



QRC SUBMISSION

MAIN SUBMISSION

17 APRIL 2015

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Executive summary

The Queensland Resources Council (**QRC**) provides this submission on behalf of its coal members.

In its Draft Decision the QCA has proposed substantial changes to the 2014 DAU. In the QRC's view, substantial change was and is necessary. While the QRC wishes to acknowledge the efforts of Aurizon Network to productively engage with stakeholders, the 2014 DAU was not balanced and did not begin from an objective of achieving an undertaking consistent with section 69E and section 138 of the QCA Act.

The QRC supports the changes proposed by the QCA. This Submission explains in detail some matters that may require further consideration from stakeholders. In some cases there may be merit in stakeholders meeting with a view to developing an even better outcome. It is the QRC's view that with some further work the 2014 DAU can form the basis for a new era of rail regulation.

The nature and extent of the 2014 DAU is such that there are numerous important issues to consider. A non-exhaustive and incomplete summary of some of the key issues are highlighted below.

- **Expansion funding and SUFA:** SUFA is not a complete alternative to Aurizon Network funding. The QRC considers that Aurizon Network should be obliged to fund some expansions at the regulated rate. Further, in order for SUFA to be effective there needs to be an efficient and expeditious negotiation process. This requires the information available to Aurizon Network and access seekers to be balanced.
- **Capacity:** The QCA has proposed numerous changes to the capacity sections of the Undertaking (Part 7 and Part 7A). The QRC considers those changes to have substantially enhanced the effectiveness of capacity assessments and capacity allocation. The QRC notes that there may be some circumstances in which undertaking an expansion to meet a capacity shortfall is not warranted, for example, where the system constraints are such that building additional rail capacity will be futile.
- **Access agreements:** The QRC supports the rationalisation of the number of standard access agreements. The QRC considers however that the terms of the Standard Access Agreement and Standard Train Operations Deed require further refinement.
- **Connection:** The QRC supports the advancement of rail connection arrangements and in particular the ability for third parties to connect. The QRC has proposed further refinements to the Standard Rail Connection Agreement and considers it important to develop a standard construction agreement (which can be based on the SUFA construction agreement).
- **Ringfencing:** The QRC recognises the improvements made to the ringfencing regime, however, given the fully integrated nature of the Aurizon Group and the increasing incidence of conflicts, the QRC considers that the ringfencing regime requires further refinement.
- **Price:** The QRC notes that there are numerous important pricing issues, for example, the pricing of expansions. The QRC acknowledges the effort made by the QCA to develop and propose alternative pricing options for consideration. The QRC's Submission sets out some further ideas which could benefit from discussion with stakeholders.

Lastly, the QRC wishes to acknowledge the utility of the QCA preparing a mark-up of the 2014 DAU. Detailed drafting enables all stakeholders to better understand the QCA's intention and helps to progress the issues between stakeholders.

Reference table

Reference to the 2014 DAU	How the item is addressed?	Where the item is addressed?
Part 1 – Preamble	<ul style="list-style-type: none"> No comment 	<ul style="list-style-type: none"> The QRC supports the preamble section of the Draft Decision
Part 2 – Intent and scope (includes Schedule D)	<ul style="list-style-type: none"> Submission 	<ul style="list-style-type: none"> Part 2 – Intent and scope
Part 3 – Ringfencing (includes Schedule I)	<ul style="list-style-type: none"> Submission 	<ul style="list-style-type: none"> Part 3 – Ringfencing
Part 4 – Negotiation framework (includes Schedules A and B)	<ul style="list-style-type: none"> Submission Mark-up of Part 4 	<ul style="list-style-type: none"> Part 4 – Negotiation framework Annexure 1 – Part 4 mark-up
Part 5 – Access agreements	<ul style="list-style-type: none"> Submission 	<ul style="list-style-type: none"> Part 5 – Access agreements
Part 6 – Pricing principles (including Schedule F)	<ul style="list-style-type: none"> Submission 	<ul style="list-style-type: none"> Part 6 – Pricing principles
Part 7 – Available capacity allocation and management	<ul style="list-style-type: none"> Submission Mark-up of clause 7.5 	<ul style="list-style-type: none"> Part 7 – Available capacity allocation and management Annexure 2 – Clause 7.5 mark-up
Part 7A – Baseline capacity (includes Schedule G)	<ul style="list-style-type: none"> Submission 	<ul style="list-style-type: none"> Part 7A – Baseline capacity

Reference to the 2014 DAU	How the item is addressed?	Where the item is addressed?
Part 8 – Network development and expansions	<ul style="list-style-type: none"> • Submission 	<ul style="list-style-type: none"> • Part 8 – Network development and expansions
Part 9 – Connecting private infrastructure (including Schedule J)	<ul style="list-style-type: none"> • Submission • Mark-up of Standard Rail Connection Agreement 	<ul style="list-style-type: none"> • Part 9 – Connecting Private Infrastructure • Annexure – Standard Rail Connection Agreement mark-up
Part 10 – Reporting	<ul style="list-style-type: none"> • Submission 	<ul style="list-style-type: none"> • Part 10 – Reporting
Part 11 – Dispute resolution and decision making	<ul style="list-style-type: none"> • Submission 	<ul style="list-style-type: none"> • Part 11 – Dispute resolution and decision making
Part 12 – Definitions and interpretation		<ul style="list-style-type: none"> • The QRC has not proposed amendments to the entirety of Part 12. Rather, the QRC has addressed specific key definitions throughout the relevant sections of this Submission.
Schedule A – Preliminary, additional and capacity information	<ul style="list-style-type: none"> • Submission (as part of the Part 4 submission) 	<ul style="list-style-type: none"> • Part 4 – Negotiation framework
Schedule B – Access application information requirements	<ul style="list-style-type: none"> • Submission (as part of the Part 4 submission) 	<ul style="list-style-type: none"> • Part 4 – Negotiation framework
Schedule C – Operating and other plan requirements	<ul style="list-style-type: none"> • Submission 	<ul style="list-style-type: none"> • Schedule C – Operating and other plan requirements
Schedule E – Regulatory Asset Base	<ul style="list-style-type: none"> • Submission 	<ul style="list-style-type: none"> • Schedule E – Regulatory Asset Base

Reference to the 2014 DAU	How the item is addressed?	Where the item is addressed?
Schedule F – Reference Tariff	<ul style="list-style-type: none"> • Submission (as part of the Part 6 submission) 	<ul style="list-style-type: none"> • Part 6 – Pricing principles
Schedule G – Network Management Principles	<ul style="list-style-type: none"> • Submission (as part of the Part 7A submission) 	<ul style="list-style-type: none"> • Part 7A – Baseline capacity
Schedule H – Explanatory diagrams and flowcharts		<ul style="list-style-type: none"> • The QRC does not have a submission on Schedule H except that it should be updated to reflect the amendments to the remainder of the Undertaking.
Schedule I – Confidentiality Agreement	<ul style="list-style-type: none"> • Submission (as part of the Part 3 submission) 	<ul style="list-style-type: none"> • Part 3 – Ringfencing
Schedule J – Coal loss mitigation provisions	<ul style="list-style-type: none"> • Submission (as part of the Part 9 submission) 	<ul style="list-style-type: none"> • Part 9 – Connecting Private Infrastructure
Standard Access Agreement	<ul style="list-style-type: none"> • Submission 	<ul style="list-style-type: none"> • Standard Access Agreement
Standard Train Operations Deed	<ul style="list-style-type: none"> • Submission 	<ul style="list-style-type: none"> • Standard Train Operations Deed
Standard Studies Funding Agreement	<ul style="list-style-type: none"> • Submission 	<ul style="list-style-type: none"> • Standard Studies Funding Agreement
Standard Access Interface Deed	<ul style="list-style-type: none"> • Submission (as part of the Standard Access Agreement submission) • Draft Standard Access Interface Deed 	<ul style="list-style-type: none"> • Standard Access Agreement • Annexure 3 – Standard Access Interface Deed

Reference to the 2014 DAU	How the item is addressed?	Where the item is addressed?
Standard Rail Connection Agreement	<ul style="list-style-type: none">• Submission (as part of the Part 9 submission)• Mark-up	<ul style="list-style-type: none">• Part 9 – Connecting Private Infrastructure• Standard Rail Connection Agreement mark-up

Part 2 – Intent and Scope

This part of the Submission outlines the QRC's comments with respect to the Draft Decision in relation to the intent and scope of the Undertaking and the 'Ultimate Holding Company Deed', as captured in Part 2 and Schedule D of the Undertaking.

1 Part 2 – Intent and scope

The QRC sets out its position in respect of the key aspects of Part 2 and Schedule D below.

-  = Agree
-  = Agree subject to some comments
-  = Disagree

Item No	Clause Reference	Issue	Description	QRC Position
Part 2				
1	2.2	Listed objectives are without limitation	The QRC supports the clarification proposed in clause 2.2. The QRC agrees that the objectives which are listed in that clause 2.2 are non-exclusive examples of the objectives of the Undertaking.	
2	2.2 and 2.4	Non-discriminatory treatment	The QRC supports the QCA's proposal to include principles of non-discrimination into the intent and scope provisions of the Undertaking. The QRC agrees that incorporating those principles into Part 2 of the Undertaking clearly indicates that Aurizon Network must act in a non-discriminatory way in exercising all of its rights and carrying out all of its obligations under the Undertaking.	

Item No	Clause Reference	Issue	Description	QRC Position
3	2.2(g)	Objectives compared to obligations	<p>The Draft Decision provides various statements in regard to unfair discrimination under the proposed clause 2.2(g). Whilst the QRC supports those principles, the QRC is concerned that:</p> <ul style="list-style-type: none"> the intent of the drafting may not be achieved, because the principles are presented as ‘objectives’ rather than obligations (ie the objectives will not be effective unless an operative clause is provided elsewhere in the Undertaking which creates an obligation on Aurizon Network); and the principles are overly detailed for an objectives clause. <p>The QRC recommends that clause 2.2(g) be simplified by removing the more detailed principles. Instead, those principles should be included as obligations on Aurizon Network under clause 2.4. This includes, for example, the restrictions on anti-competitive behaviour (ie cost-shifting, cross-subsidies and price or margin squeezing) and the restrictions on providing access to a related operator on a more favourable basis. Incorporating those principles as explicit obligations on Aurizon Network will allow stakeholders to ensure compliance with those principles (for example by making a complaint under clause 2.4(d)). The QRC notes that this approach would be consistent with clause 3.2 of UT3 (upon which clause 2.2(g) of the Draft Decision is based). Clause 3.2 of UT3 imposed a firm obligation on Aurizon Network (ie by use of the opening words “<i>Aurizon Network will not</i>”).</p>	
4	2.4(a)	Consistent application of the Undertaking	The QRC suggests that clause 2.4(a) (which provides that the Undertaking must be consistently applied) should extend to access holders.	
5	2.5(a)	Scope	The QRC supports the clarification proposed in clause 2.5 whereby statements regarding the scope of the Undertaking must be read subject to any express provisions to the contrary contained in the remainder of the Undertaking.	
6	2.5(c)	Land upon which rail infrastructure is situated	<p>The QRC supports clause 2.5(c) as proposed in the Draft Decision. The QRC agrees that Aurizon Network should be required to promptly notify an access holder if it does not own, or have a legal right to, the land on which rail infrastructure is situated.</p> <p>However, the QRC considers the drafting of clause 2.5(c) is unclear. That clause should be amended to link to clause 2.5(b)(ii) and specify what land is being referred to (ie the land on which rail infrastructure is situated).</p>	

Item No	Clause Reference	Issue	Description	QRC Position
7	2.5(g)	Rights of Aurizon Network under the QCA Act	<p>The QRC does not agree with clause 2.5(g) and considers it should be deleted. UT4 is a voluntary undertaking. A voluntary undertaking should be able to modify the rights of Aurizon Network under the QCA Act.</p> <p>For example, the Undertaking should be capable of restricting the application of provisions in the QCA Act which require consideration of Aurizon Network's legitimate business interests. To this point, the Draft Decision proposed the removal of all direct and indirect references to Aurizon Network's legitimate business interests in the context of Part 8 of the Undertaking. Clause 2.5(g) would be inconsistent with the intention of that proposal.</p>	●
8	2.6 Schedule D	Ultimate holding company support deed	<p>The QRC supports the requirement in clause 2.6 for Aurizon Network to ensure an ultimate holding company deed is in full force and effect at all times. The QRC considers that as the person bound by the Undertaking, it is appropriate for Aurizon Network to be subject to this obligation.</p> <p>The QRC also supports:</p> <ul style="list-style-type: none"> the proposed requirements of the ultimate holding company deed as reflected in clause 2.6(b); and the pro-forma ultimate holding company deed set out in Schedule D of the Draft Decision. 	●
9	2.7(c)	Disputes regarding electricity supply and sale	<p>The QRC supports a dispute resolution mechanism for disputes arising in respect of electricity supply, as provided in UT3.</p>	●
10	2.7	Obligation to supply electricity	<p>In the QRC's October 2013 Submission and the QRC's October 2014 Submission, the QRC proposed the introduction of an absolute obligation for Aurizon Network to supply electric energy to an access seeker or access holder. The Draft Decision does not adopt this suggestion, on the basis that <i>"it is not clear that the supply and sale of electricity falls within the declaration under the QCA Act"</i>.</p> <p>Whilst the QRC continues to hold the view that Aurizon Network should commit to supply electricity, the QRC understands Aurizon Network is currently incentivised through its investment in electric infrastructure to supply electricity. The QRC also appreciates that some protection is provided under the Draft Decision via:</p> <ul style="list-style-type: none"> the proposed new provisions regarding unfair discrimination; and the proposal to provide a dispute resolution mechanism for disputes arising in respect of 	●

Item No	Clause Reference	Issue	Description	QRC Position
			<p>electricity supply (clause 2.7(c)).</p> <p>Given the above, the QRC understands the Draft Decision, however, suggests this issue is revisited during the development of any future undertaking or in respect of any future amendments to UT4 (in the event it is extended).</p>	
11	2.8	Incentive mechanism	<p>The QRC does not support the incentive mechanism as currently described in the Draft Decision under clause 2.8.</p> <p>Clause 2.8 provides that Aurizon Network “<i>may</i>” develop an incentive mechanism during the term of UT4. Since Aurizon Network can elect whether or not to develop an incentive mechanism, the QRC does not consider this clause adds anything to the Undertaking. The QRC also considers there is insufficient time remaining in the term of UT4 for an incentive mechanism to be developed by Aurizon Network and subsequently approved by the QCA.</p> <p>The QRC recommends that clause 2.8 is abandoned in favour of the QCA providing any guidance which it is willing to offer in relation to the substance of an incentive mechanism in the QCA’s final decision on UT4.</p> <p>The QRC also welcomes any opportunity to consult with Aurizon Network on appropriate incentive mechanisms, so that a proposal which is supported by stakeholders can be presented to the QCA as part of the UT5 submission, or if UT4 is extended, as an amendment to UT4.</p>	
12	N/A	Obligation to provide associated services	<p>In the QRC’s October 2013 Submission and the QRC’s October 2014 Submission, the QRC proposed there should be an obligation on Aurizon Network to perform any “<i>associated services</i>” on reasonable terms. Associated services were intended to encompass those ancillary services for which it is only practicable for access holders to engage Aurizon Network to perform (ie RIM and train control, level and other crossing services, land leases and design and scope and standard reviews).</p> <p>In the Draft Decision, the QCA has not accepted the QRC’s suggestion, on the basis that the services may not be covered by the declaration in the QCA Act.</p> <p>The QRC is willing to accept that position, however, proposes that where another railway is connected to the regulated rail infrastructure, Aurizon Network should at least be under an obligation to agree an arrangement which provides for coordinated train control across the two networks (ie so that a train can travel across the two networks seamlessly). For clarity, the QRC is not proposing that Aurizon Network be obliged to provide the train control on the other railway which is connected</p>	

Item No	Clause Reference	Issue	Description	QRC Position
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to the regulated rail infrastructure.

The QRC also intends to revisit the issue of “*associated services*” during the development of any future undertaking or in respect of any future amendments to UT4 (in the event it is extended). A key consideration for the QRC will be the extent to which Aurizon Network acts reasonably in the provision of these services over the term of UT4.

Part 3 – Ringfencing

This part of the QRC's Submission outlines the QRC's comments with respect to the Draft Decision in relation to ringfencing and confidential information, as captured in Part 3 and Schedule I of the Undertaking.

1 Part 3 - Ringfencing

Overall the QRC is supportive of the significant improvements proposed to the ringfencing regime in the Draft Decision. An effective ringfencing regime and other appropriate protections against conflicts of interest are integral to an effective Undertaking. The QRC had a number of significant concerns with the ringfencing regime proposed in the 2014 DAU. That regime was defective in a large number of respects. The ringfencing regime proposed by the QCA represents a step towards the development of an effective and meaningful ringfencing regime.

The QRC sets out its position in respect of the key aspects of Part 3 below.

-  = Agree
-  = Agree subject to some comments
-  = Disagree

Item No	Clause Reference	Issue	Description	QRC Position
Part 3				
1	3.3, 3.9	No waiver or restriction of Part 3	The QRC supports clause 3.9(a) which provides that Aurizon Network must not request a waiver from an access seeker, access holder or train operator. The QRC also supports the QCA's proposal to ensure no confidentiality agreement or access agreement seeks to circumvent the protections afforded by Part 3. The QRC considers that any ability for Aurizon Network to request a stakeholder to provide a waiver or agree any other restrictions to its ringfencing obligations would create an unfair balance of power and detract from the protections offered under the Undertaking. The QRC may be agreeable to Aurizon Network having a right to seek a waiver from the QCA. The	

Item No	Clause Reference	Issue	Description	QRC Position
			<p>QRC is comforted by the understanding that the QCA would only ever grant such a waiver if it was fair and reasonable in the circumstances. The QCA could also allow itself the opportunity to undertake consultation with affected stakeholders prior to granting any requested waiver. If the QCA, throughout the period of UT4, maintains the view that there are no circumstances which would justify approval of a waiver, then the ability for Aurizon Network to request a waiver (which will be rejected) appears harmless. For this reason, clause 3.3 appears unnecessary and should be deleted.</p>	
2	3.5(d)	Function of Aurizon Network to include development of undertaking and protection of confidential information	<p>Aurizon Network’s functional responsibility under clause 3.5 should be expanded to include:</p> <ul style="list-style-type: none"> the development of the Undertaking, all standard documents and any future undertaking (this will support clause 3.7(f) which restricts Aurizon Network from delegating that function to another Aurizon entity); and the protection of confidential information. <p>The development of the undertaking and the protection of confidential information are essential elements of Aurizon Network’s role in providing below rail services.</p>	
3	3.5(e)	Prohibition on Aurizon Network undertaking certain functions	<p>The QRC supports the proposal to prohibit Aurizon Network from:</p> <ul style="list-style-type: none"> undertaking above rail services, the operation or marketing of train services, port services or the operation or management of a coal mine; and holding an interest in a port or a coal mine. <p>If Aurizon Network was allowed to undertake those activities, a range of ringfencing provisions would become ineffective. For example, provisions regarding staff secondments and transfers would need to be extended to apply to staff members who move between roles within Aurizon Network.</p> <p>Clause 3.5(e) should also be expanded to prohibit Aurizon Network from undertaking above or below rail services in relation to another railway or holding any interest in another railway. The QRC is concerned that there would be increased complexity involved in determining Aurizon Network’s efficient costs if more business activities are added to the entity. For this reason, the QRC would prefer that if the Aurizon Group was to become involved in another railway or hold an interest in another railway, those activities would be undertaken in another separate entity.</p>	

Item No	Clause Reference	Issue	Description	QRC Position
4	3.6(a)	Performance of below rail services	Whilst the QRC agrees with clause 3.6(a) in principle, that clause does not go far enough. The prohibition on Aurizon Network transferring or delegating the below rail activities to a 'Related Operator' should be extended to a 'Related Competitor' (that is a related entity that has an interest in a port or coal mine). This change is required to ensure the effective separation of the core below rail activities from other conflicting business activities within the Aurizon Group.	
5	3.7(c)	Corporate functions and shared services	<p>The QRC supports the QCA's proposal that below rail services must only be performed by Aurizon Network employees and that those employees should be restricted from working for other related entities.</p> <p>Clause 3.7(c) of the Draft Decision proposes to describe exceptions to the ringfence described above. That clause allows Aurizon Network to obtain assistance in the performance of below rail services from staff employed within the Aurizon Group in the provision of shared services and corporate functions. Whilst the QRC agrees that Aurizon Network should be permitted to obtain assistance from the Aurizon Group in relation to services such as accounting and finance, the functions to which this clause applies need to be more clearly defined. For example, it is not clear whether this clause would allow the shared service or corporate function which deals with regulatory affairs to assist in the development of a replacement undertaking, or whether the new clause 3.7(f) would prevent this. To resolve this ambiguity, clause 3.7(c) should apply in regard to a defined list of services approved by the QCA.</p>	
6	3.7(e)	Secondments and temporary transfers	<p>In the QRC's October 2014 Submission, the QRC sought a requirement that Aurizon Network obtain the approval of the QCA for any proposed secondments. Instead, the Draft Decision requires only that the QCA be notified.</p> <p>The QRC understands Aurizon Network's concerns in regard to limitations on the movement of employees, however, continues to be concerned about the use of secondments and the effectiveness of provisions which are designed to protect confidential information in those circumstances. Despite this, for the remaining term of UT4, the QRC accepts the proposal to require Aurizon Network to provide the QCA with prior notice only.</p>	
7	3.7(f)	Transfer or delegation of development of the undertaking	Clause 3.7(f) should be extended to include the development of any replacement undertaking rather than only dealing with the development of UT4.	

