forced to negotiate with QR's above-rail business groups for access to declared rail transportation services. This objective requires the following outcomes from the assignment process:

1. Network Access should operate as a stand alone provider of declared rail transportation services. The onus of proof in justifying a departure from this principle rests with QR.
2. Existing market shares of QR's above rail business groups should not be a factor in the assignment of management responsibility for declared services.
3. Network Access should provide access – using its own infrastructure – to any private siding.
4. Network Access should provide access to any end-user's facility not owned or leased by a rail operator and any facility where there is joint use by end-users.
5. Network Access should provide access to declared rail transport services that assist normal mainline operations. These operations include the following rail transport functions:
 - Mainline running, including the use of passing loops.
 - Loading and unloading at facilities other than freight centres and depots, undertaken as part of the normal operational cycle.
 - Train queuing and staging for the following activities so long as they are undertaken as part of the normal operational cycle:
 - loading and unloading;
 - transit;
 - 'on track' maintenance, provisioning and crewing activities.
 - Train marshalling and shunting:
 - in preparation for transit;
 - in preparation before or after train loading or unloading;
 - in preparation before or after maintenance and provisioning.
 - Short term train storage:
 - in a breakdown situation;
 - for short periods where product flow has been disrupted;

- for short periods where the timetable does not allow use.

The Authority supported QR's proposed assignment of management responsibility for its rail infrastructure from Gladstone north as part of the Final Decision, on the grounds the assignment reflected the above principles.

2.2 QR's position

Rail Access Line Diagrams

QR has incorporated as Schedule A of its 2001 draft access undertaking, Rail Access Line Diagrams for its rail infrastructure for northern and southern Queensland. As noted above, the Authority supported the management assignment for northern Queensland. However, this is the first opportunity for stakeholders to assess the assignment for Queensland south of Gladstone.

QR provided a draft of the southern Queensland line diagrams to the Authority for comment in late 2000. These line diagrams do not appear to raise as many contentious issues as those for northern Queensland, however, the Authority will be closely assessing the consistency of QR's proposed assignment of management responsibility for this rail infrastructure with the Authority's assignment principles.

Acacia Ridge Yard

The Authority is aware that the management of the Acacia Ridge Yard (Sheet 23 of Rail Access Line Diagrams, Southern Queensland) is a source of contention between the managers of the yard (QR and National Rail) and other railway operators. To assist stakeholders, the Authority considers that some background to the proposed assignment within the yard is warranted.

Both interstate and intrastate freight activities are currently being undertaken within the yard. However, the declaration of QR's rail infrastructure specifically excludes below-rail standard gauge interstate services.

QR owns the yard. However, National Rail currently has a lease to operate in an area within the yard that has a container terminal (utilising dual gauge track) and a marshalling yard (utilising standard gauge track).

The container terminal is strategically important for interstate rail freight (container) traffic on the Australian east-coast corridor, providing the link between container freight services originating in Sydney/Melbourne and QR's container freight services on the North Coast line up to central and north Queensland. The standard gauge marshalling yard is important for train operators carrying freight from Sydney to Brisbane and wanting to utilise the private sidings in the top end of the Acacia Ridge yard or wanting to 'break up' a train before heading to the Port of Brisbane. The Authority considers that the standard gauge yard could be characterised as a common use facility. National Rail currently performs shunting services for Specialised Container Transport and BHP utilising the standard gauge yard.

The other main activities performed within the Acacia Ridge yard are associated with the QR Q-Link (small freight) depot, a marshalling yard and locomotive provisioning facility, all utilising narrow gauge track.

The assignment of management responsibility for the standard gauge marshalling yard currently leased by National Rail appears unclear under the leasing arrangement. The declaration covers "the use of rail transport infrastructure for providing transportation by rail if the infrastructure is used for operating a railway for which Queensland Rail is the railway manager". However, QR has informally advised the QCA Executive it does not consider it is the railway manager for this

part of the yard because National Rail is responsible for the control of all train movements within it.

In addition, the Authority considers that determining whether the activities being conducted in the standard gauge marshalling yard are of an interstate or intrastate nature is not straightforward. This is relevant for cases where a rail operator runs interstate freight services and requires use of the marshalling yard to shunt its trains for unloading or loading purposes.