Item No	Clause Reference	Issue	Description	QRC Position
8	3.8	Management of Aurizon Network	<p>The QCA has not accepted the QRC’s proposal that the board of Aurizon Network should exclude directors of related parties, however, the QCA notes “<i>this does not mean we do not share stakeholder concerns in this regard</i>”. The QRC is willing to accept this position for the term of UT4 but will reassess the position in the future, taking into account:</p> <ul style="list-style-type: none"> • the extent of cross directorships; • the extent of conflict involved in each cross directorship; • the extent of independent directors in the Aurizon board composition; and • the effectiveness of the overall ringfencing arrangements. <p>In the meantime, the Aurizon Network board should be required to include at least two true independent directors (ie directors who have no other directorship or executive role within the Aurizon group, including within Aurizon Network).</p>	●
9	3.10	Request to enter confidentiality agreement	<p>The QRC supports the QCA’s proposal to allow an access seeker or train operator the right to require Aurizon Network to enter into a confidentiality agreement (in the form set out in the Undertaking). The QRC is concerned that clause 3.10 (which sets out that right) is limited to any time during the ‘Negotiation Period’ and only applies to ‘Access Seekers’ or ‘Train Operators’.</p> <p>An entity only becomes an ‘Access Seeker’ once it has submitted a properly completed access application. The ‘Negotiation Period’ only commences after a valid access application (which will contain confidential information) has been provided, an indicative access proposal has been prepared, and the notification of intent has been provided. Confidential information contained within the access application will not be protected through a confidentiality agreement for a number of months.</p> <p>For these reasons, clause 3.10 unduly restricts the application of the confidentiality agreements. The QRC suggests that any party which intends to lodge an access application should be able to enter into a confidentiality agreement ahead of lodging the application.</p>	●
10	3.12	Disclosure of confidential information	<p>The QRC supports the significant improvements proposed by the QCA in relation to the protection of confidential information, however, further improvements could be made.</p> <p>The QRC supports the proposal to require confidential information to be disclosed on an as needs basis, however, reference to a “<i>legitimate business purpose</i>” (in clause 3.12(a)(ii)) may be uncertain. Instead, the purpose for which a recipient can obtain access to confidential information should be</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
			<p>more closely linked with the purpose for which the confidential information was disclosed and to the performance of the below rail services.</p> <p>The QRC broadly supports the proposal to require the prior consent of the discloser of confidential information in a number of circumstances, however, some aspects of clause 3.12 may undermine the intent of the consent provisions. Clause 3.12(i) provides that consent cannot be unreasonably delayed or refused. Clause 3.12(j) also provides that where consent is refused in certain circumstances, Aurizon Network has the right to cease negotiations with the particular access seeker. This is reasonable where consent is unreasonably delayed or unreasonably refused, however, as currently drafted, a refusal on reasonable grounds could also result in Aurizon Network issuing a negotiation cessation notice. This appears to be an unintended consequence and should be clarified.</p>	
11	3.13	Confidential information register	<p>The QRC supports the QCA's proposal with respect to the confidential information register.</p> <p>The QRC agrees that maintaining a confidential information register will promote compliance with the Part 3 confidentiality obligations. A confidential information register will also allow greater transparency.</p>	●
12	3.14	Confidential information training	The QRC supports the QCA's proposal with respect to confidential information training.	●
13	3.15	High risk personnel	The QRC supports the QCA's proposal with respect to high-risk personnel and in particular the suggestion that this could be used to develop a tiered training system. All Aurizon employees should be provided with some form of training, however, some employees may require more intensive training.	●
14	3.16	Exit certificates	The QRC supports the proposal to require Aurizon Network employees to undergo a debriefing session and provide an exit certificate when leaving Aurizon Network. Maintaining a register of exit certificates will also ensure transparency.	●

Item No	Clause Reference	Issue	Description	QRC Position
15	3.17	Security measures	The QRC supports the suggestion that Aurizon Network personnel should use an email address which identifies them as Aurizon Network personnel. This will assist greatly in distinguishing Aurizon Network personnel from other Aurizon Group personnel on a day to day basis. This requirement should be extended to ensure the business cards of Aurizon Network personnel clearly identify them as such.	
16	Section E 3.19	Complaints	<p>The QRC supports the complaints process proposed by the QCA, however, considers the application of the complaints mechanism should be extended to third parties seeking access or increased access. The QRC's concerns with the current drafting are described below.</p> <ul style="list-style-type: none"> Limiting the right to lodge a complaint to 'Access Seekers', 'Access Holders' and 'Train Operators' unduly restricts the operation of the complaints process. This appears to be based on the assumption that these are the parties providing confidential information to Aurizon Network. This incorrectly assumes the only purpose of Part 3 is the protection of confidential information. Given that Part 3 extends beyond the protection of confidential information, it is appropriate that other affected parties have a right to lodge a complaint. For example, mining companies may wish to lodge a complaint if Aurizon Network breaches clause 3.7(f) by delegating the development of the Undertaking. As explained at item 9, reference to 'Access Seeker' is also restricting. An access seeker who has submitted an application which is deemed not to comply with all the requirements for a valid 'Access Application' will not be an 'Access Seeker' and therefore unable to lodge a complaint. A third party who wants access or increased access should have the right to make a complaint in respect of Aurizon Network's compliance with Part 3, whether or not an access application has been lodged (this would be consistent with clause 3.7(d) which seeks to protect the interests of a 'Third Party Access Seeker'). 	
17	Section F	Rail infrastructure responsibility and ownership	<p>The QRC supports the proposal with respect to rail infrastructure responsibility and ownership. The obligations and restrictions imposed on Aurizon Network are important to support the effective separation of the declared service from other business units.</p> <p>The QRC also supports the proposal to include a positive obligation on the ultimate holding company in the 'Ultimate Holding Company Support Deed' to ensure that rail transport infrastructure within the scope of the declared service is only ever owned by Aurizon Network. This is particularly important due to the control that the ultimate holding company can exercise in respect of the ownership of rail transport infrastructure.</p>	

2 Schedule I – Confidentiality agreement

The QRC sets out its position in respect of the key aspects of the standard form confidentiality agreement set out in Schedule I of the Undertaking below.

- = Agree
- = Agree subject to some comments
- = Disagree

Item No	Clause Reference	Issue	Description	QRC Position
Schedule I				
1	5	Pro-forma confidentiality agreement	<p>The QRC's Draft Decision includes a pro-forma confidentiality agreement in Schedule I. Under that confidentiality agreement, the 'Recipient' is undefined. As a result, it is unclear whether it is contemplated that there may be mutual confidentiality obligations between Aurizon Network and a relevant counterparty. Clause 5 also provides for additional obligations on the counterparty if it is the 'Recipient' under the confidentiality agreement.</p> <p>The QRC understands that there are some circumstances in which it would be reasonable for the counterparty to be the 'Recipient' under the confidentiality agreement. For example, this may be the case where Aurizon Network requires a related entity to enter into a confidentiality agreement in accordance with the requirements under Part 3.</p> <p>The QRC is however concerned that the confidentiality agreement could be construed to seek to restrict an access seeker's use of information disclosed to it by Aurizon Network during the negotiation process. This would not be practicable in circumstances where an access seeker needs to provide that information to other parties in an attempt to obtain supporting supply chain rights (for example, to obtain port access, above rail services, etc). The pro-forma confidentiality agreement should clarify that to the extent the confidentiality agreement is entered into between an access seeker and Aurizon Network for the negotiation of an access agreement or train operations deed, the 'Recipient' is intended to be Aurizon Network only.</p>	●
2	4(f)	Negotiation cessation notice where consent is withheld	The QRC has the same comments in respect of clause 3.12(j) of the Undertaking as outlined at item 10 of Section 1 of this Part 3 submission.	●

Item No	Clause Reference	Issue	Description	QRC Position
3	8(c), (d)	Breach of agreement and liquidated damages	The QRC does not agree with clause 8(c) and clause 8(d) which seek to provide an entitlement to liquidated damages and compensation for breaches of a confidentiality agreement. An entitlement to liquidated damages as proposed (ie liquidated damages of \$10,000) is unlikely to provide any additional incentive for Aurizon Network to refrain from breaching its confidentiality obligations.	●
4	9	Termination	The QRC does not agree with clause 9 of the pro-forma confidentiality agreement proposed by the QCA. The QRC considers that a confidentiality agreement should only be capable of termination by written mutual consent. This will still allow the parties to agree within an access agreement or train operations deed (which sets out appropriate replacement confidentiality obligations) for a confidentiality agreement to be terminated.	●

Part 4 – Negotiation framework

This part of the QRC's Submission outlines the QRC's comments with respect to the Draft Decision in relation to the negotiation framework, as captured in Part 4, Schedule A and Schedule B of the Undertaking.

1 Part 4 – Negotiation framework

The QRC sets out its position in respect of the key aspects of Part 4 below. In addition to the comments outlined below, the QRC has prepared a mark-up of Part 4 (**Part 4 Mark-up**). That mark-up is set out in Annexure 1 and is intended to indicate a number of drafting improvements (rather than substantive changes) which the QRC considers will result in a clearer negotiation process.

-  = Agree
-  = Agree subject to some comments
-  = Disagree

Item No	Clause Reference	Issue	Description	QRC Position
Part 4				
1	N/A	Train operators as access seekers and access holders	<p>The QCA has proposed to amend the definitions of 'Access Seeker' and 'Access Holder' under the Undertaking so that a 'Train Operator' is no longer expressly excluded.</p> <p>The QRC is concerned that there may be unintended consequences or confusion which flows from this change in definitions. For example, where a customer has applied for access and intends to have an operator enter into a train operations deed, who will be the 'Access Seeker'? Will the 'Access Seeker' in relation to that application be the customer, the 'Train Operator', or both? If both the customer and the 'Train Operator' are intended to be 'Access Seekers', who will have the right to exercise the powers afforded to 'Access Seekers' or make various decisions throughout the negotiation framework provided under Part 4? The QRC does not consider it useful to include 'Train Operators' in the definition of 'Access Seekers'.</p>	

Item No	Clause Reference	Issue	Description	QRC Position
			These definition changes appear to have been made because the QCA considers a 'Train Operator' should be afforded the same protections offered to 'Access Seekers' and 'Access Holders' throughout the Undertaking. To ensure there are no unintended consequences, rather than amending the definitions, the QRC recommends amending the drafting of the relevant protections. For example, Part 11 should expressly acknowledge that a 'Train Operator' has access to the dispute resolution framework and all of the protections offered by that framework. In any case, the QRC recommends that further consideration be afforded to the effects of the amended definitions proposed.	
2	N/A	Access applications by railway operators	In the QRC's October 2013 Submission and the QRC's October 2014 Submission, the QRC explained its concerns regarding the ability of an operator to progress an access application without specific support from the intended customer. The QRC remains concerned with these provisions. The QRC wishes to ensure that the equity of the Undertaking cannot be avoided by a party taking the access rights out of the sphere of regulation.	
3	4.3	Non-availability requirements	The QRC supports clause 4.3 of the Draft Decision, which recognise the circumstances in which there may be a reasonable explanation for an access seeker not providing information or evidence. The QRC considers those amendments will better support an objective of ensuring an access seeker is only prejudiced from progressing an access application where a failure to provide information or evidence indicates the access seeker is unlikely to be able to use the access rights being sought.	
4	4.3(c)(ii)(B), 4.5(f)(ii)(B)	Capacity allocation related issues	Clause 4.3(c)(ii)(B) and clause 4.5(f)(ii)(B) provides Aurizon Network with a right to request more evidence or information required to assess " <i>capacity allocation related issues</i> ". Submissions made by industry members have consistently sought to restrict Aurizon Network's power to obtain further information from access seekers to that which is reasonably required. This focus is reflected in the Draft Decision. The QRC is concerned that reference to " <i>capacity allocation related issues</i> " in clause 4.3(c)(ii)(B) and clause 4.5(f)(ii)(B) is too broad and ambiguous. The QRC considers this clause should be more clearly defined.	

Item No	Clause Reference	Issue	Description	QRC Position
5	4.4	Acknowledgement of access application	The QRC's Part 4 Mark-up includes a number of drafting amendments to clause 4.4 of the Undertaking. Those amendments are intended to clarify the effects of an access seeker providing a notice satisfying the non-availability requirements.	
6	4.4(d)(vi)	Suspension of negotiation process for an expansion	<p>Clause 4.4(d)(vi) of the Draft Decision provides that the suspension of the negotiation process due to an expansion continues until there is some agreement on how the expansion is to be funded. As pointed out in the QRC's October 2014 Submission, that provision is vague and uncertain.</p> <p>It is not clear what is meant by "<i>how an expansion is to be funded</i>" and why this should be the trigger to recommencing negotiations for access rights. Rather, the suspension should be lifted where 'Planned Capacity' exists and it is possible for that 'Planned Capacity' to be allocated to the relevant access seeker.</p>	
7	4.4(f)	Provisional capacity allocation	<p>Clause 4.4(f) of the Draft Decision provides that where a provisional capacity allocation has been issued, Aurizon Network may suspend negotiations with other access seekers for "<i>corresponding access rights</i>".</p> <p>The QRC considers the phrase "<i>corresponding access rights</i>" is vague and uncertain. This clause should be amended to clarify that "<i>corresponding access rights</i>" are those which are unable to be provided (without an expansion) if the provisional capacity allocation proceeds.</p>	
8	4.4(g)	Permitted lead time for submitting an access application	<p>The QCA has proposed to extend the allowable lead time for an access seeker to lodge an access application.</p> <p>As indicated in the QRC's October 2014 Submission, the QRC is willing to accept a compromised position whereby an access application lodged in respect of access rights which do not commence until more than three years after the date of the application are required to substantiate why a longer lead time is required. Regardless, the QRC supports the QCA's proposal to allow a lead time of 5 years (as of right) for lodging an access application.</p>	
9	4.5	Revisions to an access application	<p>The QRC's October 2014 Submission proposed a number of amendments to the framework for varying an access application both prior to, and after, an indicative access proposal is issued.</p> <p>In the Draft Decision, the QCA has indicated support of the right to vary an access application. Allowing an access application to be varied is considered to facilitate a less time consuming and less resource-intensive negotiation framework.</p>	

Item No	Clause Reference	Issue	Description	QRC Position
			<p>The Draft Decision proposes to consolidate the ability to request a variation and the treatment of that variation, regardless of the stage of the negotiation process. Whilst the QRC supports any attempt to simplify and streamline processes, the QRC considers that clause 4.5 requires a number of drafting amendments. The QRC's Part 4 Mark-up describes the amendments recommended by the QRC. Broadly, those amendments are intended to ensure:</p> <ul style="list-style-type: none"> the process and timeframes for requesting a variation is clear; and there are no unintended consequences of the treatment of variations, particularly in the context of the queuing mechanism being reinstated. 	
10	4.8(a)(ii)	Negotiation with multiple operators	It is unclear why Aurizon Network would be required to negotiate with multiple access seekers who are operators where clause 4.8(a)(ii)(B) applies (ie one of those operators is a party to an existing haulage agreement with the customer in respect of the access rights being sought).	●
11	4.9.1	Customer's right to take over an access application	The QRC supports the proposal to allow a customer to take over an access application from an operator which is seeking access rights on behalf of that customer. The QRC considers that this right is necessary to afford flexibility to the underlying customer.	●
12	4.9.1	Interaction between customers and operators	<p>There is some confusion in the drafting of clause 4.9. That confusion is in relation to the distinction between:</p> <ul style="list-style-type: none"> an operator acting only in the capacity as a 'Train Operator' (ie which intends to enter a train operations deed but not an access agreement); and an operator acting in the capacity of both an 'Access Seeker' and a 'Train Operator' (ie seeking to hold access rights under an access agreement and enter into the train operations deed in respect of the operation of the train services for those access rights). <p>The QRC has proposed a number of drafting amendments to clause 4.9 in the Part 4 Mark-up to clarify that distinction.</p>	●
13	N/A	Exclusion of liability proposed by Aurizon Network	The QCA has rejected Aurizon Network's proposal to exclude liability where it has made a good faith and reasonable attempt to comply with its obligations in respect of ceasing negotiations. For the reasons outlined in the QRC's October 2014 Submission, the QRC supports the deletion of that provision.	●

2 Schedule A – Preliminary, additional and capacity information

The QRC sets out its position in respect of the key aspects of Schedule A – Preliminary, additional and capacity information below.

- = Agree
- = Agree subject to some comments
- = Disagree

Item No	Clause Reference	Issue	Description	QRC Position
Schedule A				
1	2	Requirement to disclose information to access seekers	In the QRC's October 2014 Submission, the QRC explained its concerns with the various carve outs for confidentiality obligations with respect to the provision of preliminary, additional and capacity information. The QRC continues to disagree with those broad carve outs. The QRC considers that the provision of preliminary, additional and capacity information is essential to ensuring transparency and open access and should not be subject to broad confidentiality obligations.	●

3 Schedule B – Access application information requirements

The QRC sets out its position in respect of the key aspects of Schedule B – Access application information requirements below.

- = Agree
- = Agree subject to some comments
- = Disagree

Item No	Clause Reference	Issue	Description	QRC Position
Schedule B				
1	3(a)	Operator seeking access rights	As discussed above in respect of Part 4 of the Undertaking, an operator who is seeking access rights to be used for a person other than itself (ie a proposed customer), should be required to provide evidence that the proposed customer agrees to the operator acting on its behalf. Simply providing that Aurizon Network will disregard the effect of granting access rights to the operator when assessing the ability to attract a customer in the future is insufficient.	●
2	6(g)	Aurizon Network's power to obtain further information	The Draft Decision includes a number of amendments to Part 4 of the Undertaking which are intended to ensure Aurizon Network's power to obtain further information in respect of an access application is appropriately limited. The QRC recommends that clause 6(g) of Schedule B should also be appropriately restricted.	●
3	Footnote 5	Renewals	The QRC considers that footnote 5 of Schedule B has the potential to cause confusion and should be deleted. Whether or not a renewal exists should depend on the operative provisions of the Undertaking.	●

Part 5 – Access agreements

This part of the Submission outlines the QRC's comments with respect to the Draft Decision in relation to the entry into access agreements, as captured in Part 5 of the Undertaking.

1 Part 5 – Access agreements

The QRC sets out its position in respect of the key aspects of Part 5 below.

-  = Agree
-  = Agree subject to some comments
-  = Disagree

Item No	Clause Reference	Issue	Description	QRC Position
Part 5				
1	5.1(d)	Variations of access agreements	The QRC agrees with clause 5.1(d), particularly the requirement that variations to a standard access agreement be negotiated by Aurizon Network and the access seeker reasonably and in good faith. The QRC considers that these principles will guide effective collaboration between the parties. However, the QRC considers that clause 5.1(d) should be expanded to clarify that Aurizon Network and the access seeker may negotiate in good faith amendments to provisions of the Undertaking which are incorporated by reference into the Standard Access Agreement.	
2	5.1(e)	Dispute over terms of access agreement	This clause provides that a dispute in relation to the terms of an access agreement may be resolved by the QCA or the expert. However, the QRC is concerned that clause 5.1(e) does not stipulate in which circumstances each dispute resolution method should be utilised. If the parties cannot agree whether a dispute will go to the QCA or an expert, a stalemate may arise. The QRC considers that to resolve this issue the QCA	

Item No	Clause Reference	Issue	Description	QRC Position
			<p>should consider prescribing a process pursuant to which a determination can be made as to which entity will resolve the dispute.</p> <p>Clause 5.1(e) provides that a dispute should be resolved by completion of a standard access agreement. This raises two issues that require clarification:</p> <ul style="list-style-type: none"> the standard access agreement that is ‘completed’ by the expert or the QCA should take into account any amendments to the standard access agreement that have been agreed between the parties (ie the amendments not in dispute); and if an access agreement is “<i>completed</i>” by the QCA or an expert, is it intended that the parties must promptly execute that form of the access agreement? If so, this must be expressly stated. 	
3	5.1(g)	Provision of final form access agreement for execution	<p>Clause 5.1(g) should specify a time period within which Aurizon Network must provide the final form of the access agreement to the access seeker for execution. The QRC suggests a period of not less than five business days after the access seeker gives a notice under clause 5.1(g).</p> <p>This clause should also specify that the final form of the access agreement provided by Aurizon Network must reflect the terms and conditions that have been agreed between Aurizon Network and the access seeker.</p>	●
4	5.1(h)	Use of reasonable endeavours to execute access agreement as soon as practicable	<p>The QRC considers that the following amendments are required for clarity:</p> <ul style="list-style-type: none"> the words “<i>form of</i>” should be inserted after the words “<i>the final</i>”; and the clause should specify a minimum period for the access agreement to be executed, for example, not less than one month after Aurizon Network delivers the final form of the access agreement to the access seeker. 	●
5	5.1(i)	Execution of access agreement up to two years prior to commencement of train services	<p>The two-year limitation in clause 5.1(i) should not apply to access agreements that are conditional on the completion and commissioning of an expansion. The QRC considers that clause 5.1(i) should contemplate that Aurizon Network may be required to execute an access agreement that is conditional on the completion and commissioning of an expansion up to five years before the commencement of train services under the access agreement or such longer period may be agreed.</p>	●
6	5.1(j)	Aurizon Network is not required to agree to terms additional	<p>For clarity, should the reference to “<i>consistent with</i>” be replaced with “<i>inconsistent with</i>”? Is the reference to “<i>existing Access Agreement</i>” a reference to an existing access agreement to which the</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
		access rights	<p>access seeker is a party?</p> <p>In addition, the QRC considers that a clarification is required in relation to the interaction between clause 5.1(j) and clause 7.3(b) of the Undertaking. Clause 7.3(b) provides that certain variations to train services are to be disregarded for the purposes of determining whether the access rights are equivalent access rights. In order for clause 5.1(j) to operate effectively, the QRC considers that clause 5.1(j) should be expressed as “<i>subject to</i>” clause 7.3(b).</p>	
7	5.1	Development of access agreement	<p>The QRC considers that Part 5 should include the following provisions in relation to security for an access seeker’s financial obligations under an access agreement:</p> <ul style="list-style-type: none"> • Aurizon Network may require an access seeker to provide security under an access agreement, before the commencement of train services, if the access seeker is not financially sound (and the access seeker may dispute the requirement to provide security if it considers that it is financially sound) but only for the period during the term of the access agreement that the access seeker is not financially sound; • if the access seeker is required to provide security then the form of the security must be at the election of the access seeker and the form of security may be: <ul style="list-style-type: none"> – a bank guarantee; or – a company guarantee from a company (that may include a parent company) that is of sufficient financial standing (based on a similar test to that which applies to the access seeker); and • if the access seeker is required to provide security and elects to provide a bank guarantee, then the amount of the bank guarantee must be equivalent to the maximum amount of aggregate take or pay charges for all train service types under access agreement that could potentially be payable, on average, for all train service types during any six month period during the term assuming: <ul style="list-style-type: none"> – all of the train services were not operated for the access holder during the applicable six month period; and – the reason that the train services are not operated is not as a result of an ‘Aurizon Network Cause’. <p>The QRC notes that the comments made in this item 7 apply only in respect of an access agreement entered into which relates to access rights capable of being provided without an expansion.</p>	

Item No	Clause Reference	Issue	Description	QRC Position
8	5.3(c)	'Train Operations Deed'	The definition of 'Train Operations Deed' requires clarification.	●
9	5.3(d)	Development of train operations deed	The QRC considers that clause 5.3(d) should be expanded to clarify that Aurizon Network and the train operator may negotiate in good faith amendments to provisions of the Undertaking which are incorporated by reference into the train operations deed.	●
10	5.3(e)	Dispute over train operations deed	The QRC's comments above in relation to clause 5.1(e) similarly apply to clause 5.3(e).	●
11	5.3(f)	Provision of final form train operations deed	The QRC's comments above in relation to clause 5.1(g) similarly apply to clause 5.3(f).	●
12	5.3(g)	Use of reasonable endeavours to execute access agreement as soon as practicable	The QRC's comments above in relation to clause 5.1(h) similarly apply to clause 5.3(g).	●
13	5.3(h)	Timing of execution	This clause provides that Aurizon Network will execute a train operations deed before the operation of train services under the related access agreement. This restriction should only relate to the operation of train services for which the operator has been appointed under the relevant train operations deed. The reason for the clarification is that at the time a train operations deed is being negotiated, the access holder might already have another train operator operating train services under another train operations deed. This should not then restrict the execution of subsequent train operations deeds.	●
14	5.4(a)	Review of standard access agreement or standard train operations deed	<p>The QRC considers that clause 5.4(a) is unclear because it does not specify the scope of a review that may be conducted under this clause. Based on the references to "<i>workability</i>" throughout the clause (see clauses 5.4(a)(ii), 5.4(a)(iii), 5.4(f)), it appears that reviews conducted under this clause are intended to be limited to reviews of the "<i>workability</i>" of the standard access agreement and standard train operations deed.</p> <p>The QRC considers that:</p> <ul style="list-style-type: none"> if the scope of reviews conducted under this clause is intended to be limited to "<i>workability</i>", this 	●

Item No	Clause Reference	Issue	Description	QRC Position
			<p>should be expressly stated; and</p> <ul style="list-style-type: none"> if the review is not limited to “<i>workability</i>”, the scope of the review should be specified and the scope of consultation with access holders, access seekers and train operators should match that scope of the review and not be limited to “<i>workability</i>”. <p>Further, the QRC considers that access holders and train operators should also have a right to request a review of the standard access agreement or standard train operations deed.</p>	
15	5.4(a)(ii)	Aurizon Network’s consultation obligations	<p>The QRC agrees with the requirement in clause 5.4(a)(i) that Aurizon Network must consult with access holders, access seekers and train operators in relation to the workability of the standard access agreement and standard train operations deed. However, the QRC considers this clause could be refined by:</p> <ul style="list-style-type: none"> requiring Aurizon Network to act reasonably and in good faith in conducting consultations under clause 5.4; requiring Aurizon Network to take account of the reasonable views of the access holders, access seekers and train operators (this is discussed in further detail below); specifying a minimum timeframe for consultation with access holders, access seekers and train operators; and requiring Aurizon Network to provide relevant information to access holders, access seekers and train operators as soon as possible after the review has commenced. 	
16	5.4(a)(iii)(A)	Proposed amendments to the standard access agreement and standard train operations deed	<p>The QRC considers that under clause 5.4(a)(iii)(A), Aurizon Network must take into account the reasonable views of the access holders, access seekers and train operators when submitting to the QCA proposed amendments to the standard access agreement and the standard train operations deed.</p>	
17	5.4(c)	The QCA must seek submissions from stakeholders where appropriate	<p>The QRC agrees that the QCA should seek submissions from stakeholders in relation to proposed amendments to the standard access agreement and the standard train operations deed. However, this requirement should not apply only where the QCA deems consultation “<i>appropriate</i>”. The QCA should be required to consult with and seek submissions from stakeholders whenever an amendment is proposed.</p>	

Item No	Clause Reference	Issue	Description	QRC Position
18	5.4(e)	Approval of amendments by the QCA	<p>The QRC agrees with clause 5.4(e) subject to the following comments:</p> <ul style="list-style-type: none"> there is a significant typographical error in the first sentence of clause 5.4(e); the sentence should be replaced with the word “if”; and in relation to clause 5.4(e)(iv), the QRC considers that the QCA should be obliged to consult with stakeholders in relation to its proposed amendments to the standard access agreement and the standard train operations deed. 	
19	5.4(f)	Aurizon Network may seek amendments to the standard access agreement or the standard train operations deed	<p>The QRC generally agrees with clause 5.4(f) but considers that Aurizon Network should be required to act reasonably when proposing amendments that have previously been refused by the QCA.</p> <p>The QRC is concerned that clause 5.4(f) may inadvertently relieve Aurizon Network from its consultation obligations under clause 5.4(a)(ii). To avoid this, the QRC considers that it should be specified that clause 5.4(f) refers to amendments submitted in accordance with clause 5.4(a)(ii)(A) and not to amendments in general.</p>	

Part 6 – Pricing principles

This part of the submission outlines the QRC’s position with respect to the Draft Decision in relation to the pricing principles, as captured in Part 6 and Schedule F of the Undertaking.

1 Part 6 – Pricing principles

The QRC sets out its position in respect of the key aspects of Part 6 below.

1.1 Pricing frameworks for rail access

The Draft Decision rejects many of the changes to pricing frameworks under UT4 which were proposed by Aurizon Network, particularly in regard to take or pay arrangements and the reference tariff components. Instead, the QCA proposes that Aurizon Network conducts a comprehensive review of pricing frameworks under UT5. The QRC generally accepts the QCA’s decision to retain existing arrangements for the term of UT4, however considers there is a scope for incremental improvement to UT4 in certain areas, including by approving some of the changes proposed by Aurizon Network.

The QRC considers that Aurizon Network should undertake an early consultation process in relation to further reforms for UT5. Key issues for consultation are:

- the way in which the changes may impact existing and future access holders and their customers, and which stakeholders may be advantaged and disadvantaged;
- the impacts of existing access agreements (particularly, the “*generations*” of take or pay) and whether these create impediments, particularly in terms of equity considerations, to the implementation of changes;
- what behaviours and outcomes the new arrangements should seek to achieve and methods for balancing conflicting objectives; and
- ways in which Aurizon Network could provide sufficient transparency to allow stakeholders to make informed decisions.

The QRC broadly supports cost reflective pricing (subject to costs being efficient). Under cost reflective pricing arrangements, reference tariff structures aim to reflect the costs imposed on the system by users, and take or pay terms aim to ensure that contracts involve a genuine

commitment to pay the associated costs of capacity. However, the QRC considers that these aims must be balanced against other considerations, including the costs of complexity, and the uncertainty created by major reforms to pricing frameworks.

The QRC has sought to transition to genuine take or pay as soon as this can be achieved in a way which is reasonably equitable between users. It has not previously been considered equitable to introduce genuine and unqualified take or pay for new access agreements, while other access agreements include terms which may result in the cost of unused capacity being socialised across all users of a system. This concern will cease to apply when all UT1 and UT2 access agreements have expired. Moving closer to a user pays regime while these agreements remain in place is more difficult but should be considered.

1.2 Pricing principles

Price differentiation

The QRC supports the Draft Decision in respect of price differentiation, in particular:

- the prohibition on established access charges for a train service which discriminates in favour of related parties;
- the ability for an access holder to have its charges amended if the price differentiation principles are breached; and
- the requirement for QCA approval for non-standard terms in access agreements. This is important because of the need to ensure that any additional costs or risks accepted by Aurizon Network, and compensated by the access seeker, are not borne by parties other than Aurizon Network due to the revenue cap or other regulatory arrangements.

The QRC also suggests the following further improvements:

- at clause 6.2.3(a), Aurizon Network should be obliged to negotiate in good faith a reasonable access charge with an access seeker that varies from the applicable Reference Tariff to recognise a material decrease in cost or risk;
- at clause 6.5.2, both Aurizon Network and the QCA should be required to alert access holders where Aurizon Network has entered into an access agreement in contravention of Part 6. The QRC holds this view on the basis of the limited visibility of access holders of the terms of access agreements they are not a party to. The QRC suggests that both Aurizon Network and the QCA are much better placed to alert access holders in relation to the existence of access agreements which contravene Part 6, as under clause 10.3.1, Aurizon Network is required to provide this information to the QCA.

Pricing limits

The QRC broadly supports the QCA's Draft Decision regarding pricing limits, including:

- the requirement to use RAB values when available, in assessing pricing limits; and

- the requirement that Aurizon Network comply with both pricing limit principles and price differentiation principles. The QRC does not support Aurizon Network’s proposal that it be deemed to comply with pricing limits (despite not complying) in cases where the non-compliant price is applied to all future access seekers. This approach could still impose additional costs on other users in a revenue cap environment.

Expansion pricing principles

The QRC is pleased to note that the views of Aurizon Network, the QRC and the QCA, are aligned in regard to the “*averaging down/incremental up*” approach.

The QRC supports the key principles set out in the Draft Decision regarding expansion pricing principles, specifically that:

- expanding users should generally pay an access charge which at least reflects the full incremental cost of access;
- existing users should not experience a material increase in tariffs due to an expansion;
- new or expanding users pay their full incremental costs and face a higher access charge than existing users, a zero contribution to common costs is acceptable; and
- an allocation of expansion costs to existing users may be appropriate where existing users receive a benefit.

The Draft Decision to reject Part 6 is based on detail which lies below the level of these principles. The QRC also has concerns at this next level of detail.

Fixed cost arrangements for expanding users

The QRC, as previously submitted, was generally comfortable with a socialisation test, based on the forecast costs of expansions and forecast incremental tonnage (but not contracted tonnage) and with a “*once socialised, always socialised*” approach. As the QCA has noted, this does create risks for existing users, including the risk of paying higher tariffs, as a result of the expansion, if:

- final expansion costs are higher than forecast costs;
- actual tonnages from the expansion are less than forecast; and
- incremental tonnages decline over time (beyond the initial forecast period).

The QRC was prepared to accept these risks due to:

- an expectation that the QCA would conduct a thorough review of forecast expansion costs and volumes prior to approving a pricing proposal, and not approve socialisation until adequate evidence supporting the forecasts was available;

- an understanding that the substantial socialisation risks exist in current arrangements, for example, in regard to the volumes achieved by other mines in a system; and
- a preference for simplicity, in terms of avoiding the creation of numerous pricing groups where possible.

The approach proposed by Aurizon Network was broadly supported by the QRC, and the QRC considers that the key concerns raised in the draft decision could be addressed through relatively minor amendments to Aurizon Network’s proposal. For example, the risk of existing users being worse off due to a capital cost overrun of an expansion could be addressed by deferring the decision to socialise until capital costs are relatively certain. The same approach could address the risk of forecast tonnages being overestimated.

The QRC understands that the QCA’s “*fixed cost*” proposal, has certain advantages over the approach proposed by Aurizon Network and supported by the QRC. It also has a number of disadvantages, including the creation of a new set of reference tariffs for every expansion. The QRC also considers that the QCA’s proposed common cost contribution is inequitable (discussed below).

At this stage, the QRC members do not have a fixed view on the appropriate solution, or which approach (or combination of approaches) should apply. The QRC suggest that consultation between Aurizon Network, the QCA and all stakeholders is required.

Completed projects

An issue which is impacting on the ability of stakeholders to provide input to this issue is the uncertainty regarding whether projects which have been undertaken during the UT3 period (original period, or extended period) will be assessed and priced using UT3, or UT4 pricing principles. For example, Aurizon Network, and the WIRP customers, have proposed that WIRP be subject to UT3 pricing principles, on the basis that the investment decision was made, and contracts were entered into, during their term of that undertaking. Other users have challenged certain aspects of Aurizon Network’s WIRP proposal, but did not indicate their view on the question of the application of UT3 principles. Uncertainty on this question, which applies equally to a number of other completed projects, complicates the development of UT4 pricing principles. The QRC encourages the QCA to provide guidance on this issue as soon as possible, so that stakeholders understand whether the alternatives which they consider for UT4 pricing principles will have immediate commercial implications, or will be applied only to future projects.

The QCA’s proposed common cost contribution under the “*fixed cost*” proposal

The QRC considers that the QCA’s approach to determining a common cost contribution in cases where the access charge for expanding users is lower than the system reference tariff is inequitable. The inequity has two aspects.

- Levelising the tariffs of two groups of users is not equitable where the groups face different risk profiles. Customers paying the system reference tariff are exposed to variation in tariffs arising from changes in volumes of other customers, due to the revenue cap and the nature of UT1, UT2 and UT3 take or pay terms. Customers paying an expansion tariff are less exposed to short term volume risk of

other users due to the proposed take or pay terms, but are exposed to significant default risk given that each expansion is likely to involve a small number of customers, all of which are sourcing tonnages from new mines or expansion projects.

- The access charge of expanding users will be based on full contracted volumes, while the access charge of existing users is based on forecast volumes. It may be the case that the only cause of the expansion tariff being below the system tariff is that existing users are forecast to underutilise their contracted volumes. That is, the cause of the difference may be simply the fact that the tariffs are effectively expressed on a different basis, where tariffs for existing users are \$/forecast tonne, while tariffs for expansion users are \$/contracted tonne.

The following example demonstrates the risk of inequity outlined above.

	Existing Users	New Users
Incremental cost \$m	100	100
Contracted Volume (million tonnes p.a.)	10	10
Volume for pricing (forecast for existing, contract for new)	7	10
Reference Tariff (\$ per NT)	\$ 14.29	\$ 10.00

True forecast volume (mtpa)	7	7
True cost per tonne railed (\$/NT)	\$ 14.29	\$ 14.29

Common cost contribution (to equalise ref tariffs)	-\$ 2.143	\$ 2.143
Final reference tariff	\$ 12.143	\$ 12.143
Final cost per tonne railed	\$ 12.14	\$ 17.35

In this example, existing and new users have the same incremental cost (or are accountable for the same MAR value), have the same contracted volume and have the same forecast volume. However, because the reference tariff of the expansion group is based on contracted tonnes, their reference tariff will appear lower, despite their actual cost per tonne railed being identical to that of existing users. This triggers a contribution to common cost which causes the reference tariffs of the two groups to become identical. As the reference tariff of the existing users is applied to actual tonnes railed, while the same reference tariff for the expansion group is applied to contracted tonnes, the cost per tonne railed for the expansion users becomes substantially higher.

The QCA stated in its Draft Decision “*our position is that the reference tariff applicable to an expanding user should not be lower than the existing reference tariff on a unit basis*”. The QRC considers that this statement does not assist in resolving the issues with the proposed common cost contribution because the reference tariffs in this case cannot be directly compared, as they are being applied in a different way. The QRC suggests that if the QCA proceeds to impose this mechanism then the assessment of a contribution to common costs should be based on a like for like comparison of the unit costs (rather than tariffs) of existing and new users. For example, new users could be required to pay a contribution to common costs which equalises the unit costs of existing and new users, with unit costs being assessed based on the contracted tonnes of both existing and new users.

Five per cent criteria for socialisation

Given the Draft Decision in regard to the creation of expansion tariffs, the five percent criteria for socialisation would only apply when considering whether to merge two expansions for pricing purposes, and would not be applied in regard to the system tariff.

The Draft Decision provides that:

- if socialisation leads to a lowering of the ‘Highest Expansion Tariff’, the expansion will be socialised; and
- if socialisation will increase the ‘Highest Expansion Tariff’, the QCA will consider socialisation on a case by case basis.

Given that the question of socialisation will be settled through a pricing proposal, and this will occur relatively early in the expansion process, the QRC is comfortable with this approach.

Ten year expiration of expansion tariffs

The QRC suggested this provision, which was supported by Aurizon Network. The QRC considered that a key objective of expansion tariffs was to ensure that new users did not trigger uneconomic investment. That is, if expanding users did not value additional capacity highly enough to pay its full cost, it is best that the expansion not proceed, rather than proceeding only because costs are transferred to existing users. The QRC considered that ten years of expanding users paying their full incremental cost was sufficient to demonstrate the viability of the expansion, and that the socialisation of the depreciated asset at this time represented an acceptable risk for the existing users, and was preferred for simplicity.

The QRC continues to support a maximum term for expansion tariffs of ten years.

Post-expansion access seekers

The QRC supports the QCA’s proposal that:

- where new access rights are contracted without the need for an expansion (excluding renewals and transfers to the extent that it can be demonstrated that the system capacity excluding capacity generated by the expansion remains sufficient to provide the access rights renewed or transferred); and

- more than one reference tariff exists in the system (due to previous expansions),

the reference tariff applied for the new access rights should be the reference tariff which is the highest when expressed in \$/NT for those access rights.