The dual gauge container terminal is likely to be less contentious as far as coverage by the declaration is concerned. Freight centres and depots and the railway track that forms part of them are defined as ‘other rail infrastructure’ under the Transport Infrastructure Act and are specifically excluded from the declaration.

Review process

In Clause 2.2 of the 2001 draft access undertaking, QR establishes a process by which an access seeker may seek a review of the management assignment during the term of an approved undertaking. QR provides in paragraph 2.2(c) that it will agree to a request if, in its reasonable opinion, the revision is required to meet the specified assignment principles. QR’s proposed principles generally reflect those proposed by the Authority (see above). However, QR proposes two additional principles (sub-paragraphs 2.2(c)(iv) & (v)) that provide exceptions to the Authority’s principles with respect to Network Access managing track adjoining private infrastructure and private facilities. These exceptions relate to situations where there are contractual arrangements between QR business groups other than Network Access and private infrastructure managers and/or private facility managers that provide for the rail infrastructure to be managed by the QR business group rather than Network Access.

The Authority seeks comments on:

- **the appropriateness of QR’s proposed assignment of management responsibility for rail infrastructure in the Rail Access Line Diagrams for southern Queensland with respect to its consistency with the Authority’s principles outlined above;**
- **the proposed assignment of management responsibility for rail infrastructure within the Acacia Ridge Yard; and**
- **the proposed process by which an access seeker can seek a review of the assignment of management responsibility for the rail infrastructure during the term of an approved undertaking and particularly sub-paragraphs 2.2(c)(iv) & (v).**

3. NETWORK MANAGEMENT PRINCIPLES

3.1 Background

The Final Decision proposed a set of Scheduling & Train Control Principles to establish processes for changing the master and daily train plans and to guide performance of the train control function.

The following Scheduling Principles were proposed (pp174-76, Vol 2):

Capacity Entitlement Principles

1. All railway operators' capacity entitlements will use consistent terminology, recognising that different traffic types may require different terminology, incorporated in a single glossary.
2. Capacity entitlements will be expressed in terms that can be interpreted for the development of a master train plan and a daily train plan.
3. Where a rail operator's required capacity cannot be met fully, it could, in accepting the capacity entitlement, use the Register of Interested Parties to identify the additional capacity it is interested in acquiring at another opportunity.

Master Train Plan Principles

1. The master train plan will need to define all of the railway operators' capacity entitlements and Network Access' requirements in a form that indicates the time/distance (location) relationship of the train services.
2. The master train plan will consist of a graphical representation as well as any explanatory notes to indicate any relevant conditions of service (eg. explanations of underlying capacity entitlements).
3. The master train plan may, subject to the terms of relevant access agreements, be modified:
 - where QR and an operator agree to a change to the operator's train services in accordance with their capacity entitlement;
 - where new capacity entitlements or maintenance possessions are created; and
 - where actual train running indicates that greater than 10% of train services on a particular system are consistently (over a 3-month period) varying from their scheduled paths; or
 - following a review of the master train plan undertaken every 3 months, by Network Access, operators, and infrastructure service providers. Any one of these parties may seek a review before the 3-month period expires.
4. Network Access will invite all railway operators and, where appropriate, other relevant parties, to contribute to the modification of the master train plan. Each party will be provided with a copy of any proposed changes 7 days prior to a meeting between all parties. An operator will have the power of veto over changes to the master train plan if its capacity entitlement can no longer be satisfied.

5. The master train plan will be in a form that is readily convertible to a daily train plan, which is the principal reference document to be used by the train controllers in carrying out their duties.

Daily Train Plan Principles

1. The daily train plan will express the relevant railway operator's capacity entitlement and Network Access' requirements in a form that indicates the time/distance (location) relationship of the train services. It will reflect the information contained in the master train plan.
2. The daily train plan will consist of a graphical representation as well as any explanatory notes to indicate any relevant conditions of service. An electronic medium is to be used for the conveying of this information.
3. Network Access will invite all railway operators and, where appropriate, other relevant parties, to contribute to the formulation of the daily train plan. This will normally occur each week, for the coming week or fortnight. Alternative arrangements may be necessary for timetabled traffics. Unless otherwise agreed by all parties, Network Access will make available a draft of its understanding of operators' requirements 24 hours before a weekly meeting of all parties to finalise the plan.
4. The daily train plan may be modified:
 - Periodically during the course of its currency, in accordance with the railway operators' capacity entitlements or Network Access' needs or the needs of other infrastructure providers.
 - At any time following a request by a railway operator to make such a change on terms established by its capacity entitlement.
 - Where actual train running indicates a consistent variation to that established in the access agreement and formulated in the daily train plan.
5. Network Access will invite all railway operators and, where appropriate, other relevant parties, to contribute to the modification of the daily train plan. Each party will be provided with a copy of any proposed changes.
6. The daily train plan will be the principal reference document from which train controllers will carry out their normal duties of train routing and dispatch, as well as incident management where trains run differently from their expected paths.
7. The daily train plan will express the expected train operation performance target over its period and will be used as the base information for the performance monitoring in reference to the underlying capacity entitlement.
8. Modifications to the daily train plan may occur during the course of its duration in the event of out-of-course running. Those modifications will occur according to the train control principles.