This operates on the basis that it is the reference tariff components which would be applied to the new access rights, rather than the unit cost in \$/NT terms. That is, the new access rights will not face the same \$/NT cost as is currently being paid by users who pay the selected expansion tariff, but the reference tariffs paid will be the same. For example, in the case where the new access rights are being contracted by a mine which is relatively close to the port, the QRC's understanding is:

- each set of reference tariffs in the system would be converted into \$/NT using the characteristics of the new access rights (distance, gross weight, net tonnes, electric/non-electric);
- the reference tariffs to be applied would be those that result in the highest \$/NT result;
- the \$/NT result will be lower than the \$/NT result of other hauls which are subject to the same expansion tariff, due to the shorter distance of the new access rights (assuming train characteristics are similar); and
- the revenue from the new access rights (and any incremental costs) will be taken into account when recalculating the reference tariffs for the highest existing expansion tariff, such that the reference tariffs reduce.

Expansions funded by Aurizon Network at regulatory WACC

The QRC supports the QCA's decision to reject Aurizon Network's proposal that all expansions funded by Aurizon Network at the regulatory WACC should be socialised. This proposal would result in existing users having no protection from adverse impacts of high cost expansions. The QRC's understanding is that Aurizon Network's intention was to limit its risk in cases where it has funded at the regulatory WACC, by recovering costs from a larger customer base.

The QRC understands Aurizon Network's concern that it needs some mechanism to address risks in the case where it is forced to invest in an expansion at the WACC and an expansion tariff will apply (such that risk is concentrated in a small number of customers). However, the proposed solution is inappropriate and undoes many of the protections which Part 6 is intended to provide. The QRC is willing to discuss alternatives with Aurizon Network as part of consultation regarding an obligation to invest in expansions at the regulated WACC.

New mine-specific spur lines

Under UT3, customers with mine-specific spur lines which are not included in the RAB may receive a discounted tariff which reflects the private costs incurred to construct the spur line. Aurizon Network proposed, for UT4, to replace this discount with a formula-based discount which did not require reference to the private costs incurred to construct the spur line. The QCA proposes to discontinue the UT3 distance discount, and not approve the proposed UT4 discount, on the basis that:

- existing distance tapers already provide a distance discount (although this discount, in the case of new mines using a mine-specific spur, would be influenced only by distance travelled on the mainline, not on the spur, and that this is not the case for existing mines whose spurs are in the RAB);
- the proposed approach was overly complex; and
- although it is inequitable for new mines to pay the cost of their spurs plus a contribution to the cost of existing spurs which are in the RAB, the existing spurs contribute less than 10% of the MAR, and this will reduce over time, therefore the additional complexity is not justified.

The QRC considers Aurizon Network's original proposal does prevent an inequitable outcome, and that 10% of the MAR (which is the portion of the tariff of a new mine which will be incurred due to the cost of other mines' spurs) is material. The QRC does not share the QCA's concerns regarding complexity in regard to this proposal. The QRC suggests either:

- Aurizon Network's proposal should be approved; or
- the UT3 distance discount should be retained until the review of reference tariff components proposed by the QCA has been completed, consistent with the QCA's approach to a number of other elements of reference tariffs.

'Access Conditions'

The QRC supports the QCA's proposed clause 6.13, which largely reinstates, but simplifies, the 'Access Conditions' clause of UT3. Ensuring that the ability of Aurizon Network to secure 'Access Conditions' is not misused is critical.

SUFA is complex, untested and involves significant transaction costs. Therefore, Aurizon Network will continue to have a substantial advantage and significant bargaining power when negotiating 'Access Conditions' for projects. The QCA's proposed Clause 6.13 goes some way to ensuring that this power is not abused.

The QRC also supports the QCA's conclusion that Aurizon Network should provide a genuine voluntary funding obligation in order to signal a willingness to work with the CQC coal supply chain for its collective economic benefit. This is particularly critical for small to medium sized projects, which will be unsuitable for funding through SUFA, at least until SUFA is settled and tested. The QRC also supports the QCA's requirement that Aurizon Network commit to developing tax efficient financing options for access seekers and third party financiers for small to medium expansion projects.

Drafting amendments

In addition to the specific matters discussed in detail above, the QRC makes the following minor suggestions in relation to Part 6:

- clause 6.4.3(i) could be improved by providing that the consultation with the QCA should involve the access holders in the coal system;

- under clause 6.9.2, Aurizon Network should be required to publish a new version of clauses 7-13 of Schedule F within 10 business days following approval by the QCA; and
- under clause 6.13.2, Aurizon Network should be obliged to negotiate in good faith with access seekers as to the terms of the 'Access Conditions'.

2 Schedule F – Reference tariffs

The QRC sets out its position in respect of the key aspects of Schedule F below.

2.1 General provisions (clause 1)

The QRC supports the revised version of clause 1 of schedule F proposed by the QCA in its Draft Decision.

In relation to the QCA's proposal to delete clause 1.3(viii), the QRC understood the intent of that clause was that, in a system with more than one Reference Tariff, clause 1.3(viii) would be used to determine which of the Reference Tariffs would apply to particular 'Access Rights' (ie the Reference Tariff applied to the 'Access Rights' would be the Reference Tariff in which the capital costs associated with providing the 'Access Rights' were reflected). If clause 1.3(viii) is deleted, the QRC suggests this issue needs to be dealt with elsewhere in the Undertaking.

2.2 Reference Tariff (clause 2)

The QRC generally supports the revised version of clause 2 of schedule F proposed by QCA in its Draft Decision. However, the QRC does not support the QCA's amendments to Aurizon Network's proposed pricing of cross-system train services. The pricing of cross-system train services proposed by Aurizon Network was based on input from the QRC and was supported in the QRC's October 2014 Submission. The version proposed by the QCA returns the pricing of cross-system train services to the UT3 arrangements. The key differences between the UT3 arrangements (proposed to be reinstated by the QCA) and Aurizon Network's proposal (which was supported by the QRC) are outlined below.

- AT3 will (under the QCA amendments) be the higher of the AT3 tariffs of the two systems, with this amount applied to the entire distance across the two systems. The QRC supported Aurizon Network's approach of applying each of the system AT3 tariffs to the distance travelled in each system (consistent with the approach applied to AT5). The QRC is not aware of any basis or logic which supports the application of the higher of the two AT3 tariffs to the entire distance travelled, nor why this ought to differ from the approach taken in respect of AT5.

- AT4 will be the higher of the AT4 tariffs of the two systems. The QRC supported the Aurizon Network approach of applying the AT4 of the origin system.

It appears the reason for the QCA's proposed rejection of the change to pricing of cross-system services is the QCA's preference to conduct a full review of the Reference Tariff structure as part of the development of UT5. The QRC generally accepts this approach, however, does not consider that incremental improvements should necessarily be precluded from implementation under UT4. In the case of cross-system pricing, the QRC is unable to identify any justification for the continuation of the UT3 approach, particularly in regard to AT3, which requires that a cross-system service pay the higher of the two system AT3 tariffs across its entire journey. A cross-system service will often travel relatively few kilometres within its origin system, yet the AT3 of this system, if higher, would be applied to the entire journey. Despite Aurizon Network's proposal (compared to UT3) creating "*winners and losers*" amongst the QRC coal members, no member objected to this change, because the change was seen as being more cost reflective and fair. The QRC is not aware of any other stakeholder having an objection to the change, and does not consider that this improvement ought to be deferred.

2.3 Take or pay (clause 3)

The QRC supports the revised version of clause 3 of schedule F proposed by the QCA in its Draft Decision. The amended clause 3:

- rejects the concept of "*operator capping*";
- provides take or pay relief in a wider range of circumstances in which train paths are not made available to an access holder (through the amended definition of 'Aurizon Network Cause');
- rejects Aurizon Network's proposal to provide take or pay relief for 'Aurizon Network Cause' to UT1 access agreements ahead of other access agreements; and
- establishes take or pay rules in relation to expansions. These proposed rules provide that take or pay in relation to expansions will not be subject to trigger tests or capping mechanisms, and that take or pay will extend to AT5.

2.4 Annual review of Reference Tariffs (clause 4)

The QRC supports the revised clause 4 of schedule F proposed by the QCA in its Draft Decision. The amended clause 4:

- rejects the proposed automatic adjustment of maintenance cost allowances to reflect changes in forecast volumes (refer to clause 4.1). While the QRC supports the concept of making forward-looking adjustments to maintenance cost allowances, the QRC considers that an approach involving extensive consultation and assessment of the needs of the system should be developed, rather than a formula-based adjustment;

- requires the removal of the 'Increment' (refer to clause 4.4). The QRC sought removal of the 'Increment' on the basis that Aurizon Network should not be in a position to claim performance bonuses until a symmetrical suite of performance incentives is introduced;
- rejects Aurizon Network's proposed adjustment of 'Allowable Revenues' to reflect differences between actual and forecast collections of AT1 revenue (refer to clause 4.3); and
- requires the inclusion of ancillary revenue in the calculation of 'Total Actual Revenue' (refer to clause 4.3).

2.5 Reference Tariff variations (clause 5)

The QRC supports the amendments proposed by the QCA to clause 5 of schedule F, which seek to limit 'Review Events' to certain force majeure events.

2.6 Adjustment charges (clause 6)

The QRC agrees with the QCA's proposal to approve clause 6 as proposed by Aurizon Network.

2.7 System Reference Tariffs (clause 7 to clause 11)

Clause 7 to clause 11 of schedule F, and particularly the proposed tariffs, reflect a number of draft decisions in regard to pricing issues. The QRC's comments on these draft decisions are set out in the table below. To the extent that the draft decisions were reflected in earlier clauses within schedule F and were discussed above, those comments have not been repeated.

Item No.	Draft Decision	QRC Comment
1	Rejection of the re-balancing of revenue recovery to increase recovery through AT2	The QRC had some concerns with this proposal, but generally relied upon the QCA to assess the merits of this change. The QRC accepts the QCA's decision to reject this change until a full review of the structure of Reference Tariffs is completed.

Item No.	Draft Decision	QRC Comment
2	Rejection of the proposed diesel multiplier	The QRC relies on the QCA to determine the appropriateness and magnitude of the diesel multiplier.
3	Pricing proposals for WIRP	The QRC notes that this issue is subject to a separate consultation process, to which individual coal producers and other stakeholders have previously contributed.
4	Rejection of the proposed changes to the pricing of cross-system train services	The QRC continues to support the approach proposed by Aurizon Network.
5	Rejection of various proposals regarding GAPE, NAPE, NAP and Newlands tariffs in favour of the removal of NAPE costs from the Newlands system, creation of a NAP system and revision of GAP tariffs	The QCA has rejected a number of Aurizon Network's proposals on the basis that Aurizon Network provided insufficient information to justify its claims or approaches. The QRC expects that Aurizon Network's response to the Draft Decision will provide the additional explanations requested by the QCA. The QRC therefore requests an opportunity to comment on these issues after the information is made available.
6	Pricing proposals for Middlemount and Caval Ridge	The QCA proposes the application of UT3 pricing principles to services from Middlemount, and the application of UT4 pricing principles to services from Caval Ridge. This is on the basis of the dates on which services from each of these mines commenced. The QRC encourages the QCA to undertake further consultation regarding the basis on which the decision to apply current or past undertaking provisions should be made. Alternatives include application of the terms of the relevant undertaking:

Item No.	Draft Decision	QRC Comment
		<ul style="list-style-type: none">• at the time of the decision to invest;• at the time of entering into an access agreement or similar contractual commitment with Aurizon Network;• at the time of commencement of railings; or• from time to time. <p>The QRC does not wish to comment on the reasonableness or advantages and disadvantages of these alternatives at this time.</p>

Part 7 – Available capacity allocation and management

This part of the QRC's Submission outlines the QRC's comments with respect to the Draft Decision on available capacity allocation and management, as captured in Part 7 of the Undertaking.

1 Part 7 – Available capacity allocation and management

The QRC's specific comments in respect of the Draft Decision in relation to Part 7 are set out in the table below.

-  = Agree
-  = Agree subject to some comments
-  = Disagree

Item No	Clause Reference	Issue	Description	QRC Position
Part 7				
1	7.2.1	Criteria for refusing allocation of capacity	<p>Clause 4.12 provides for the criteria Aurizon Network must consider in deciding whether to cease negotiations with a particular access seeker. Similarly, clause 7.2.1 describes circumstances in which Aurizon Network may refuse to allocate capacity in respect of a particular access application.</p> <p>The QRC considers the criteria in clause 7.2.1 should align with that in clause 4.12. The use of consistent language and criteria will assist to reduce any risk of implying a different intention. The QRC does not consider there is any need for different criteria or the implication of a different intention in respect of clauses 4.12 and 7.2.1.</p>	
2	7.2.2, 7.2.3	Capacity notification register and committed capacity register	<p>Historically, the capacity notification register and the committed capacity register have provided little comfort to stakeholders. From industry's perspective, those capacity registers are now redundant, particularly in the context of a more robust expansion framework under Part 8 of UT4. There is however a need for visibility to the queuing mechanism if this is to be reinstated under UT4. To allow transparency,</p>	

Item No	Clause Reference	Issue	Description	QRC Position
			Aurizon Network should be required to publish the same record of the queue which it maintains for the purpose of allocating capacity. This will prevent the need for Aurizon Network to keep multiple records and registers and will allow access seekers visibility in respect of Aurizon Network's compliance with the capacity allocation framework.	
3	7.3	Priority of renewals	The QRC supports the QCA's proposal to ensure priority is given to renewing access seekers and to streamline the renewal process.	
4	7.3(b)	Equivalent access rights for the purpose of renewals	<p>The QCA has proposed that Aurizon Network should disregard any change to the origin or destination of a train service in considering whether the relevant access rights are equivalent access rights for the purpose of a renewal if:</p> <ul style="list-style-type: none"> • the train services continue to have substantially the same 'Train Paths'; • there is no adverse effect on the ability of the existing access holder to use their access rights; • the origin for the renewal and the origin for the existing access rights are located in the same 'Track Segment'; and • the train services for the renewal are not in excess of those under the existing access agreement. <p>In relation to the fourth bullet point above, if the change to the origin of a train service within the same track segment (as allowed under bullet point 3) creates a longer haul distance, then the train services for the renewal are likely to be considered in excess of those under the existing access agreement (in breach of bullet point 4). This appears to be an unintended consequence. It should be clarified that if an allowable change to an origin or destination creates a longer haul distance for the train service, then that train service will not be considered in excess of the existing train service for the purpose of considering whether the access rights are equivalent.</p> <p>In relation to a change in destination, clause 7.3(b) should also clarify that access rights will be equivalent access rights where there is a change in destination which is between terminals within a port (for example, from RG Tanna at the Port of Gladstone to WICET at the Port of Gladstone) or within the same 'Track Segment'.</p> <p>A change in destination in respect of renewal should however be subject to a similar concept of 'Ancillary Access Rights' as proposed in respect of transfers. That is, if a renewal and another access application are mutually exclusive because of the ancillary access rights, then the renewal should be subject to the capacity allocation queue to the extent of the ancillary access rights.</p>	

Item No	Clause Reference	Issue	Description	QRC Position
			Clause 7.3(b) must be without prejudice to the rights of an access holder in relation to transfers.	
5	7.3(c)	Renewal rights as a transferee	<p>The Draft Decision includes a new provision clause 7.3(c) which seeks to clarify that a renewal includes access rights granted to an access holder as a transferee. The QRC supports this proposition, however, considers this right should be restricted to permanent transfers in relation to which the transferee has received a transfer of the relevant access for the entire remaining term of those access rights (ie where a transfer is only for part of the remaining term of the relevant access rights, the transferor should retain any right of renewal).</p> <p>It will also be necessary to outline in a transfer notice whether the right to renew is being transferred.</p>	●
6	7.3(d)	Loss of priority for failure to enter renewed access agreement 12 months before expiry	<p>An access holder will lose its priority to other access seekers in respect of a renewal if it does not enter into an access agreement at least 12 months before the expiry of its access rights (or such later date as agreed by Aurizon Network). The QRC supports the QCA's proposal to clarify that a renewing access holder will not lose its priority where a delay is caused by a breach of the Undertaking by Aurizon Network. However, the QRC recommends this exception be expanded so that a renewing access holder does not lose its priority in the following circumstances:</p> <ul style="list-style-type: none"> • if the failure to execute an access agreement at least 12 months prior to the expiry of the access rights, is caused by an act, omission or delay by Aurizon Network (even if such act, omission or delay does not amount to a breach of the Undertaking by Aurizon Network); or • if the access holder has agreed with Aurizon Network, at least 12 months prior to the expiry of the access rights, to enter into an access agreement in accordance with the Undertaking. 	●
7	7.3(e), (f)	Time to negotiate renewals	<p>The QRC supports the QCA's proposal to increase the time during which Aurizon Network must negotiate a renewal with an access seeker from three years to five years. This will assist in ensuring that genuine renewing access seekers do not lose their priority rights due to a failure to complete negotiations in respect of a renewal by the required time.</p> <p>The QRC does however consider that clause 7.3(e) should be amended to clarify that a refusal by Aurizon Network under that clause (to negotiate more than five years in advance) does not then extinguish the access seeker's rights to request a renewal or enter into a further access agreement within five years before the expiry date.</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
8	7.3(h)	Form of renewed access agreement	<p>The QRC considers that a renewing access seeker (and Aurizon Network) should be required to align the terms and conditions of a renewed access agreement with the standard access agreement under the approved undertaking in force at the time. In Volume 2 of the Draft Decision, the QCA appears to agree with this position stating that “a renewed access agreement should align with the undertaking in force at the time of the renewal.” The QRC considers that the drafting proposed by the QCA under clause 7.3(h) does not reflect that intention. Rather, clause 7.3(h) seems to require Aurizon Network to renew an access agreement on the same terms as the existing access agreement except to the extent the renewing access seeker agrees with Aurizon Network to vary the terms of the existing access agreement or enter into an access agreement consistent with the Standard Access Agreement.</p> <p>The QRC considers that the intention of the drafting of clause 7.3(h) should be clarified. Clause 7.3(h) should make it clear that Aurizon Network has an obligation to enter into the renewed access agreement consistent with the Standard Access Agreement.</p>	
9	7.3(j)(i)	Application of Part 4 to the transfer process	<p>The QRC considers that “IAP” should be inserted after “Access Application” in clause 7.3(j)(i) so that the provisions which allow Aurizon Network to treat an IAP as having been withdrawn under Part 4 will not apply in respect of a transfer.</p>	
10	7.4	Transfers, relinquishments and resumptions moved from the access agreement to the Undertaking	<p>The QRC supports the QCA’s proposal to move the following from the Standard Access Agreement back into the undertaking itself:</p> <ul style="list-style-type: none"> • relinquishments; • transfers; • resumptions; and • force majeure. <p>The QRC agrees that including these provisions in the Undertaking will increase transparency and consistency across different generations of access agreements. Incorporating these provisions into the Undertaking will also allow access holders to benefit from the continuous improvements and refinements made to the processes over time.</p> <p>In respect of the force majeure provisions, the QRC agrees with the QCA that a force majeure event which affects Aurizon Network’s obligations under one access agreement is likely to also affect Aurizon Network’s obligations under other access agreements. Including the force majeure provisions in the Undertaking will assist with ensuring access holders affected by force majeure are treated equally.</p>	

Item No	Clause Reference	Issue	Description	QRC Position
			<p>The QRC is however concerned that the Undertaking is not particularly clear as to how these new provisions interact with existing access agreements and new access agreements. It would be useful to more clearly articulate which mechanisms operate as an additional right available to access holders (or their customers), compared to the mechanisms which should only apply to the extent they are incorporated into an access holder's access agreement by reference. For example, it would be unreasonable for the capacity resumptions mechanism to be imposed on existing access agreements, particularly where those access agreements include different resumption provisions.</p> <p>The Undertaking could also be clearer as to whether or not the relinquishments, transfers, resumptions or force majeure provisions in the Undertaking can be varied by the parties when entering into a new access agreement. The QRC understands that the parties would have the opportunity to seek to vary those clauses consistent with the right to negotiate any amendments to the Standard Access Agreement (ie under clause 5.1(d) of the Undertaking), however, this should be expressly acknowledged.</p>	
11	7.4.2(f), 7.4.3(d)	Assumptions adopted in the calculation of transfer fee or resumption fee	<p>The QRC supports the QCA's proposal to require Aurizon Network to notify an access holder of the amount of a transfer fee or relinquishment fee as well as how that fee was calculated. The QRC proposes that Aurizon Network's obligation should be clarified so that it clearly requires disclosure of any assumptions made by Aurizon Network in calculating the relevant fee, as well as written reasons for those assumptions.</p> <p>In order for an access holder to be able to dispute the assumptions made by Aurizon Network (ie under clause 7.4.4(g)), that access holder must be notified of those assumptions.</p>	●
12	7.4.3	Reduction of relinquishment fee	<p>Where Aurizon Network is aware that a relevant access holder intends to relinquish its access rights, there should be an obligation on Aurizon Network to notify that access holder if it becomes aware of an opportunity to enter into an access agreement with another party which could reduce the relinquishment fee that would apply. Aurizon Network should also be obliged not to unreasonably delay the negotiation and execution of any such access agreement.</p>	●
13	7.4.4(b)(ii)	Revised transfer or relinquishment fee	<p>Clause 7.4.4(b)(ii) contemplates that the access holder might have paid a transfer fee or relinquishment fee before the revised calculation is notified to the access holder. This clause should be amended to clarify that if the access holder has paid an amount in excess of the revised calculation, then the excess should be refunded to the access holder.</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
14	7.5	Mutually exclusive access applications	<p>The QCA's Draft Decision has proposed to reinstate the queuing mechanism in relation to mutually exclusive access applications.</p> <p>The QRC considers that clause 7.5 should more clearly describe the circumstances in which the queue applies and the relevant exceptions to that queue. The QRC has prepared a mark-up of clause 7.5 which reflects the QRC's recommendations in this regard.</p>	●
15	7.6(a)	Capacity resumptions and information requests	<p>Clause 7.6 allows Aurizon Network to resume capacity in certain circumstances. If Aurizon Network is considering resuming capacity, the first step is to issue an 'Information Request Notice' under clause 7.6(a). The QRC considers Aurizon Network should be required to include in the 'Information Request Notice' reasonable details of the sustained alternative demand for the capacity which it is seeking to resume. This information is critical to ensuring that access holders and the QCA can determine whether Aurizon Network has acted properly in subsequently issuing a resumption notice.</p> <p>The QRC also considers there should be a right to dispute an 'Information Request Notice' where there were insufficient grounds for issuing that notice (ie the trigger events in clause 7.6(a) were not met). Allowing a right to dispute upfront will complement the dispute right in respect of a resumption notice under clause 7.6(i) and limit the incidence of access rights being incorrectly resumed.</p>	●
16	7.6(a)(ii)	Trigger for capacity resumption for cyclic traffic	<p>The 'Resumption Trigger Event' in respect of cyclic traffic in clause 7.6(a)(ii) is drafted ambiguously. The QRC recommends that trigger is clarified so that a 'Resumption Trigger Event' only occurs if "<i>an Access Holder fails to operate at least eighty five percent (85%) of the Train Services allowed under the Access Holder's Train Service Entitlement during each Quarter, for four (4) consecutive Quarters.</i>"</p>	●
17	7.6	Capacity resumptions where Aurizon Network fails to contract the resumed access rights	<p>Aurizon Network's ability to resume access rights is dependent on Aurizon Network demonstrating sustained alternative demand for those access rights. Aurizon Network should also have an obligation to reinstate resumed access rights where Aurizon Network fails to contract those resumed access rights within six months after the resumption.</p>	●
18	7.6	Capacity resumptions - other drafting comments	<p>The QRC also recommends the following drafting amendments in respect of clause 7.6:</p> <ul style="list-style-type: none"> References to the access holder "<i>operating</i>" train services in clause 7.6(a)(i) should be replaced with references to the access holder "<i>causing</i>" train services to be operated. An access holder will not ever operate train services in its capacity as access holder, the train services will be operated by the train operator under the relevant train operations deed. 	●

Item No	Clause Reference	Issue	Description	QRC Position
			<ul style="list-style-type: none"> Clause 7.6(c) should clarify that the access holder is only be bound by clause 7.6(c) if Aurizon Network issued the information request notice within the required timeframe. Clause 7.6(d) “<i>can demonstrate</i>” should be replaced with “<i>has demonstrated</i>” in accordance with the recommendation to require Aurizon Network to notify of the sustained alternative demand for capacity discussed at item 15 above. 	
19	7.7.1	Mitigation in respect of a force majeure event	The QRC proposes that Aurizon Network should be subject to an express obligation to mitigate and minimise the effects of a force majeure event. This is a standard requirement in respect of force majeure.	●
20	7.7.1(a)(i)	Notice regarding force majeure event	Aurizon Network should have an obligation to provide regular updates to the affected access holder (and its customer and train operator, as applicable) as to the matters listed in paragraphs (A) to (D) of clause 7.7.1(a)(i). This will ensure the affected access holder (and its customer and train operator, as applicable) is kept reasonably informed in relation to the force majeure event.	●
21	7.7.1(b)(ii), 7.7.2(a)	Provision of notices in relation to force majeure to a customer and train operator	<p>The QRC is particularly interested in ensuring that a customer receives all notices in relation to a force majeure event and that those notices are received at the same time as the access holder. To achieve this outcome, the QRC recommends the following amendments:</p> <ul style="list-style-type: none"> clause 7.7.1(b)(ii) should clarify that Aurizon Network is required to provide a copy of the force majeure notice to the access holder’s customer and train operator (as applicable) at the time of providing that notice to the access holder in accordance with clause 7.7.1(a); and clause 7.7.2(a) should be extended to also require Aurizon Network to provide a copy of any notice of recommencement to the access holder’s customer and train operator (as applicable) at the same time as providing that notice to the access holder. 	●
22	7.7.2	Resuming provision of access rights after force majeure event ends	The drafting of clause 7.7.2 should be tightened so that Aurizon Network is unable benefit from the suspension of its obligations where it is unable to provide access rights due to any reason other than the relevant force majeure event. This could be achieved by replacing the words “ <i>is able to resume provision of Access Rights</i> ” with “ <i>no longer prevented or hindered from providing, whether wholly or in part, Access Rights under an Access Agreement by reason of the relevant Force Majeure Event</i> ”.	●

Item No	Clause Reference	Issue	Description	QRC Position
23	7.7.3(a)(ii)	Test for determining whether the cost of repairing damage or destruction to the network is not economic	The QRC considers that clause 7.7.3(a)(ii) should be amended by deleting the words “ <i>in Aurizon Network’s reasonable opinion</i> ”. The test as to whether repairing damage or destruction to the network is not economic should be an objective test rather than a subjective test which is dependent on Aurizon Network’s opinion.	●
24	7.7.3(a)	Contribution by customers to the repairs or replacement of the network	<p>Clause 7.7.3(a) contemplates that a customer will be given the opportunity to bear the cost of the relevant repairs or replacement. Because of this right, the QRC recommends the following amendments to clause 7.7.3:</p> <ul style="list-style-type: none"> • clause 7.7.3(a) should be amended to require Aurizon Network to provide a copy of the notice in relation to the relevant repairs or replacement to the access holder’s customer. Currently that clause only requires Aurizon Network to provide the notice to the access holder; and • clause 7.7.3(c)(i) should clarify that were a customer has paid the amount for the cost of repairs or replacement to Aurizon Network, it is the customer rather than the access holder who should receive a refund of any amount by which the amount paid exceeds the actual cost of the repairs or replacement. 	●
25	7.7.3(b)	Obligation for Aurizon Network to undertake repairs or replacement within a reasonable time	Clause 7.7.3(b) requires Aurizon Network to proceed with the repairs or replacement within a reasonable time of receiving payment for those repairs or replacement. The QRC considers that clause 7.7.3 should also expressly require Aurizon Network to refund any payment received if the QCA does not proceed with those repairs or replacement within a reasonable time.	●
26	7.7.3(c)(ii)	Obligation to pay additional costs where actual costs of repairs or replacement exceed what was agreed	Clause 7.7.3(c)(ii) requires an access holder (or its customer) to pay any additional costs actually incurred in undertaking the relevant repairs or replacement over and above what was agreed with the access holder (or its customer). Because of this requirement, it is essential that Aurizon Network be subject to stringent obligations in relation to carrying out the relevant works. For example, the QRC considers that Aurizon Network should be subject to undertaking the work diligently, efficiently and in accordance with good industry practice. The QRC also considers that the access holder’s (or customer’s) obligation to contribute funds (including its obligation to contribute additional funds over and above what was agreed with Aurizon Network in advance), should be restricted to the actual costs necessarily and reasonably incurred by Aurizon Network.	●

Item No	Clause Reference	Issue	Description	QRC Position
27	7.7.3(d)	Reduction of access rights as a result of a force majeure event	Clause 7.7.3(d) provides that if an access holder has not agreed to fund the relevant repairs or replacement by giving Aurizon Network a notice within 20 business days, Aurizon Network may reduce the access rights to the extent affected by the force majeure event. Clause 7.7.3 should be amended to facilitate a request by an affected access holder (or its customer) to require Aurizon Network to undertake repairs or replacement at a later date if the access holder (or its customer) agrees to fund those repairs or replacement. It is possible that an access holder (or its customer) may change its mind as to whether it would agree to fund repairs or replacement due to for example a change in market conditions. Clause 7.7.3(d) should not preclude the access holder (or its customer) funding the repairs or replacement at a later date in those circumstances.	
28	7.7.3	Right of dispute	The QRC considers that clause 7.7.3 should include an express right for an access holder, customer and train operator to dispute any matters under that clause in accordance with Part 11 of the Undertaking.	
29	7.7.3	Other drafting comments	The QRC makes the following comments in relation to the drafting of clause 7.7.3: <ul style="list-style-type: none"> • clause 7.7.3(a)(vi) appears to include a typographical error which makes the provision difficult to understand; and • clause 7.7.3(e): <ul style="list-style-type: none"> – refers to ‘Network’ which is undefined; and – should refer to “<i>reduction</i>” rather than “<i>suspension</i>”. 	

1.1 Structure of transfers

The QCA has proposed a number of questions in the Draft Decision in respect of transfers. Those questions are summarised in “Table 50” on page 232 of Volume 2 of the Draft Decision.

The QRC’s position in relation to transfers is reflected in:

- the QRC’s October 2014 Submission under the section titled “Part 7 – Available capacity allocation and management”; and
- the QRC’s Submission on Short Term Transfers dated 17 February 2015 (**QRC STT Submission**).

Without prejudice to those submissions, the QRC has sought to address the QCA’s questions posed in the Draft Decision in the table below. The QRC intends to comment separately on the Aurizon Network Discussion Paper on Potential Short Term Transfer Mechanism dated December 2014 (**AN STT Paper**). The QRC generally accepts Aurizon Network’s proposal in respect of short term transfers as a first step, however, considers some amendments are required to ensure workability with the remainder of the Undertaking, particularly in light of the Draft Decision.

The QRC would also welcome the opportunity to consult further with the QCA and Aurizon Network in relation to long term and short term transfers.

Item No	QCA Issue	QCA question	QRC’s comments
Structure of transfers			
1	General treatment of transfers	<p>Should long term and short term transfers be treated under the same process under the undertaking?</p> <p>Should there be separate rules and procedures for:</p> <ul style="list-style-type: none"> • transfer notices • approval/negotiation of, or pre-approval of transfers • capacity assessments • disputes 	<p>The short term transfer mechanism is intended to operate in conjunction with the existing mechanism for long term transfers. The short term transfer mechanism is not intended to replace the long term transfer mechanism, or be incorporated into that mechanism.</p> <p>The Draft Decision suggests there is no need for separate processes and separate treatments in relation to short term and long term transfers. The QRC disagrees with that position.</p> <p>The QCA has suggested that there is no real difference between short term and long term transfers because short term transfers can occur consecutively. Although consecutive transfers will not be prohibited, short term transfers should be restricted to a three month duration. This will allow Aurizon Network the opportunity to reassess a short term transfer against the relevant criteria at regular intervals. There is no guarantee that multiple consecutive short term transfers will be approved.</p>

Item No	QCA Issue	QCA question	QRC's comments
			<p>The AN STT Paper sets out Aurizon Network's proposal as to the rules and procedures which should apply to short term transfers. This includes in relation to transfer notices, approval and negotiation of transfers, capacity assessments and disputes. The QRC generally supports Aurizon Network's proposal subject to any comments to the contrary.</p> <p>The rules and procedures which should apply in respect of long term transfers are those which are set out in the Draft Decision under clause 7.4.2. That transfer mechanism should be clarified so that it only applies in respect of long term transfers.</p>
2	Duration	If the period of a transfer is a relevant consideration for transfer mechanisms, is 12 months the appropriate duration for a temporary/short term transfer?	The QRC considers that short term transfers should be restricted to three months duration.
3	Transfer fees	When should a transfer incur a transfer fee? Can any party to the transfer pay the fee?	<p>In relation to long term transfers, the QRC generally agrees with the Draft Decision in respect of transfer fees, subject to the comments made above in relation to Part 7.</p> <p>In respect of short term transfers, the QRC agrees with Aurizon Network that no transfer fee should be payable. The QRC's reasoning for this position is detailed in the QRC's October 2014 Submission.</p>
4	Tariff treatment	Can the existing tariff structure accommodate the flexibility required to enable transfers of short duration?	The QRC generally accepts the treatment of tariffs for short term transfers as proposed in the AN STT Paper, subject to any comments to the contrary.
5	Information flow	What information is needed, when and in what form to facilitate transfers? When is a capacity assessment required?	<p>The QRC generally agrees with the Draft Decision with respect to the form of transfers, subject to the comments made above in relation to Part 7. The Draft Decision should be clarified so that those transfer provisions only apply in respect of long term transfers.</p> <p>The information required to facilitate a short term transfer and the form of a short term transfer notice is addressed in the AN STT Paper. The QRC generally supports that proposal subject to any comments to the contrary.</p>

Item No	QCA Issue	QCA question	QRC's comments
6	Ancillary access rights	<p>Does the concept of ancillary access rights only work with transfers of longer duration?</p> <p>Would ancillary access rights form part of the queuing mechanism?</p>	<p>The QRC considers that the concept of 'Ancillary Access Rights' should apply to both long term transfers and short term transfers. 'Ancillary Access Rights' are those access rights required to supplement the transferred access rights in order to provide for complete train paths. In some cases, 'Ancillary Access Rights' will be essential to allow the transferee to use the transferred access rights. Without this concept, a transfer would only be possible where the transferee uses the same route and destination as the transferor, and the transferee's origin is closer to the destination than the transferor. This outcome would be inflexible and would inhibit the development of an effective transfer regime.</p> <p>In respect of long term transfers, the QRC recommends that:</p> <ul style="list-style-type: none"> • the queuing mechanism only applies to transfers to the extent of any 'Ancillary Access Rights'; and • transfers in all other circumstances should be afforded priority (consistent with the Draft Decision). <p>To the extent that a transfer:</p> <ul style="list-style-type: none"> • includes 'Ancillary Access Rights'; and • the transfer and another access application are mutually exclusive in relation to the 'Ancillary Access Rights' (ie this would not be satisfied where the transfer and the other access application are mutually exclusive in relation to the transferred access rights but not in relation to the 'Ancillary Access Rights'), <p>then Aurizon Network should be required to notify the relevant transferee. The transferee should then be required to submit a separate access application in respect of the 'Ancillary Access Rights' which would be subject to the queuing mechanism. This would allow the transferee to maintain priority in respect of the transferred access rights, whilst subjecting the transferee to the same capacity allocation rules as other access seekers in respect of the 'Ancillary Access Rights'.</p> <p>In respect of short term transfers, the AN STT Paper sets out Aurizon Network's proposal regarding 'Ancillary Access Rights'. The QRC generally supports that proposal subject to any comments to the contrary.</p>

Item No	QCA Issue	QCA question	QRC's comments
7	Approvals	<p>When would Aurizon Network approve a transfer?</p> <p>What aspects of a transfer should require approval?</p> <p>What is an appropriate timeline for Aurizon Network to approve a transfer (long or short if relevant)?</p> <p>Are there impediments restricting Aurizon Network from pre-approving transfers?</p> <p>Under what circumstances should Aurizon Network not approve a transfer?</p>	<p>The QRC generally agrees with the Draft Decision in respect of the approval process for long term transfers, subject to the comments made above in relation to Part 7.</p> <p>The AN STT Paper includes recommendations in relation to the approval process for short term transfers. The QRC generally agrees with those recommendations subject to any comments to the contrary.</p>

Part 7A – Baseline Capacity

This part of the Submission outlines the QRC's comments with respect to the Draft Decision in relation to baseline capacity, as captured in Part 7A and Schedule G of the Undertaking.

In the Draft Decision, the QCA has proposed an overhaul of the capacity related provisions in UT4 including by separating those provisions under a new chapter, Part 7A. The QRC is supportive of the QCA's efforts to emphasize the significance of capacity assessments and to increase transparency in an attempt to ensure a broader understanding of capacity related issues amongst stakeholders. The QRC commends the QCA for adopting a comprehensive approach to reviewing Aurizon Network's proposal with respect to capacity.

1 Part 7A - Baseline Capacity

The QRC's specific comments in respect of the Draft Decision in relation to Part 7A are set out in the table below.

- = Agree
- = Agree subject to some comments
- = Disagree

Item No	Clause Reference	Issue	Description	QRC Position
Part 7A				
1	7A.2.1(b)	Dispute concerning network management principles	The QRC supports the QCA's proposal to allow any dispute regarding the network management principles to be dealt with in accordance with Part 11 where the dispute does not arise in respect of an access agreement or train operations deed. This will ensure all stakeholders have the right to dispute Aurizon Network's compliance with the network management principles, not only those who have the ability to do so under an access agreement or train operations deed.	●

Item No	Clause Reference	Issue	Description	QRC Position
2	7A.2.3, 7A.2.4, 7A.2.5	System Rules	<p>The provisions adopted in the Draft Decision in respect of the system rules under clauses 7A.2.3, 7A.2.4 and 7A.2.5 are to be unnecessarily complex. The process for approving the initial system rules and any proposed amendments appears to be repetitive and may be more time consuming than is necessary.</p> <p>The QRC considers that those clauses could be simplified to provide that:</p> <ul style="list-style-type: none"> • Aurizon Network must ensure system rules (which have been approved by the QCA) are in place for each coal system (or a collection of coal systems) at all times (or where system rules do not exist at the time of the approval of the Undertaking, Aurizon Network must ensure those system rules are put in place within 3 months of the approval of the Undertaking); • the approved system rules must be reviewed by Aurizon Network at least annually; • any proposed amendments (or lack thereof) following a review must be approved by the QCA (following public consultation); and • Aurizon Network must adopt any amendments approved or recommended by the QCA. <p>The QRC considers that simplifying the approval and review process in respect of the system rules will promote greater clarity and transparency. A simplified process will also be less time and resource intensive.</p> <p>The QRC's proposed drafting with respect to system rules is contained in clauses 7.6.2 and 7.6.3 of the mark-up document titled "Part 7 – Available capacity allocation and management" in the QRC's October 2014 Submission. However, that drafting will need to be updated to account for circumstances in which system rules do not exist in relation to a particular system at the time of the approval of the Undertaking (as contemplated above).</p>	●
3	7A.3	Supply chain coordination	<p>The QRC supports the QCA's proposal to require Aurizon Network to participate in supply chain groups. The QRC agrees that as a key service provider, Aurizon Network must participate in supply chain coordination in order to promote the overall coordination and efficient operation of the supply chain.</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
4	7A.4.1	Baseline capacity review	<p>Under the Draft Decision, Aurizon Network will be required to undertake a baseline capacity assessment within 6 months of the approval of UT4. The QRC supports this proposal. The QRC considers that reporting the baseline capacity for each coal system upfront will assist to address stakeholder concerns emanating from the lack of transparency in respect of capacity assessments and the current lack of faith in Aurizon Network’s assessment of capacity.</p> <p>The additional rigour proposed by the QCA in respect of the process for approving the baseline capacity assessment is also supported by the QRC. The QRC considers that the significance of a baseline capacity assessment and the potential for that assessment to increase transparency in the interests of access holders, access seekers and their customers warrants a process whereby QCA approval is required upfront. For this reason, the QRC considers there is merit in including separate and distinct processes for the baseline capacity review and subsequent capacity reviews.</p> <p>The QRC similarly supports the proposal to require Aurizon Network to fully disclose the assumptions it adopts in undertaking the capacity assessment which must include (amongst other things) the system operating parameters and the methodology for calculating train service entitlements. Ensuring transparency of the assumptions which underpin capacity assessments will equip stakeholders with the means to meaningfully understand, test and comment on capacity.</p> <p>The QRC does however make the following recommendations for further improvement in respect of clause 7A.4.1:</p> <ul style="list-style-type: none"> • The ‘Baseline Capacity Assessment Report’ should expressly include the report described under clause 7A.4.1(b)(iv). • The requirement for Aurizon Network to consult with access holders under clause 7A.4.1(b)(i) should be extended to customers and train operators. • Clause 7A.4.1(c)(iii) provides that the QCA may, if deemed appropriate, seek submissions after receiving the baseline capacity assessment from Aurizon Network. The QRC considers that the QCA should be obliged to seek submissions from stakeholders on receipt of the baseline capacity assessment. Capacity assessment is of such importance that the QRC consider that it would always be appropriate to seek submissions from stakeholders. • The expert review which may be undertaken by the QCA under clause 7A.4.1(c)(iv) does not seem to be linked to any specific outcome. For example, if an expert review has been obtained by the QCA, it follows that the QCA should only be able to approve a baseline capacity assessment to the extent consistent with that expert review. 	●