The following Train Control Principles were proposed (pp180-81, Volume 2):

Train Control Principles

The fundamental objective of train control will be to facilitate the running of train services and the commencement and closures of track possessions as scheduled in the daily train plan.

1. The following general principles apply to train operations and train control:
 - all parties will ensure that operational safety is maintained through compliance with safeworking rules, safety management systems, applicable safety risk management and rollingstock interface requirements and environmental management systems;
 - railway operators will ensure operating integrity, including train crewing, locomotives, wagons and loading so that the daily train plan can be met;
 - QR will manage the network on behalf of railway operators based on agreed entry/exit times as specified in the daily train plan with the objectives of managing trains according to their schedule for on time exit, not contributing to late running and, if a train is running late, making up time and holding the gain where reasonably possible; and
 - the primary objective is to ensure a train that enters the network within the agreed tolerance exits the network within the agreed tolerance, except to the extent that the above-rail operator causes delays.
2. Out-of-course running is dependent on the particular circumstances of a rail corridor, including the traffic type using the corridor. In the event of out-of-course running:
 - except as provided in a railway operator's access agreement, train control will adhere to the contracted capacity entitlement of each railway operator, expressed in terms of the daily train plan. The capacity entitlement will reflect a level of priority on the network;
 - where train control fails to adhere to a railway operator's contracted capacity entitlement, the terms of that operator's access agreement will govern the consequences;
 - the identity of a railway operator will, of itself, play no part in a decision by train control to alter that operator's scheduled train service; and
 - train control will resolve conflicts in accordance with the primary goal of ensuring a train that enters the network within the agreed tolerance exits the network within the agreed tolerance, except to the extent that the above-rail operator causes delays.
3. A Traffic Management Decision-Making Matrix ('the Matrix'), approved by the Authority, will be provided to assist train controllers in the resolution of disputes in accordance with the above principles.³
4. For the purposes of the Matrix, a 'healthy' train is defined as one that has experienced no delay, within agreed tolerances, attributable to the above-rail operator, either on entry or whilst on the network. Out-of-course running refers to the circumstances in which the

³ The role of the Matrix is to establish a decision-making framework for train controllers to resolve conflicts in the event of train services not running according to the scheduled daily train plan.

actual running of a train service differs, by more than an agreed tolerance, from the path provided in the daily train plan.

5. QR will provide railway operators with the current version of the Matrix, real time train control information and copies of train control diagrams to assist operators understand how train control decisions are made.

3.2 QR's position

QR has re-drafted and added greater detail to the Scheduling and Train Control Principles proposed in the Final Decision. The objective of this appears to be to more closely align the principles with QR's current scheduling and train control activities. QR names its principles Network Management Principles and incorporates them as Schedule G of the 2001 draft access undertaking. Appendix 1 of the Network Management Principles incorporates a decision-making process for resolving contested train paths and Appendix 2 incorporates a traffic management decision-making matrix.

QR argues that its Network Management Principles are intended to have generic application (as was proposed for the Scheduling and Train Control Principles), whilst recognising certain coal-system specific procedures (such as the scheduling of a weekly train plan). However, in QR's view, separate sets of principles for different traffics on different parts of its network may provide a more accurate summary of how QR will provide scheduling and train control services.