Item No	Clause Reference	Issue	Description	QRC Position
5	7A.4.2(a)	Triggers for subsequent capacity reviews	<p>In the QRC's October 2014 Submission, the QRC proposed some mark-up to the triggers for capacity reviews (refer to clause 8.11.3(a)(ii) of the mark-up document titled "Part 8.2 – Network development"). In accordance with that submission, the QRC proposes that the triggers for capacity reviews be expanded to include where:</p> <ul style="list-style-type: none"> the system operating parameters are varied under clause 7A.5(b); or Aurizon Network is aware of a below rail change which is not otherwise reflected in the system operating parameters but which is expected to result in a material and sustained change to the existing capacity of a coal system. 	
6	7A.4.2(b)(iv)	Assumptions affecting capacity	<p>The QRC considers clause 7A.4.2(b)(iv) should be linked to the assumptions listed in clause 7A.4.1(b)(iv).</p> <p>Clause 7A.4.1(b)(iv) lists the assumptions Aurizon Network must consider (and disclose) in undertaking a baseline capacity assessment. The QRC considers Aurizon Network should also be required to consider (and disclose) those same listed assumptions in respect of any subsequent capacity review.</p>	
7	7A.4.2(d)	Outcome of an independent expert review of a capacity assessment	<p>Clause 7A.4.2(d) affords both the QCA and access holders (or their customers) the power to trigger an independent expert review of a capacity assessment published by Aurizon Network. Whilst the QRC supports that review right, the QRC is concerned that the expert review appears to lead to no particular outcome, other than the development and distribution of an expert report.</p> <p>As outlined in the QRC's October 2014 Submission, the QRC considers that an expert report should be binding on Aurizon Network. The QRC does not agree with an independent review process which is conducted for informational purposes only. An expert report which is produced for informational purposes provides little value or substance to the capacity review process.</p>	

Item No	Clause Reference	Issue	Description	QRC Position
8	7A.4.2(d)	Independent expert engaged by Aurizon Network to undertake a review of a capacity assessment	<p>Where an independent review is triggered by access holders (or their customers) in respect of a capacity assessment, the QCA has proposed that the independent expert must be acceptable to those access holders (or customers). Whilst the QRC appreciates the QCA's proposal, such a requirement will be difficult to administer in practice. Rather, the QRC would accept a requirement for the expert:</p> <ul style="list-style-type: none"> • to be approved by the QCA; and • to acknowledge a duty to the access holders (and their customers) to act independent and in accordance with the Undertaking. 	●
9	7A.4.2(d)(iii)	Scope of review by an independent expert	<p>The QRC recommends that clause 7A.4.2(d)(iii) be amended to clarify that in undertaking a review of a capacity assessment, an independent expert will review any assumptions underpinning the capacity assessment including the system operating parameters. The assumptions which are considered in assessing capacity are as important as the assessment of capacity itself.</p>	●
10	7A.4.1(i), 7A.4.2(g), 7A.4.3(d), 7A.5(f)	<p>Confidentiality obligations in respect of a disclosure of:</p> <ul style="list-style-type: none"> • baseline capacity assessment; • capacity assessments; • capacity deficits; and • system operating parameters. 	<p>The QRC supports the QCA's proposal to restrict Aurizon Network's ability to rely on confidentiality obligations to avoid disclosing:</p> <ul style="list-style-type: none"> • baseline capacity assessments; • capacity assessments; • assessments of a capacity deficit; and • the system operating parameters. <p>As outlined in the QRC's October 2014 Submission, the QRC was concerned that Aurizon Network might rely on vague and undisclosed confidentiality obligations to justify withholding information from stakeholders which would lead to a lack of transparency and heightened scepticism regarding capacity related issues.</p> <p>The QRC particularly supports the QCA's proposal to prohibit Aurizon Network from agreeing confidentiality obligations which prevent the disclosure of information relating to capacity assessments, deficits and system operating parameters. It would be inappropriate for Aurizon Network to agree any such confidentiality obligations.</p> <p>However, the QRC considers that the prohibition on Aurizon Network agreeing confidentiality</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
			<p>obligations should be more clearly linked to the information which Aurizon Network must disclose. For example, under clause 7A.4.1, paragraphs (i) and (j) should be clearly interlinked so that those clauses work together. The QRC also suggests it may be appropriate to include some examples of when it may be acceptable for Aurizon Network to agree confidentiality obligations.</p>	
11	7A.4.3	Capacity deficit	<p>The QRC broadly supports the QCA’s proposal to develop a capacity assessment regime whereby Aurizon Network is held accountable for a capacity deficit. Aurizon Network should be held accountable for delivering the capacity which it contracts. To ensure this, the QRC considers clause 7A.4.3 should expressly acknowledge that nothing in that clause affects or limits Aurizon Network’s obligations or liabilities under any access agreement or other agreement.</p> <p>The QCA has also proposed that where a capacity deficit exists, Aurizon Network is required to address that capacity deficit by undertaking and funding an expansion. The QRC is concerned that there may be unintended consequences which flow from this obligation. For example, there may not be merit in undertaking the expansion where other parts of the system could not match the capacity of the below rail assets. In the case of each shortfall consideration should also be given to whether augmentation to other parts of the system could more economically make-up the shortfall. One way of addressing this concern, would be to require the approval of the access holders affected by the deficit prior to Aurizon Network carrying out the relevant expansion.</p>	●
12	7A.5	System operating parameters	<p>The system operating parameters are an important component to ensuring access holders have the necessary information to meaningful comment on capacity. For this reason, it is imperative that system operating parameters are in place at all times in respect of each system. Clause 7A.5 could benefit from a specific obligation on Aurizon Network to ensure that system operating parameters (which have been approved by the QCA) are in place for each system at all times.</p> <p>The QRC also considers the system operating parameters, and any proposed amendments of the system operating parameters, should require the QCA’s approval. Aurizon Network should be obliged to amend the system operating parameters as approved by the QCA.</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
13	7A.5(a)(i)	Notifying affected access holders, access seekers and customers regarding system operating parameters	<p>Clause 7A.5(a)(i)(A) requires Aurizon Network to notify any affected access holders, access seekers and customers of any amendments resulting from a review of the system operating parameters. The requirement for Aurizon Network to notify a customer is however limited to the extent the access holder or access seeker has provided Aurizon Network with the customer's contact details.</p> <p>Given the importance of ensuring an affected customer is notified, the QRC considers there should be a requirement for Aurizon Network to seek to obtain customer contact details. Without an obligation on Aurizon Network to actively seek to keep customers informed, customers will not be equipped with the means to meaningfully comment on capacity and capacity assessments.</p>	
14	7A.5(a)(v)	Responding to submission regarding the system operating parameters	<p>This clause should be amended to require Aurizon Network to respond to any submissions received within 10 Business Days, rather than as soon as reasonably practicable. Leaving an undefined time period for a response does not acknowledge the need for fast and accurate amendments which are often required in this context.</p>	
15	7A.5(b)	Review of the system operating parameters	<p>Clause 7A.5(b) requires Aurizon Network to review the system operating parameters where there is a “<i>permanent change</i>” which “<i>materially adversely affects the system operating parameters</i>”. The QRC considers the reference to a “<i>permanent</i>” and “<i>adverse</i>” change is confusing and misleading. In this context, a change is unlikely to ever be permanent and there appears no reason to restrict a review of the system operating parameters to an adverse effect.</p> <p>In its October 2014 Submission, the QRC proposed that this clause be amended to require a review where there is a “<i>sustained change</i>” which “<i>materially affects the system operating parameters</i>”. In the QRC's October 2014 Submission, the QRC also proposed that a number of additional events be included as triggers for Aurizon Network to review the system operating parameters. The QRC maintains that those proposed changes should be adopted.</p>	
16	7A.5(b)	Outcome of a review of the system operating parameters	<p>There should be a clear obligation on Aurizon Network to promptly make the outcomes of any review of the system operating parameters available to all interested parties. This amendment is required to ensure transparency in relation to any review of the system operating parameters. Transparency in relation to the system operating parameters is particularly important for the reasons outlined at item 12 above.</p>	

Item No	Clause Reference	Issue	Description	QRC Position
17	7A.6	Content and scope of the network development plan	<p>The QRC supports the amendments proposed by the QCA in respect of the network development plan. In particular, the QRC supports the proposal to provide additional detail as to the scope of, and minimum requirements of, a network development plan as well as the criteria which Aurizon Network must consider in developing the network development plan. Those changes will allow for a better understanding of the network development plan amongst stakeholders and assist to combat the uncertainty which exists in relation to the purpose and content of the document.</p> <p>The QRC also considers there should be a requirement for the network development plan:</p> <ul style="list-style-type: none"> to be consistent with good engineering practices, similar to the requirement in respect of the system operating parameters; and to detail the particular segments within each 'Coal System' which are constrained such that they are limiting the capacity of the relevant 'Coal System'. 	
18	7A.6(e)	Peer review of the network development plan	<p>The QRC supports the QCA's proposal to allow access holders to require a peer review in relation to the preparation or development of the network development plan. Allowing a peer review will assist with the accuracy and relevancy of the network development plan.</p>	
19	7A.6(c)	Trigger for review of the network development plan	<p>The QRC supports the QCA's proposal to include the following as additional triggers for a review of the network development plan:</p> <ul style="list-style-type: none"> if a new coal basin or port terminal is connected; at the completion of a major expansion; and where requested by the QCA or by 60% of access holders (or their customers). <p>In addition to those changes, the QRC proposes that clause 7A.6(c)(i) be amended so that a review is required where there is change which materially affects the network development plan in any way (rather than only a change which materially "adversely" affects the network development plan). For the same reasons outlined at item 15 above, reference to "adversely" in this context is unnecessary.</p>	

2 Schedule G - Network management principles

The QRC's specific comments in respect of the Draft Decision in relation to Schedule G are set out in the table below.

-  = Agree
 = Agree subject to some comments
 = Disagree

Item No	Clause Reference	Issue	Description	QRC Position
Schedule G				
1	2(a)(ii)	Aurizon Network's obligation to make the strategic train plan available	Aurizon Network's obligation in clause 2(a)(ii) to make the strategic plan available on request should be extended to customers. The provision of information to customers is as important as the provision of information to access seekers and access holders.	
2	2(c), (d) 3.1(f), (g) 4(f), (g) 5.2(c), (d)	Confidentiality obligations in respect of a disclosure of: <ul style="list-style-type: none"> • strategic train plan; • master train plan; • intermediate train plan; and • daily train plan. 	The QRC supports the amendments proposed by the QCA which seek to specify the disclosure requirements of Aurizon Network in respect of the strategic train plan, master train plan, intermediate train plan and daily train plan, and which expressly limit Aurizon Network's ability to rely on confidentiality obligations to avoid disclosing those plans. In respect of clauses 2(c)-(d), 3.1(f)-(g), 4(f)-(g) and 5.2(c)-(d) of Schedule G, the QRC makes the same drafting comments as outlined in relation to Part 7A at item 10 above.	
3	2(h)	Review or audit of a strategic train plan	The QRC supports the QCA having the right to require a strategic train plan to be reviewed by an independent expert or audited.	
4	3.1(c), (e)	Master train plan considerations	The QRC supports the proposal to require Aurizon Network to consider certain factors in preparing the master train plan, including the system operating parameters and any expansions. The QRC also supports the requirement for a master train plan to specify the material assumptions made by Aurizon Network in preparing the plan. The QRC considers these amendments will assist to increase transparency.	

Item No	Clause Reference	Issue	Description	QRC Position
5	3.2(a)(v), (b)	Modifications to a master train plan	Where Aurizon Network seeks to modify a master train plan under paragraphs (a)(v) or (b) of clause 3.2, the QRC considers that Aurizon Network should also consult with the affected customers.	●
6	3.2(c)	Consultation with infrastructure service providers and railway managers	The phrase “ <i>Aurizon Network considers</i> ” should be deleted from clause 3.2(c) so that whether an infrastructure service provider or a railway manager may be affected by any modification to the master train plan is an objective rather than subjective test.	●
7	3.2(e)(i)	Restrictions on modifying a master train plan	The QRC supports clause 3.2(e) which proposes to prevent Aurizon Network making unilateral amendments to the master train plan which materially disadvantages any access holder (or its customer).	●
8	4	Period of ITP	The QRC recommends that clause 4 be amended to clarify the timeframe which the ITP is intended to cover.	●
9	4(f)	Timeframe for issuing the ITP	Clause 4(f) should be amended to clarify that Aurizon Network is required to issue the ITP by “ <i>1600 hours on each Thursday during the Term before the commencement of the next ITP period</i> ”.	●
10	5.2	DTP consistent with the ITP	Aurizon Network should be required to schedule the DTP consistent with the ITP, except to the extent that it is permitted to schedule the DTP in variation to the ITP in accordance with clause 5.4. This obligation should be expressly stated in clause 5.2.	●
11	5.2(a), (b)	Scheduling and notification of a DTP	Aurizon Network is required to schedule a DTP at least 24 hours in advance, however, is only required to provide a copy of the DTP to all access holders and infrastructure providers by 1400 hours on the day prior to the day of operation. The QRC questions whether different timeframes are required in this regard. The QRC also considers that the time at which the ‘Day of Operation’ commences should be clearly specified in clause 5.2(a).	●

Item No	Clause Reference	Issue	Description	QRC Position
12	5.4(b)	Requirements for a request or notice to schedule the DTP in variation to the ITP	Clause 5.4(b) requires Aurizon Network to notify access holders of the requirements for any request or notice to schedule the DTP in variation to the ITP from time to time. The QRC considers that it would be reasonable for Aurizon Network to include in the Undertaking its requirements as at the 'Approval Date'.	●
13	5.4(c)	Interaction between the system rules and obligations under Schedule G	The system rules should not allow Aurizon Network to avoid any obligations which exist under Schedule G. For example, the system rules should not permit the submission of requests for ad hoc train services less than 48 hours prior to the day of operation, as required under clause 5.4(c) of Schedule G.	●
14	5.4, 5.5	Timing of DTP scheduling	Once the DTP is scheduled, access holders lose the ability to require the DTP to be scheduled in variation to the ITP under clauses 5.4 and 5.5. Aurizon Network is required to schedule the DTP at least 24 hours prior to the day of operation, however, there is no limit on Aurizon Network's ability to do this well in advance of that time. The QRC considers that Aurizon Network should be prevented from scheduling the DTP a specified number of days prior to the day of operation.	●
15	7.6(a)	Monthly train service entitlement notice	The reference under clause 7.6(a) to 'End User' should be updated to 'Customer'.	●

Part 8 – Network development and expansions

This part of the Submission outlines the QRC's position with respect to Part 8 of the Draft Decision in relation to network planning, expansion and expansion funding obligations, as captured in Part 8 of the Undertaking.

As the QRC has pointed out in previous submissions, Part 8 deals with some of the most crucial aspects of UT4. Network planning and development, the expansion process and Aurizon Network's funding obligations are key elements to the provision of access.

1 Part 8 – Network development and expansions

The QRC sets out its position in respect of the key aspects of Part 8 below.

-  = Agree
-  = Agree subject to some comments
-  = Disagree

Item No	Clause Reference	Issue	Description	QRC Position
Part 8				
1	N/A	Definition of 'Expansion'	The definition of 'Expansion' is generally used by Aurizon Network and stakeholders to mean work undertaken to increase the capacity of the 'Rail Infrastructure'. The definition of 'Expansion' does not however expressly refer to an increase in the capacity of the 'Rail Infrastructure'. The definition of 'Expansion' excludes certain categories of work. One of the categories of works excluded is 'Asset Replacement and Renewal Expenditure'. When those particular exclusions are applied to the definition it is difficult to think of 'Expansion' work that would not increase capacity. The QRC therefore question whether the definition of 'Expansion' could be made clearer by expressly acknowledging that an 'Expansion' is to increase capacity, rather than through implication.	

Item No	Clause Reference	Issue	Description	QRC Position
2	8.2	Technical and economic feasibility of expansions	<p>The QRC supports the QCA's approach to the technical and economic feasibility of expansions and considers that the QCA has largely adopted the position jointly proposed by the QRC and Aurizon Network on this issue.</p> <p>The QRC considers that the QCA's incorporation of a concept of deemed approval (at clause 8.2.1(c)(i)) in relation to the technical and economic feasibility of expansions is appropriate.</p>	●
3	Old 8.2.1(d)	Aurizon Network's legitimate business interests	<p>The QRC supports the proposal of the QCA in respect of the legitimate business interests of Aurizon Network as relevant to expansions. The QRC acknowledges the legislative requirement for the QCA to consider the legitimate business interests of Aurizon Network as a factor in the context of the expansion process, however, agrees with the QCA's view that the legitimate business interests of Aurizon Network are appropriately satisfied through the provision of the regulated rate of return and relevant operating and maintenance costs upon investment. Therefore the QRC agrees that there is no need to incorporate direct references to the legitimate business interests of Aurizon Network as relevant to the expansion process.</p>	●
4	8.2.1(l)	Construction of expansions	<p>The QRC considers it appropriate that construction of expansions must be by Aurizon Network. The QRC notes that there may be circumstances in which a party other than Aurizon Network is responsible for construction of the expansion – for example in a step-in event.</p>	●
5	8.2.2	Disputes under Part 8	<p><i>Consolidation of dispute resolution provisions and timeframes</i></p> <p>The QRC supports the QCA's consolidation of the dispute resolution provisions applying to Part 8, however, considers that more specific timeframes could be incorporated to improve the efficiency of the consolidated dispute resolution mechanism.</p> <p>As identified in previous UT4 submissions, the QRC would like to ensure that stakeholders are not discouraged from referring disputes for resolution due to the time taken to resolve disputes. The QRC considers that incorporating more specific timeframes in this provision would contribute to a robust and efficient dispute resolution mechanism.</p> <p><i>Expert determination</i></p> <p>The QRC suggests that incorporating an expert determination element in the Part 8 dispute resolution mechanism may be beneficial to all stakeholders. An expert process may be more conducive to an expedited timeframe.</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
6	8.2.4	Demand assessments	<p><i>Removal of EOI process conducted by Aurizon Network and confidentiality provisions</i></p> <p>The QRC supports the removal of an EOI process. The QRC was concerned that if the EOI process were to be retained, there would be considerable scope for Aurizon Network to obtain access to sensitive commercial information that it would not otherwise have the benefit of.</p> <p><i>Exclusion of certain information from demand assessment process</i></p> <p>The QRC supports the QCA's proposal to exclude particular information relating to the status of coal reserves and resources, mining tenure and key approvals from the demand assessment process, for the same reasons as outlined above in relation to the removal of the EOI process.</p> <p><i>Demand assessments and capacity</i></p> <p>The QRC supports the QCA proposal that demand assessment reports not exceed the outloading capacity being sought at a coal terminal.</p>	
7	8.4.1	Concept Studies	<p>The QRC supports the QCA's approach to the funding of concept studies. That is, that Aurizon Network fund concept studies, unless a concept study is requested by an access seeker or the access seeker offers to fund.</p> <p>As noted in previous submissions, the QRC agrees that in the event that Aurizon Network does not fund a concept study, the funding party must not be provided with any rights generally that they would not otherwise have been entitled to had they not funded the concept study.</p>	

Item No	Clause Reference	Issue	Description	QRC Position
8	8.4.2	Pre-feasibility Studies	<p>The QRC is supportive of the simplification which the QCA has made to clause 8.4.2.</p> <p><i>Selecting funders</i></p> <p>As outlined in previous submissions, the QRC supports the proposed criteria for selecting pre-feasibility study funders, as the QRC considers that potential funders who are not at an advanced stage of their project should not be precluded from providing funding.</p> <p><i>Notification of likelihood of Aurizon Network funding</i></p> <p>The QRC agrees with the QCA proposal that Aurizon Network be required to notify access seekers and funders of the likelihood of Aurizon Network funding a project, or otherwise, at the commencement of a pre-feasibility study.</p> <p><i>Costs incurred by Aurizon Network</i></p> <p>The QRC also supports the QCA's proposal that costs incurred by Aurizon Network in funding or electing to continue to undertake and complete a pre-feasibility study in certain circumstances, should not be included in the regulated asset base, except where an expansion is developed.</p>	●
9	8.4.3	Feasibility Studies	<p>The QRC supports the proposed drafting simplification around clause 8.4.3, particularly the deletion of certain duplicated criteria for selecting feasibility study funders.</p> <p><i>Requirement for Aurizon Network to provide final notification</i></p> <p>The QRC agrees with the QCA proposal that Aurizon Network be required to provide final notification to access seekers at the commencement of a feasibility study as to whether Aurizon Network will fund a project, as this will help to ensure that access seekers:</p> <ul style="list-style-type: none"> • can engage with financiers or internal approvals as early as possible during the study process; and • are better placed to ensure project development timelines can be aligned to operational ramp-up requirements. <p><i>Feasibility study funders</i></p> <p>As outlined in previous submissions, the QRC supports the proposal that Aurizon Network is not to have broad discretion when choosing who funds a feasibility study.</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
10	8.3 and 8.4	Other common matters in relation to concept, pre-feasibility and feasibility studies	<p><i>Amendments to scope of Studies</i></p> <p>The QRC supports the QCA proposal in the Draft Decision that Aurizon Network be prevented from amending the scope of concept, pre-feasibility and feasibility studies unless agreed by all funders. However, the QRC has concerns that under the Standard Studies Funding Agreement:</p> <ul style="list-style-type: none"> • Aurizon Network has the ability at clause 9.2(a) of the Standard Studies Funding Agreement to force through changes to the scope – this is inconsistent with the drafting proposed in the Draft Decision, is commercially unreasonable and should be deleted; and • if Aurizon Network proposes a variation to the scope of works and a study funder does not agree to pay, the Standard Studies Funding Agreement will automatically terminate under clause 9.5(c) – the QRC submits that this provision should be deleted as it is commercially unreasonable. <p><i>Timelines around Studies Funding Agreements</i></p> <p>The QRC supports the inclusion of specific timeframes for the completion of schedules in the Standard Studies Funding Agreement as this contributes to an efficient process.</p>	
11	8.3.4(g)	Form of study documents provided to access seekers	<p>The QRC disagrees with the form of the study documents proposed to be provided to access seekers. Specifically, the QRC holds concerns about the level of information to be provided to access seekers as distinct from that to be provided to the QCA and suggests that the level of information to be provided to both should be more closely aligned. Specifically, the QRC suggests that the obligation at clause 8.3.4(g)(i) for Aurizon Network to provide a study document on an unredacted basis to the QCA should also be extended to the relevant access seeker.</p> <p>The QRC acknowledges the QCA proposal that Aurizon Network must not agree to any confidentiality obligations that would prevent the disclosure of information contained in the above studies.</p> <p>The QRC has separately commented on the Standard Studies Funding Agreement.</p>	
12	8.3.3	Target capacity	<p>The QRC refers to previous submissions regarding target capacity and broadly supports the proposed QCA amendments to the determination by Aurizon Network of target capacity. The QRC is particularly supportive of the requirement for Aurizon Network to have regard to the outcomes of the relevant pre-feasibility study, including the scope determined for the feasibility study, when determining target capacity.</p>	

Item No	Clause Reference	Issue	Description	QRC Position
13	8.5 (d)	Provisional capacity allocations - good faith obligation on Aurizon Network when withdrawing provisional capacity allocations	<p>The QRC supports the proposed inclusion of an obligation on Aurizon Network to act reasonably and in good faith when withdrawing all or part of a provisional capacity allocation, in addition to the narrowing proposed by the QCA of the circumstances in which Aurizon Network may take such action.</p> <p>However, Aurizon Network should also be required to provide an explanation of the calculation of the target capacity and access seekers should have an ability to dispute this.</p>	
14	8.5(e) and (f)	Provisional capacity allocations – deletion of requirement to provide written notice when withdrawing provisional capacity allocations	<p>The QRC disagrees with the deletion of the requirement for Aurizon Network to provide written notice regarding the withdrawal of all or part of a provisional capacity allocation. The QRC suggests that it would be more appropriate to require Aurizon Network to provide written notice in these circumstances for record and reference purposes and does not consider that this would be unduly onerous for Aurizon Network.</p> <p>Further, the QRC suggests that it would be appropriate for Aurizon Network to have a limited window in which to exercise its rights to withdraw a provisional capacity allocation. If Aurizon Network fails to exercise this right within the permitted window, Aurizon Network would forfeit this right. The QRC considers that the permitted window should commence within a certain period after receipt of a notice under clause 8.5(e)(i) or the assignment being effected under clause 8.5(e)(ii).</p>	
15	8.5(e) and (i)	Provisional capacity allocations – assignment of study funding agreements	<p>The QRC supports the inclusion of a right for feasibility funders to assign their study funding agreement to a replacement access seeker.</p> <p>The QRC also supports the proposed treatment of costs between replacement feasibility funders, Aurizon Network and the exiting access seeker which has been proposed by the QCA.</p>	
16	8.6	Step-in where Aurizon Network fails to comply with studies funding agreement requirements	<p><i>Step-in rights generally</i></p> <p>The QRC supports the proposed QCA position in respect of step-in rights where Aurizon Network fails to comply with studies funding agreement requirements, including timelines and outputs. The QRC particularly agrees:</p> <ul style="list-style-type: none"> with the QCA proposal that study funders should have the ability to trigger step-in rights if Aurizon Network fails to meet study, scope or timeline obligations; with the QCA proposal to allow study funders rights to audit study costs in order to incentivise Aurizon Network to manage study costs efficiently; 	

Item No	Clause Reference	Issue	Description	QRC Position
			<ul style="list-style-type: none"> that where the QCA determines that a study is to be undertaken by the nominee of all relevant customers, that nominee should be required to comply with certain confidentiality obligations; and that Aurizon Network should be required to provide the nominee with all assistance (including information) which is reasonably required by the nominee to undertake the study, as opposed to merely being required to provide information that Aurizon Network can lawfully provide. <p><i>Written notice of dispute to access seekers following publication of a study by a nominee</i></p> <p>The QRC suggests that the obligation for Aurizon Network to provide written notice of referral of a dispute to the QCA following publication of a study by a nominee should be reinstated. The QRC makes this suggestion on the basis that written notification would better enable access seekers to make submissions to the QCA in respect of the dispute in question and to be put on notice as soon as possible following a referral.</p> <p><i>Reference to standard of works</i></p> <p>The QRC considers that for clarity, the reference to scope at clause 8.6(e)(iii) should expressly include the standard of works as included at clause 8.6(d).</p>	
17	8.7 and 8.8	Funding expansions (general and user funded)	<p><i>8.7 Access funding</i></p> <p>As is noted in the QRC's submissions on Part 6, the QRC considers an Aurizon Network mandatory funding obligation to be necessary. SUFA will not be suitable for all projects.</p> <p><i>8.8 Process to agree SUFA documents</i></p> <p>Part 8.8 sets out the process to negotiate SUFA agreements. In order for that negotiation process to be efficient and fast it will be necessary for Aurizon Network to provide the relevant access seeker with sufficient information about the scope of the proposed expansion and its estimated cost. It is not sufficient to rely upon the relevant study report because the study report will not capture all information relevant to the expansion. The QRC therefore considers that clause 8.8 should be amended to oblige Aurizon Network to provide all relevant scope and cost information.</p>	
18	8.8	Tax rulings and review of SUFA	<p><i>Further details around tax rulings</i></p> <p>The QRC supports the additional detail the QCA has proposed around:</p> <ul style="list-style-type: none"> statutory severance of user funded expansions from the land on which such expansions sit; and processes associated with seeking binding tax advice from the Australian Taxation Office, 	

Item No	Clause Reference	Issue	Description	QRC Position
			<p>as the QRC considers that this additional detail provides greater clarity for stakeholders in relation to taxation matters. However, the QRC suggests that specific timeframes should be incorporated in respect of Aurizon Network’s obligation to seek statutory severance in order to give stakeholders more certainty around when this will occur.</p> <p><i>Review of SUFA</i></p> <p>The QRC is broadly supportive of the QCA proposed amendments to clause 8.8.4 relating to the review of SUFA. The QRC particularly commends the proposal for the QCA to have an ability to develop amendments to SUFA to improve its workability in particular circumstances, as the QRC considers this will contribute to an efficient expansion process.</p> <p>The QRC agrees with the suggestion by the QCA that this review process is important to ensure that the SUFA structure can be amended over time in the event that specific concerns are raised with respect to the credibility, workability and bankability of SUFA.</p>	
19	8.9.1 and 8.9.2	Contracting for capacity	<p>The QRC acknowledges the previous work completed by Aurizon Network and the QRC to reach a negotiated position on the capacity contracting provisions of Part 8.</p> <p><i>Access agreements conditional on an expansion – scope of work may be determined through resolution of a dispute in accordance with clause 11</i></p> <p>The QRC considers it appropriate to note that for the purposes of clause 8.9.1, the scope of work for an expansion may have been determined through resolution of a dispute in accordance with clause 11.1. The QRC considers that recourse to this formal dispute resolution process will function as an effective circuit breaker where Aurizon Network and an access seeker may not agree the scope of work for an expansion.</p> <p><i>Capacity analysis – timing of Aurizon Network’s obligations</i></p> <p>The QRC considers that Aurizon Network should be required to notify all conditional access holders of its conclusions relating to assessment of a capacity change under clause 8.9.2(a) (and the basis for these conclusions) within a specific timeframe. The QRC suggests that this notification period should be within five business days of Aurizon Network reaching a conclusion. The QRC considers that incorporating a specific timeframe will contribute to a more efficient and certain expansion process.</p> <p><i>Deferral of assessment of a capacity change</i></p> <p>The QRC considers it inappropriate for Aurizon Network to have the ability to defer an assessment of a capacity change until Aurizon Network considers that the expansion is fully operational. The QRC</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
			<p>is strongly of the view that conditional access holders should be able to require Aurizon Network to assess the capacity change within six months following commissioning.</p> <p>If Aurizon Network were to fail to undertake the capacity change within the above required period, the QRC suggests that conditional access holders should be entitled to engage a third party independent expert, at the cost of Aurizon Network, to undertake the assessment.</p> <p><i>Capacity shortfalls</i></p> <p>The QRC broadly supports the approach to capacity shortfalls adopted by the QCA at clause 8.9.3 in respect of the conditional access rights of conditional access holders and considers it appropriate that the deemed access application contemplated in this clause be taken to be on the same terms as the previous access application made by that conditional access holder for those conditional access rights.</p>	
20	8.9.3 and 8.9.5	Overlap of capacity shortfall provisions	The QRC notes that there is overlap between Parts 8.9.3 and 8.9.5. To remove ambiguity these parts could be rationalised.	●
21	8.9.4(b)	Funding a shortfall expansion	The QRC considers that clause 8.9.4(b) should be deleted on the basis that the breadth of the clause potentially allows Aurizon Network to avoid its obligations in relation to the funding of a capacity shortfall, which is unacceptable.	●

Part 9 – Connecting private infrastructure

This part of the Submission outlines the QRC's comments with respect to the Draft Decision in relation to the connection of 'Private Infrastructure', as captured in Part 9 and Schedule J of the Undertaking and the Standard Rail Connection Agreement (**SRCA**).

1 Part 9 – Connecting private infrastructure

The QRC sets out its position in respect of the key aspects of Part 9 below.

- = Agree
- = Agree subject to some comments
- = Disagree

Item No	Clause Reference	Issue	Description	QRC Position
Part 9				
1	General	Ability of 'Private Infrastructure Owners' who are not 'Access Seekers' to invoke Part 9	As outlined in the QRC's October 2014 Submission, the QRC continues to support the capability of 'Private Infrastructure Owners' who are not 'Access Seekers' to invoke Part 9.	●
2	General	Lack of standard construction agreement for connection purposes	<i>QRC position</i> The QRC continues to hold the concerns expressed in the QRC's October 2014 Submission regarding the requirement for a separate construction agreement in respect of the construction of 'Connecting Infrastructure' by Aurizon Network. The QRC maintains the view that this is a significant shortfall in the connection process set out in Part 9 and again suggests that requiring the parties to agree the terms of the construction agreement (with the background of limited principles set out in the SRCA) will result in unacceptable delays and potential disputes. The QRC again suggests that	●

Item No	Clause Reference	Issue	Description	QRC Position
			<p>the requirement to agree the terms of a separate construction agreement undermines the benefit of having a SRCA.</p> <p><i>QCA suggestion and request for comments – reference to SUFA construction agreement</i></p> <p>The QRC acknowledges the comments of the QCA in respect of this issue and the QCA's proposal to potentially adopt the SUFA construction agreement as a starting point for the purpose of Part 9. The QRC would be supportive of using the SUFA construction contract with the amendments proposed by the QRC as a part of its SUFA submission.</p>	
3	General	Connecting Infrastructure in Regulatory Asset Base	<p>The SRCA contemplates that the cost of constructing, modifying, repairing and replacing the connecting infrastructure will be borne by the private infrastructure owner. For example:</p> <ul style="list-style-type: none"> • If the private infrastructure owner constructs the connecting infrastructure it does so at its own cost (clause 6). • If Aurizon Network constructs the connecting infrastructure it does so at the cost of the private infrastructure owner (clause 7(a)(i)). • If Aurizon Network requires modifications, upgrades or replacements to the connecting infrastructure post-commissioning, these costs will be borne by the private infrastructure owner (clause 8(f)). • If the connecting Infrastructure is damaged or destroyed by a force majeure event then the repair or replacement of the connecting infrastructure is subject to the private infrastructure owner agreeing to bear the cost (clause 17.4). <p>However, the Undertaking provides that the connecting infrastructure will be owned by Aurizon Network or leased by Aurizon Network under an infrastructure lease (clause 9.1(c)). Similarly, the SRCA also provides that the connecting infrastructure must be owned by Aurizon Network (clause 8(a)(i)). The intended outcome appears to be that the connecting infrastructure will become 'Rail Infrastructure' under the Undertaking.</p> <p>Given that Aurizon Network will not have paid for the construction of the connecting infrastructure, how does Aurizon Network propose to treat the connecting infrastructure when valuing the rail infrastructure (including the connecting infrastructure) for the purpose of developing Reference Tariffs?</p> <p>See further queries below in relation to the process for vesting of title to, or a leasehold interest in, the connecting infrastructure in Aurizon Network.</p>	N/A

Item No	Clause Reference	Issue	Description	QRC Position
4	Throughout, such as 9.1(d)(ii)(B), 9.1(d)(ii)(C), 9.1(e)(ii), 9.1(h), 9.1(i) and 9.1(j)	Ability for Aurizon Network or 'Private Infrastructure Owner' to design and construct 'Connecting Infrastructure' – drafting overlap	The QRC is concerned that although Part 9 and the SRCA clearly contemplate that connecting infrastructure may be designed and constructed by either Aurizon Network or the 'Private Infrastructure Owner', Part 9 (and to a lesser extent the SRCA) is in some areas drafted from the perspective of only Aurizon Network designing and constructing. The QRC suggests that the capability for the 'Private Infrastructure Owner' to design and construct connecting infrastructure needs to be more consistently provided for in Part 9 and where relevant, the SRCA.	
5	9.1(a)	Requirement for Private Infrastructure Owners to submit connection proposal	<p>Clause 9.1(a) requires private infrastructure owners to submit a connection proposal to Aurizon Network. It appears that the reference to 'Private Infrastructure Owner' is only intended to refer to the owner of rail transport infrastructure that has a direct interface with the connecting infrastructure (rather than owners of any other rail transport infrastructure that will become connected to the Network by virtue of the Connecting Infrastructure but not via a direct interface with the connecting infrastructure). If this is the intention then it is recommended that the definition of 'Private Infrastructure Owner' be clarified.</p> <p>The Undertaking does not specify a process for determining which entity (ie the private infrastructure owner or Aurizon Network) will undertake the design, construction and commissioning of the connecting infrastructure. To clarify this issue, the QRC recommends that the connection proposal submitted by the private infrastructure owner under clause 9.1(a) should specify the private infrastructure owner's preference as to whether the design, construction and commissioning of the connecting infrastructure should be undertaken by Aurizon Network or the private infrastructure owner and the connection proposal should be formulated on the basis of that preference.</p> <p>Subject to further comments below in relation to the design aspect of the connection proposal, Aurizon Network must have an obligation to promptly (i.e. within [10] Business Days) provide to the private infrastructure owner all information and assistance reasonably required by the private infrastructure owner for the purposes of preparing the connection proposal in accordance with the Undertaking (see, for example, the obligation imposed on Aurizon Network under clause 6(b) of the SRCA).</p>	
6	9.1(b)	Timeframe – proposal assessment period	The QRC supports the clear and specific timing obligation the QCA has proposed to apply to Aurizon Network's assessment of proposed connections to the 'Rail Infrastructure'. The QRC considers that imposing obligations on Aurizon Network to consider proposals in clear and specific timeframes contributes to an efficient and effective connection process.	