Scheduling Principles

The major matters addressed in the Network Management Principles that were not addressed in the Scheduling and Train Control Principles appear to be as follows:

- Network Access will be able to make changes to the master and daily train plans, after consultation, whether or not the scheduling changes are within the scope of access holders' train service entitlements;
 - where the proposed change would result in an access holder's capacity entitlement not being met, Network Access could require the access holder to vary its train service entitlement so as to accommodate the change if, in Network Access' view, it was not unreasonable for the access holder to do so;
- QR may make changes to the master and daily train plans, in circumstances where it does not have an impact on the parties, on a case-by-case basis without the need for consultation;
- a weekly train plan will be developed in parts of QR's network where cyclic traffics operate. In scheduling a weekly train plan, QR proposes a process to resolve contested train paths;
- QR removes the requirement for three-monthly reviews of the master train plan;
- the cancellation of a train service in accordance with the master and daily train plan principles does not necessarily excuse either QR or an access holder from other access agreement obligations relating to the conduct in question;
- Network Access will schedule the daily train plan at least one business day prior to the actual day of running. Once the daily train plan is scheduled, any changes to the plan will be reflected as deviations from the daily train plan not variations to a scheduled daily

train plan. QR specifies the circumstances in which variations to the daily train plan may be made; and

- Network Access may request a short-term change to scheduled train services, whether or not it is within an access holder's train service entitlement, for the purpose of accommodating an emergency possession.

Train Control Principles

The train control component of the proposed Network Management Principles appears somewhat less detailed than the equivalent component of the Scheduling and Train Control Principles. The major matters not addressed in the proposed Network Management Principles that were addressed in the Train Control Principles appear to be as follows:

- QR has removed the principle that train controllers will resolve conflicts in accordance with the primary goal of ensuring that a train which enters the network within the agreed threshold exits the network within the agreed threshold, except to the extent that the above-rail operator causes delays (the 'healthy train' concept);
 - rather, QR's Traffic Management Decision-Making Matrix is based on an 'on time running' objective (ie train movements will be managed in accordance with the daily train plan), with train controllers having discretion to take account of differing objectives of different traffics when conflicts over priority arise; and
- QR will not provide train control diagrams to access holders.

The Authority seeks comments on:

- **the appropriateness of the operational detail provided in the Network Management Principles;**
- **Network Access' proposed right to make changes to scheduled train services, after consultation, outside of access holders' capacity entitlements;**
- **the differences between the train control component of the Network Management Principles and the Scheduling and Train Control Principles;**
- **the proposed decision-making process for resolving Contested Train Paths and the proposed Traffic Management Decision-Making Matrix; and**
- **whether separate principles for different traffics on different parts of the network (as suggested by QR) would provide third party operators with a better guide to the performance of scheduling and train control functions than generic principles.**

4. CONFIDENTIALITY DEED

4.1 Background

The Final Decision proposed that provision should be made in an approved undertaking for a confidentiality deed to be executed between QR and an access seeker in favour of the owner of the confidential information at the commencement of an access negotiation. The deed would be as agreed between the parties, or as otherwise approved by the Authority.

4.2 QR's position

QR provides in paragraph 3.3(b) of the 2001 draft access undertaking that, at any time during the negotiation process, including prior to the submission of an access application, an access seeker may require QR to enter into a confidentiality deed with it. The confidentiality deed will be in the form specified in Schedule B, unless otherwise agreed between QR and the access seeker.

The draft confidentiality deed at Schedule B includes a \$10,000 liquidated damages provision, to apply where confidential information covered by the deed is disclosed to a QR operational business group in breach of QR's obligations in relation to the management of confidential information. To receive the liquidated damages, an access seeker would have to establish that a QR operational business group is in possession of the access seeker's confidential information and that the access seeker has suffered some form of loss or damage as a result of the possession by the QR operational business group of the confidential information.

While including a confidentiality deed as part of an approved undertaking was not envisaged in the Final Decision, the Authority sees merit in this approach, as it will provide greater certainty to both QR and access seekers. The Authority notes that the incorporation of a confidentiality deed in an approved undertaking would mean that, to change any aspect of the deed's content during the term of the undertaking, QR would have to submit a draft amending undertaking to the Authority. However, QR and an access seeker could always agree to depart from the terms of the approved deed.

The Authority seeks comments on:

- **whether a confidentiality deed should be incorporated as a schedule to an approved undertaking; and**
- **the appropriateness of the content of QR's draft confidentiality deed.**

5. DISCLOSURE OF COAL ACCESS AGREEMENTS

5.1 Background

The Final Decision proposed that QR must publicly disclose through the Authority coal access agreements and internal access agreements between Network Access and the QR operational business group that operates coal train services.

5.2 QR's position

QR has included in its 2001 draft access undertaking an obligation such that, if the relevant customer consents, QR will publicly disclose the below-rail aspects of the access agreement for all coal carrying train services (including internal agreements) for new or renewed train services. QR has also included a provision listing those parts of the access agreements it considers should not be disclosed. These are as follows:

- details of authorised rollingstock and rollingstock configurations;
- special operating restrictions;
- access holders' performance levels;
- insurance provisions;
- the Interface Coordination Plan;
- the Interface Risk Management Plan;
- the Environmental Investigation and Risk Management Plan; and
- cycle times (including aspects of cycle times such as dwell times and access holders' sectional running times).

The key question for the Authority in considering such a list of exclusions is whether genuinely confidential information and/or intellectual property is being protected. The Authority would prefer the confidentiality and intellectual property tests to be strictly applied to protect the intent of the proposed disclosure arrangement.

An issue raised with the Authority is whether Interface Risk Management Plans between Network Access and railway operators (both QR and third party operators) should be confidential because this will preclude the sharing of information on innovative safety risk management arrangements. This issue has been raised in the context of access agreements for all train services not just coal carrying services.

The Authority seeks comments on:

- **QR's proposal to obtain the consent of the relevant customer prior to the public disclosure of the coal access agreement;**
- **the appropriateness of QR's proposed items to be excluded from disclosure; and**
- **the appropriateness of publicly disclosing Interface Risk Management Plans incorporated in access agreements for all train services.**

6. CAPACITY RESUMPTION AND SECONDARY TRADING

6.1 Background

Capacity resumption

The Final Decision proposed a relatively detailed policy framework within which Network Access would be able to resume access holders' capacity rights (pp 200-02, Vol 2). Certain elements of the framework were agreed with QR, such as the resumption triggers, however, other elements were a source of contention, such as the need for QR to demonstrate an alternate demand before resuming capacity. The 2001 draft access undertaking broadly reflects the policy framework proposed by the Authority. However, there remain a number of minor policy differences. These are outlined in the section below.

The Authority also recognises that converting the resumption policy framework into the detail required for the 2001 draft access undertaking is not a trivial task and that a careful assessment of QR's drafting is also required.

Secondary trading

The Final Decision proposed high-level policy positions to guide the development of a secondary trading framework in QR's 2001 draft access undertaking (pp 210-11, Vol 2). These policy positions were that:

- secondary trading can occur within each system on the central Queensland coal system on the Central Queensland coal network and across different non-coal traffics; and
- QR should not be adversely affected as a result of a secondary trade.

The Authority also argued that secondary trades need not be restricted to origin-destination paths for non-coal traffics.

QR's 2001 draft access undertaking fills in the detail of these high-level policy positions and is summarised in the table in the section below.

6.2 QR's position

A complete description of QR's response can be found in Table 9 of its accompanying submission to its 2001 draft access undertaking.

Capacity resumption

Table 1: Difference between Final Decision and 2001 draft access undertaking⁴

Issue	QCA's position in Final Decision	QR's position in 2001 draft access undertaking
Alternate demand test (<i>sub-paragraph 7.4.2(a)(iv)</i>).	The capacity resumption test should make reference to the reasonably expected existence of alternate demand for the capacity that is subject to the resumption process.	QR will demonstrate an alternate demand with the exception of coal carrying services in central Queensland.

⁴ The relevant clause of the 2001 draft access undertaking is referred to in the left-hand column of the table.

Issue	QCA's position in Final Decision	QR's position in 2001 draft access undertaking
Register of Interested Parties (<i>clause 7.5</i>).	Network Access should notify all relevant parties on the Register of Interested Parties when a resumption test is triggered.	QR will separate the register of interested parties into a Committed Capacity register and a Capacity Resumption register. The latter register will be limited to access seekers who lodge access applications but the access rights cannot be provided except for a resumption. An access seeker can only remain on the capacity resumption register for six months, unless otherwise agreed between QR and the access seeker.
Resumption window (sub-paragraph 7.4.2(a)).	The life of a particular transgression of the capacity resumption trigger should be one month.	QR provides for a life of 60 days.
<i>Resumption disputes</i> (sub-paragraphs 7.4.2 (d) & (f)).	A party (either QR or the access seeker), would instigate the resumption dispute process by giving notice to the Authority indicating the capacity sought and detailing the circumstances that have led to activation of the trigger. The Authority would substantiate the information and appoint an expert to hear the matter. Submissions to the expert must be made within 10 business days, with the expert to make a decision 10 business days later.	QR has not provided for the Authority to substantiate whether a capacity resumption dispute should go to an expert. Rather disputes should go directly to expert resolution, which will be binding on the parties. QR provides for 14 day limits for submissions and the expert's decision.
Access seeker's right to resume (<i>sub-paragraph 7.4.2(e)</i>).	Access seekers should have a right to apply for resumption of an incumbent's capacity, subject to providing Network Access with a commitment to use the capacity subject to resumption.	QR establishes the conditions that must be met before it will commence the process to resume capacity at an access seeker's request. The access seeker must provide legally enforceable undertakings regarding: <ul style="list-style-type: none"> • reimbursement of all QR's costs; • the take up of the access rights once resumed; and • an indemnity for QR if it incurs a net loss as a result of the resumption and reallocation of access rights.

Issue	QCA's position in Final Decision	QR's position in 2001 draft access undertaking
Right of end user to change railway operator (<i>sub-paragraphs 7.4.4(f) &(g)</i>).	An end user is permitted to change its railway operator by serving notice on Network Access where that operator can demonstrate it has an unconditional contractual commitment with an end user for capacity entitlements in preference to the incumbent operator.	QR may also require security in respect of the resumption process to reflect its revenue risk associated with the access agreement. QR will treat this proposed amendment as a mandatory secondary trade. All requirements of a secondary trade will need to be satisfied.

Secondary trading

A complete description of QR's response can be found in Table 9 of its accompanying submission to its 2001 draft access undertaking.

Table 2: Difference between Final Decision and 2001 draft access undertaking⁵

Issue	QCA's position in Final Decision	QR's position in 2001 draft access undertaking
Extent of secondary trading (<i>sub-paragraphs 7.4.4(a) & (b)</i>). Protection for QR (<i>sub-paragraphs 7.4.4(d) & (e)</i>).	Secondary trading can occur within each system on the Central Queensland coal network and across different non-coal traffics QR should not be adversely affected as a result of a secondary trade.	Trades will only be permitted where the access seeker is seeking capacity for new or additional access rights (where for Central Queensland coal services, new or additional access rights will be related to traffic volumes not already included in the forecast traffic volume used to determine reference tariffs). For transfers involving the same origin/destination, the transfer fee will be equivalent to the present value of any future expected reduction in contributions to QR's common costs, including a return on assets used for the provision of the service over the life of the original access holder's access agreement, due to the net effect

⁵ The relevant clause of the 2001 draft access undertaking is referred to in the left-hand column of the table.

Issue	QCA's position in Final Decision	QR's position in 2001 draft access undertaking
		<p>of the transfer.</p> <p>Where a service is traded for another with a different origin and/or destination, the transfer fee is equivalent to the fee that would be payable for the relinquishment of the access rights, reduced to reflect the extent to which access rights are taken up by access holders and/or access seekers. (The relinquishment fee for reference tariff services is equal to the take-or-pay component of the access charge for the following 2 years. For non-reference tariff services, the fee is equal to the amount that would have been contributed to the common costs of providing the rail infrastructure over the following 2 years.).</p>

The Authority seeks comments on:

- **separating the register of interested parties into a Committed Capacity register and a Capacity Resumption register and QR's underlying rationale for such a separation;**
- **the conditions QR proposes must be met before it will resume capacity at an access seeker's request;**
- **the appropriateness of treating the right of an end user to change railway operator as a mandatory secondary trade; and**
- **the restrictions QR proposes to place on secondary trading within the Central Queensland coal systems.**

7. SAFETY

7.1 Background

The Final Decision proposed safety arrangements that aimed to ensure that the rail safety provisions of an approved undertaking would be consistent with the Australian co-regulatory rail safety framework. Specifically, the Authority was concerned that an approved undertaking should recognise that the Rail Safety Accreditation Unit (RSAU) of Queensland Transport is the rail safety regulator in Queensland and responsible for administering the rail safety framework set down in the *Transport Infrastructure Amendment (Rail) Act 1995*.

The Authority considers the most significant substantive differences between the 2001 draft access undertaking and the Final Decision relate to safety, including authorisation and auditing of third party operators' rolling stock, system-wide safety changes and QR's suspension rights with respect to third party operators' train services. In broad terms, these substantive differences stem from disagreement about who should be responsible for determining whether a third party operator has taken the appropriate steps to manage the safety risks of its train services, both before it commences its train services and in an ongoing sense once its services commence. The Final Decision proposed that the RSAU should be primarily responsible, however, QR considers that as network manager it must have the right to determine those elements of a third party operator's safety arrangements referred to above.

7.2 QR's position

QR supports the positions it has taken by reference to legal advice regarding its safety responsibilities. This advice is that QR has a number of non-delegable duties, both at common law and under the *Workplace Health and Safety Act 1995*, that are not overridden by its obligation to provide access to its declared infrastructure under the QCA Act, nor by the rail safety regulatory regime established by the *Transport Infrastructure Act 1994*.

The Authority agrees that QR has a legitimate right to seek to ensure that a third party operator adequately addresses all aspects of safety. However, the issue of concern is how far it is necessary and appropriate for QR to go to achieve that objective.

The table below provides a summary of the differences in the Authority's and QR's positions. A complete description of QR's position can be found in Table 6 of its accompanying submission to its 2001 draft access undertaking.

Table 3: Difference between Final Decision and 2001 draft access undertaking⁶

Issue	QCA's position in Final Decision	QR's position in 2001 draft access undertaking
Minimum rolling stock interface standards (<i>sub-clauses 8.1.2 & 8.1.3</i>).	Rolling stock interface standards should be agreed between QR and a third party operator as part of the development of the interface risk management plan.	QR may require access seekers to comply with identified standards (rollingstock, safety or otherwise). If a dispute arises between QR and an access seeker about a particular standard the expert must determine whether QR is taking a position that aims to prevent or hinder access (in contravention of s104 or s125 of the QCA

⁶ The relevant clause of the 2001 draft access undertaking is referred to in the left-hand column of the table.

Issue	QCA's position in Final Decision	QR's position in 2001 draft access undertaking
	<p>The undertaking should include a schedule with a list of non-exhaustive minimum interface requirements to guide negotiations regarding minimum rollingstock interface standards during the interface risk assessment.</p>	<p>Act). If the expert finds this not to be the case, the third party operator must accept QR's standard.</p> <p>Schedule H outlines the risks that need to be considered during the interface risk assessment, including those associated with rollingstock, communications, infrastructure, operations and health and safety.</p>
<p>System-wide changes (<i>clause 5, Schedule E</i>).</p>	<p>QR may vary the agreed rollingstock interface standards at any time on safety grounds after consultation. Otherwise, QR may, acting reasonably, negotiate any other changes with third party operators.</p> <p>QR's right to make system-wide changes on safety grounds should be subject to all access holders having a right to participate in QR's Safety Committee meetings concerning variations to standards that affect them and the RSAU having the power to determine whether a safety change is legitimately required by QR.</p>	<p>QR may vary the agreed rollingstock interface standards, safeworking procedures and safety standards or other system-wide requirements, on safety grounds or in other circumstances.</p> <p>The only restriction upon QR's right to require system-wide changes on safety grounds is that it not do so for the purpose of preventing or hindering access (the same test as would apply for minimum interface standards above)</p> <p>In any other circumstances, when requiring a system-wide change, QR may, acting reasonably, negotiate such a change with the access holder who must not unreasonably withhold consent to the change.</p>
<p>Rollingstock authorisation (<i>sub-clause 8.1.6</i>).</p>	<p>QR is entitled to provide input to the safety regulator regarding its accreditation of a third party operator (including the regulator's assessment of whether the third party operator's rollingstock has been authorised by an appropriate person).</p>	<p>QR may refuse to authorise rollingstock (and its associated configuration) where it is not satisfied, on the basis of the certification documentation, that the rollingstock complies with the standard agreed in the interface risk management plan. If a dispute arises, the 'to prevent or hinder access' test would apply.</p>
<p>QR's right to suspend a third party operator's rollingstock (<i>clause 5, Schedule E</i>).</p>	<p>QR may suspend the operation of rollingstock for demonstrated non-compliance that has safety implications until such non-</p>	<p>QR's right to suspend in relation to rollingstock and trains is based on "actual or anticipated non-compliance" with</p>

Issue	QCA's position in Final Decision	QR's position in 2001 draft access undertaking
	<p>compliance is rectified.</p> <p>QR should not exercise this right in a manner so as to hinder or restrict access to the declared service in any way contrary to s104 or s125 of the QCA Act.</p>	<p>rollingstock interface standards, all applicable laws and the rollingstock specification in the access agreement, where that non-compliance creates a risk to the safety of a person or a material risk to property.</p> <p>QR also reserves a right to suspend for "actual non-compliance" where that non-compliance does not create a risk to the safety of a person or a material risk to property.</p> <p>Where QR suspends an access holder's rollingstock or trains otherwise than in accordance with the provisions of the access agreement, the access agreement will specify the consequences.</p>
Interface risk assessment (<i>sub-clause 8.1.5</i>).	<p>QR's role in a third party operator's safety risk assessment should not extend beyond preparation of the interface risk assessment.</p> <p>QR must provide a 'reasonable endeavours' commitment to assist third party operators meet any training requirements for its staff identified during the interface risk assessment. QR should be able to recover the reasonable costs associated with such training.</p>	<p>QR has not addressed this in its drafting.</p> <p>QR should be able to recover a "reasonable commercial charge" rather than just the reasonable costs of training.</p>
Auditing of interface risk management plan (<i>sub-clause 8.1.7</i>).	<p>The undertaking should recognise the safety regulator is the body responsible for external safety audits, not QR.</p> <p>Once the safety regulator approves an interface risk management plan, both QR and the third party operator will be accountable to the regulator for their compliance with it. QR and the third party operator should inform each other of non-compliance with the interface risk management plan.</p> <p>QR and third party operators</p>	<p>QR does not accept this position because it is inconsistent with its legal advice.</p> <p>QR should have the ability to conduct or require the conduct of audits in relation to an access holder's compliance with its interface risk management plan. Access holders should have a reciprocal right.</p> <p>QR does not agree that it should</p>

Issue	QCA's position in Final Decision	QR's position in 2001 draft access undertaking
	should establish the grounds for commercial audits in the access agreement regarding the third party operator's compliance with the agreed rollingstock standards (eg incidences of dragging equipment, overloading of wagons).	have an audit right in relation to only certain matters in its access agreements. It proposes an audit right based on it having 'reasonable grounds' for a belief of non-compliance by the access holder.

The Authority draws stakeholder attention to the 'to prevent or hinder access' test QR has proposed if disputes arise with respect to QR exercising proposed rights to:

- require a third party operator's rollingstock comply with QR's rollingstock interface standards (sub-paragraphs 8.1.3(g)),
- refuse to authorise a third party operator's rollingstock where QR is not satisfied, based on documentation provided by the access seeker, that the rollingstock complies with the agreed rollingstock interface standards (sub-paragraph 8.1.6(e)); or
- impose system-wide safety changes (clause 5 of Schedule E).

The 'to prevent or hinder access test' should be viewed in the context of QR reserving to itself the right to determine the appropriateness of the above safety-related matters regarding the third party operator's proposed or actual train services. The test is intended to protect third party operators from QR exercising its right in an anti-competitive manner.

QR also proposes a broadening of its suspension right by allowing suspension for "anticipated" non-compliance (as well as "actual" non-compliance) where the non-compliance creates a risk to the safety of a person or material risk to property. QR strengthens its suspension right by removing the Final Decision's proposed contractual right for a third party operator to take action against QR if Network Access suspends its train services with an anti-competitive intent. This contractual right was actually the same test QR now proposes with respect to its proposed right to impose rollingstock interface standards, authorise those standards or impose system-wide safety changes (see above). However, with respect to suspension, rather than allowing third party operators such a right, QR proposes that the consequence of a suspension otherwise than in accordance with the provisions of the access agreement should be determined between the parties and established in the access agreement.

The Authority seeks comments on:

- **the proposed 'to prevent and hinder access' test with respect to QR's right to require a third party operator's compliance with QR's rollingstock interface standards and right to refuse to authorise the third party operator's rollingstock against the agreed rollingstock interface standards;**
- **the appropriateness of QR's proposed right to make system-wide safety changes;**
- **the proposed broadening of QR's suspension right with respect to a third party operator's rollingstock/trains and removing that operator's contractual right to take action against QR for suspending with a purpose to prevent or hinder access;**

- **the proposed reciprocal audit right with respect to the Interface Risk Management Plan; and**
- **whether it is feasible to specify the reasonable grounds for commercial audits in an access agreement.**