Item No	Clause Reference	Issue	Description	QRC Position
7	9.1(b)	Proposal assessment criteria	<p>The QRC is also of the view that requiring assessment of proposals within a specific time period goes some way towards addressing the potential for Aurizon Network to utilise its unique position to delay the connection process, in order to secure connections on terms favourable to Aurizon Network.</p> <p>The QRC notes that clause 9.1(b) allows Aurizon Network two months to assess a connection proposal. This timeframe may need to be shorter depending on the date for commencement of train services using the connecting infrastructure under the relevant access agreement.</p> <p>The QRC also requests that clause 9.1(b) be amended to provide that if Aurizon Network fails to notify the private infrastructure owner of the outcome of its assessment of the connection proposal within the specified timeframe, then Aurizon Network will be deemed to have approved the connection proposal and the private infrastructure owner will determine the timeframes referred to in clause 9.1(d)(ii) (which Aurizon Network would have otherwise been entitled to determine).</p> <p>The QRC broadly supports the QCA-proposed amendments to the criteria against which Aurizon Network must assess a proposal for a proposed network connection to the 'Rail Infrastructure', and considers that much of the drafting proposed by the QCA clarifies the operation of clause 9.1(b). The QRC considers it appropriate that Aurizon Network be required to act in good faith, in addition to reasonably, when applying the criteria in clause 9.1(b).</p> <p><i>Design and technical specifications</i></p> <p>The QRC is concerned that clauses 9.1(b)(ii), (iii) and (iv) imply that a certain amount of design of the connecting infrastructure has to have been undertaken by the private infrastructure owner at the proposal stage, as Part 9 suggests that responsibility for the design (whether by Aurizon Network or the private infrastructure owner) has not been determined by the proposal stage.</p> <p>As noted above, the QRC recommends that the connection proposal submitted by the Private Infrastructure Owner should specify the Private Infrastructure Owner's preference as to whether the design, construction and commissioning of the Connecting Infrastructure will be undertaken by Aurizon Network or the Private Infrastructure Owner and the proposal should be formulated on the basis of that proposal.</p> <p>Where the private infrastructure owner proposes that Aurizon Network will design, construct and commission the connecting infrastructure then the private infrastructure owner should not be required to include in the proposal the information referred to in clauses 9.1(b)(ii), (iii) and (iv). The QRC considers this unnecessary on the basis that clause 7(a)(ii) of the SRCA expressly contemplates that</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
			<p>if Aurizon Network is responsible for the design of the connecting infrastructure then it must submit the 'Design' of the connecting infrastructure to the private infrastructure owner for approval within a certain time after the private infrastructure owner's proposal is approved. Therefore, it does not seem reasonable in these circumstances to require the private infrastructure owner to incur design costs prior to approval of the connection proposal, particularly where it is proposed that Aurizon Network will be responsible for the design.</p> <p>The QRC also queries whether, even where the private infrastructure owner proposes to design, construct and commission the connecting infrastructure, it is appropriate to subject the connection proposal to the criteria specified in clauses 9.1(b)(ii), (iii) and (iv) given that the private infrastructure owner will subsequently be required to submit the 'Design' under clause 6 of the SRCA for approval by Aurizon Network. Again, it does not seem reasonable to require the private infrastructure owner to incur design costs prior to approval of the connection proposal.</p> <p>However, if the criteria in clauses 9.1(b)(ii), (iii) and (iv) are retained and the private infrastructure owner elects to design, construct and commission the connecting infrastructure, then the QRC suggests that Aurizon Network should be obliged to provide the private infrastructure owner with the relevant technical specifications, standards and traffic and safety information promptly after a request by a private infrastructure owner. However, this obligation should not limit the QRC's suggestion in item 5 above that Aurizon Network must also have a general obligation to promptly provide to the private infrastructure owner all information and assistance reasonably required by the private infrastructure owner for the purposes of preparing the connection proposal in accordance with the Undertaking.</p> <p>In addition, if clause 9.1(b)(ii) is retained, it should be expressly subject to clause 9.1(h)(iv) which provides that Aurizon Network's technical standards must not be higher than those required under relevant legislation and safety standards.</p> <p><i>Safety</i></p> <p>In relation to clause 9.1(b)(iv), safety interface issues will inevitably arise where private infrastructure is connected to the network. The QRC suggests that this criterion be amended to reflect the requirement to manage safety interface risks.</p> <p><i>Capacity</i></p> <p>In relation to clause 9.1(b)(v), the QRC requests that the reference to "<i>related Expansion</i>" be clarified.</p>	

Item No	Clause Reference	Issue	Description	QRC Position
			<p><i>Approval</i></p> <p>The QRC notes that the assessment criteria specified in clause 9.1(b) of the Undertaking for the connection proposal is similar to the assessment criteria specified in clause 6.1(c)(iii) of the SRCA for the proposed design of the connection, being the 'CI Criteria'. However, clauses 6.1(c)(iii) and (iv) of the SRCA also provide that Aurizon Network must approve a design if it meets the CI Criteria and may not refuse to approve the design if it would result in the connecting infrastructure being of a higher standard than any relevant part of the network. For consistency, it is recommended that a similar approach should be taken in the Undertaking with respect to the connection proposal. In particular, if a connection proposal meets the criteria specified in clause 9.1(b) (subject to the amendments requested above in relation to design and technical specifications) then Aurizon Network must approve the connection proposal and must agree to enter into a SRCA for the approved connection proposal.</p> <p>In order to expedite the process, the connection proposal may, at the private infrastructure owner's election, also include the private infrastructure owner's proposed variations, if any, to the SRCA (which may be further negotiated under clause 9.1(e)(i)).</p>	
8	9.1(c)	Ownership of Connecting Infrastructure	<p>The intended operation of clause 9.1(c) is unclear. If this clause is seeking to impose on Aurizon Network an obligation to have title to the Connecting Infrastructure transferred to itself or to have the Connecting Infrastructure included in an infrastructure lease, then this must be clearly stated.</p> <p>The process for vesting in Aurizon Network title to or a leasehold interest in the connecting infrastructure is not dealt with the SRCA. The SRCA simply states that the connecting infrastructure must, at all times, be owned by Aurizon Network (clause 8(a)(i)).</p> <p>The QRC requests clarification in relation to this issue.</p>	
9	9.1(d)	Timeframes following a decision by Aurizon Network	<p>Where the private infrastructure owner is responsible for the design, construction and commissioning of the connecting infrastructure, it would seem more appropriate that the private infrastructure owner should determine the 'Connection Milestones' referred to in clause 9.1(d).</p> <p>Where Aurizon Network is responsible for the design, construction and commissioning of the connection infrastructure, the QRC agrees that Aurizon Network should have input into the 'Connection Milestones'. However, the QRC disagrees with the level of discretion afforded to Aurizon Network in determining timeframes in respect of 'Connection Milestones' after a positive decision on a proposal. The QRC is concerned that such a high level of discretion may give rise to</p>	

Item No	Clause Reference	Issue	Description	QRC Position
			<p>scope for Aurizon Network to use its unique position to potentially delay the connection process in order to secure connections on terms favourable to Aurizon Network.</p> <p>The QRC suggests that clause 9.1(d) could be amended to require private infrastructure owners' to either submit suggested timeframes to Aurizon Network for consideration, following notification by Aurizon Network of a positive decision on a connection proposal, or as part of the connection proposal itself, and for Aurizon Network to then either:</p> <ul style="list-style-type: none"> • adopt the timeframes proposed by the private infrastructure owner; or • adopt alternative timeframes and provide detailed reasons as to why the timeframes proposed by the private infrastructure owner' could not be adopted by Aurizon Network. <p>With respect to the timeframe for entry into the rail connection agreement under clause 9.1(d)(ii)(A), the QRC requests that the QCA consider whether a default timeframe should be specified, ie not more than [40] business days (or such longer period as the parties may agree) after the date that Aurizon Network notifies the private infrastructure owner that it approves the connection proposal. See comments below in relation to the resolution of a dispute between Aurizon Network and the private infrastructure owner in relation to the terms of the rail connection agreement.</p> <p>Presumably, the dates for construction and commissioning the connecting infrastructure should be aligned with a date for commencement of train services under the relevant access agreement. If so, it would seem reasonable to require Aurizon Network to have regard to such date when determining timeframes under clause 9.1(d).</p> <p>In any event, the private infrastructure owner should be entitled to dispute any timeframe determined by Aurizon Network under clause 9.1(d).</p> <p>The QRC considers that private infrastructure owners will be incentivised to ensure proposed timeframes are reasonable and the process suggested above will ensure greater transparency and accountability of Aurizon Network's decision making, particularly where Aurizon Network does not adopt the timeframes proposed by private infrastructure owners.</p> <p>Clause 9.1(k)(i) contemplates that certain access holders and access seekers will be involved in negotiations regarding the reasonableness of 'Connection Milestones'. However clause 9.1(d)(ii) does not refer to the involvement of any access holders or access seekers. The QRC requests clarification of this process.</p>	

Item No	Clause Reference	Issue	Description	QRC Position
10	9.1(e)	Permission to connect	Clause 9.1(e) specifies the conditions that must be satisfied before Aurizon Network must permit the connection of the private infrastructure to the rail infrastructure. The private infrastructure owner must be entitled to dispute a decision by Aurizon Network under clause 9.1(e) not to permit the connection of the private infrastructure to the rail infrastructure.	
11	9.1(e)(i)	Flexibility to vary the SRCA	<p>The QRC supports the flexible approach proposed by the QCA to varying the terms of the SRCA. The QRC agrees that it is appropriate for Aurizon Network and a private infrastructure owner to agree to vary the terms of the SRCA on a case-by-case basis, provided that the SRCA functions as the base position to guide negotiations. The QRC considers that it is important for the parties to have the capability to vary the standard terms where variations can be agreed, in order to take account of the differences between individual connections and to maximise the ability of users to connect private infrastructure’.</p> <p>However, the drafting in clause 9.1(e)(i) requires clarification. The obligation to negotiate in good faith amendments to the SRCA should not only apply where the private infrastructure owner and Aurizon Network have agreed to vary the terms of the SRCA, it should apply in all circumstances.</p>	
12	9.1(e)	Negotiation of SRCA	<p>Part 5 of the Undertaking specifies a procedure whereby, if Aurizon Network and the access seeker cannot agree the terms of an access agreement within a specified timeframe, or by the date determined under clause 9.1(d)(ii)(A), then the matters in dispute will be determined by the QCA or an expert as applicable.</p> <p>The QRC suggests that where Aurizon Network and the private infrastructure owner cannot agree the term of a rail connection agreement the matters in dispute will be determined by the QCA or an expert and the SRCA will be completed by the QCA or the expert, as applicable, in accordance with its resolution of the dispute.</p>	

Item No	Clause Reference	Issue	Description	QRC Position
13	9.1(f)	Consequences if connection criteria not satisfied	<p>See comments above in relation to proposed amendment to clause 9.1(b) of the Undertaking to specify the circumstances in which Aurizon Network must agree to enter into an SRCA.</p> <p>Aurizon Network should only be entitled to refuse to enter into a rail connection agreement if the criteria in 9.1(b) are not satisfied.</p> <p>The private infrastructure owner must be entitled to dispute, under Part 11 of the Undertaking, a decision by Aurizon Network under clause 9.1(f) that either the criteria in clause 9.1(b) have not been satisfied or that it refuses to enter into a rail connection agreement. The private infrastructure owner should also be entitled to dispute any amendments that Aurizon Network may require to be made to the private infrastructure owner's proposal under clause 9.1(f)(v).</p>	●
14	9.1(g)	Resubmission of proposal	<p>QRC to consider whether the two month period specified in clause 9.1(b) is a reasonable timeframe for Aurizon Network to consider a resubmitted connection proposal or if a shorter period would be more appropriate. This timeframe may also need to be shorter, depending on the date for commencement on train services using the connecting infrastructure.</p>	●
15	9.1(h)	Aurizon Network's obligations where a connection is permitted	<p>Clause 7 of the SRCA applies where Aurizon Network is responsible for the design and construction of the connecting infrastructure. Clause 7(a)(ii) of the SRCA provides that within a certain timeframe after Aurizon Network approves a proposal under clause 9.1 of the Undertaking, Aurizon Network must submit a draft of the 'Construction Agreement' and 'Design' to the private infrastructure owner for approval. This process is not referred to in clause 9.1(h) of the Undertaking, which purports to specify the processes that will occur after approval of the proposal.</p> <p>The QRC suggests that there needs to be closer alignment between the concepts and language in the Undertaking and the SRCA. In relation to the language, for example, clause 7(a)(ii) of the SRCA refers to the approval of an access proposal under clause 9.1 of the Undertaking whereas neither the term 'approve' nor 'access proposal' are used in clause 9.1 of the Undertaking.</p> <p>The QRC makes the following comments:</p> <ul style="list-style-type: none"> • 9.1(h)(i) - The action Aurizon Network is required to take under clause 9.1(h)(ii) could be more clearly linked to clause 9.1(h)(i). • 9.1(h)(ii) - The QRC requests that the words "<i>without unreasonable delay</i>" be deleted. The treatment of 'delay' (and reasonableness of delay) will be dealt with in the relevant agreement. • 9.1(h)(iii) – The exclusions from Aurizon Network's right to cost reimbursement, as specified in 	●

Item No	Clause Reference	Issue	Description	QRC Position
			<p>clause 9.1(h)(iii) of the Undertaking, must be accurately reflected in the SRCA. See comments below in relation to clause 1(b)(iv) of the SRCA.</p> <ul style="list-style-type: none"> 9.1(h)(iv) – This clause provides that Aurizon Network must not require technical specifications for the connection to the network that are higher than those required under the relevant legislation and safety standards. This limitation on Aurizon Network’s requirements should be accurately reflected in the relevant provisions of the SRCA, such as clauses 6(c)(iii), 6(c)(iv) and 6(d)(ii). 	
16	9.1(i-j)	Requirement for Aurizon Network to pay costs arising from [unreasonable] delays of Aurizon Network in meeting key milestones and entering into agreements	<p>The QRC agrees that Aurizon Network should be required to pay all reasonable costs incurred by ‘Private Infrastructure Owners’, ‘Access Seekers’ or ‘Access Holders’ arising out of Aurizon Network’s delay in meeting key milestones and entering into relevant agreements.</p> <p>The QRC supports the QCA’s comments in relation to this matter and considers that imposing this obligation on Aurizon Network will go some way towards incentivising Aurizon Network to proceed with connections in an efficient and timely manner.</p> <p>However, the QRC requests that the word “<i>unreasonable</i>” be deleted on the basis that this creates a level of uncertainty. If this change is made then the term ‘unreasonable delay’ in clause 9.1(j) should be replaced with “<i>delay</i>” and the term “<i>unreasonably delayed</i>” in clause 9.1(k)(i) should be replaced with “<i>delayed</i>”.</p> <p>The QRC also requests that clause 9.1(i) be extended to also require Aurizon Network to be liable for:</p> <ul style="list-style-type: none"> costs incurred by ‘Train Operators’; and loss suffered by ‘Private Infrastructure Owners’, ‘Access Seekers’, ‘Access Holders’ and ‘Train Operators’, <p>in connection with Aurizon Network’s delay.</p> <p>As discussed in further detail below, the QRC is concerned that Aurizon Network’s obligations under clause 9.1(i) of the Undertaking have not been reflected in the SRCA.</p> <p>Clause 9.1(k)(ii) contemplates that certain ‘Access Holders’ and ‘Access Seekers’ will be involved in negotiations regarding the reasonableness of delay by Aurizon Network in forming agreements referred to in clauses 9.1(i)(i) to (iii) (note the cross referencing error in clause 9.1(k)(ii)). However clause 9.1(i) does not refer to the involvement of any ‘Access Holders’ or ‘Access Seekers’ in any such negotiations. The QRC requests clarification of the negotiation process.</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
17	9.1(i)	Definition of 'Consequential Loss'	The QRC considers that the current definition of 'Consequential Loss' in clause 9.1(i) lacks certainty. The QRC's view is that a more ordinary legal definition should be adopted and a party should not have the benefit of an exclusion of liability for 'Consequential Loss' if it has committed fraud, gross negligence or a wilful default. The QRC is particularly concerned to ensure the deletion of " <i>loss or damage that does not naturally, according to the usual course of things, flow from the delay</i> ", as this language is vague and uncertain.	●
18	9.1(j)	Delay	Aurizon Network considers that 'delay' should include Aurizon Network's failure to comply with a 'Connection Milestone' to the extent that Aurizon Network's failure to meet the 'Connection Milestone' arises from the acts or omissions of Aurizon Network's employees, agents, contractors or consultants.	●
19	9.1(k)	Technical specifications and standards – anticipated 'Expansion'	The QRC notes that 'Access Holders' and 'Access Seekers' have standing to dispute matters arising under clause 9.1 (see clause 9.1(k)). The QRC requests clarification as to how the Access Holders and Access Seekers will be involved in the processes under clause 9.1. The QRC considers that the reference to " <i>anticipated Expansion</i> " should be deleted from clause 9.1(k) as the meaning of the phrase in the context of the technical specifications and standards applying to the 'Connecting Infrastructure' is vague and uncertain. It is also unclear as to what is meant by " <i>relevant Rail Infrastructure</i> ". The QRC requests drafting clarification.	●
20	9.1(k)	Reasonability of Connection Milestone – cross-referencing error	The QRC suggests that there are cross-referencing errors in clause 9.1(k) that contribute to uncertainty in this clause. Specifically, the QRC considers that: <ul style="list-style-type: none"> the reference in clause 9.1(k)(i) to clause 9.1(e)(ii) is incorrect and should instead refer to clause 9.1(d)(ii); and the reference in clause 9.1(k)(ii) to clause 9.1(j)(i) is incorrect and should instead refer to clause 9.1(i)(i). Presumably the reference to reasonable costs in clause 9.1(k)(iii) is a reference to the reasonable costs in clause 9.1(i) – this requires clarification. If clause 9.1(i) is extended to cover loss suffered by the relevant parties (as requested in item 16 above by the QRC) then clause 9.1(k)(iii) will also need to be amended to refer to loss suffered, not just costs incurred.	●

2 Standard Rail Connection Agreement

The QRC sets out its position in respect of the key aspects of the SRCA below. Capitalised terms used in the table below have the meaning given in the SRCA, unless otherwise defined.

- = Agree
- = Agree subject to some comments
- = Disagree

Item No	Clause Reference	Issue	Description	QRC Position
Standard Rail Connection Agreement				
1	General comment	Inclusion of coal loss mitigation provisions as schedule J to Undertaking	The QRC agrees that the Undertaking is the more appropriate mechanism to deal with coal loss mitigation provisions. The QRC makes further comments in respect of schedule J in the table of comments in section 3 of this Part 9 submission.	●
2	1	Definition of 'Acceptable Credit Rating'	The QRC's view is that it is inappropriate to link the acceptable credit rating of a 'Private Infrastructure Owner' to an Aurizon Network entity. The QRC suggests it would be more appropriate to define 'Acceptable Credit Rating' as a minimum long term credit rating of not less than BBB+ from Standard & Poor's (or equivalent rating by another internationally recognised ratings agency).	●
3	1	Definition of 'Authority'	The definition of 'Authority' in the SRCA is different to the definition of 'Authority' in the Access Undertaking. For consistency, the QRC requests that the QCA considers giving 'Authority' the meaning given in the Access Undertaking (which is also the approach taken in the standard Access Agreement and standard Train Operations Deed).	●
4	1	Definition of 'Connecting Infrastructure'	The QRC is concerned that paragraph (b) of the definition of 'Connecting Infrastructure' is unclear and potentially too wide. The QRC requests that Aurizon Network provides examples of 'Connecting Infrastructure' that would be captured by paragraph (b) so that it can better understand the intention of paragraph (b).	●

Item No	Clause Reference	Issue	Description	QRC Position
5	1	Definition of 'Consequential Loss'	The QRC considers that the definition of 'Consequential Loss' in the SRCA lacks certainty and refers to similar comments on this issue in relation to clause 9.1(i) of the Access Undertaking. The QRC is of the view that an ordinary legal definition should be adopted. The QRC has accordingly proposed such a definition	
6	1	Definition of 'Emergency Response Plan'	In the Access Undertaking, the term 'Emergency Response Plan' has the meaning given in clause 12.1(a)(i)(B) of the Standard Train Operations Deed. The definition of Emergency Response Plan' in the Standard Train Operations Deed is different to the definition in the SRCA. The QRC requests that the QCA considers making these definitions consistent.	
7	1	Definition of 'Environmental Harm'	This definition is inconsistent with the definition of 'Environmental Harm' in the Access Undertaking. The QRC requests that the QCA considers making these definitions consistent.	
8	1	Definition of 'Force Majeure Event'	The QRC considers that the definition of 'Force Majeure Event' should be exhaustive. Accordingly, the QRC has proposed what the QRC considers to be an exhaustive ordinary legal definition of 'Force Majeure Event'.	
9	1	Definition of 'Incident'	There are inconsistencies between the definition of 'Incident' in the SRCA and the definition of 'Network Incident' in the Access Undertaking (which is the corresponding term). The QRC requests that the QCA consider making these definitions consistent.	
10	1	Definition of 'Insolvency Event'	The QRC has extended the application of 'Insolvency Event' to Aurizon Network in the context of termination rights, as the QRC considers that 'Private Infrastructure Owners' should have an equivalent right to that of Aurizon Network to terminate the SRCA where Aurizon Network is insolvent.	
11	1	Definition of 'Interface Risk Assessment' and 'Interface Risk Management Plan'	These definitions are inconsistent with the corresponding definitions in the Access Undertaking. The QRC requests that the QCA considers making these definitions consistent with the Access Undertaking.	

Item No	Clause Reference	Issue	Description	QRC Position
12	1	Definition of 'Law'	This definition is inconsistent with the corresponding definition in the Access Undertaking. The QRC requests that the QCA considers making these definitions consistent.	●
13	1	Definition of 'Reference Tariff'	In the SRCA, the term 'Reference Tariff' is defined as an 'Access Charge' under the Access Undertaking. However, the terms 'Reference Tariff' and 'Access Charge' are defined differently in the Access Undertaking. If the term 'Reference Tariff' in the SRCA is intended to refer to a 'Reference Tariff (as defined in the Access Undertaking)', it is recommended that it is defined as such, rather than as an 'Access Charge'.	●
14	1(b)	Interpretation	A number of the interpretation rules included in the Standard Train Operations Deed have not been included in the SRCA. The QRC considers that these interpretation rules from the Standard Train Operations Deed may promote clarity in the SRCA. See, for example, the following clauses of the Standard Train Operations Deed which have not been included in the SRCA - clauses 1.2(c), 1.2(d)(iii) to (viii) and 1.2(d)(xi) to (xiv).	●
15	1(b)(iv)	Interpretation	Clause 9.1(h)(iii) of the Access Undertaking provides that Aurizon Network is not entitled to reimbursement of profit, margin or overhead relating to the Connecting Infrastructure. However, clause 1(b)(iv) only relieves the Private Infrastructure Provider from liability to reimburse profit and certain overheads which are payable to a Related Body Corporate of Aurizon Network. In addition, clause 1(b)(iv) does not refer to the exclusion of margins and nor does it exclude all overheads. The QRC requests that clause 1(b)(iv) of the SRCA be amended for consistency with clause 9.1(h)(iii) of the Access Undertaking.	●
16	1(b)(v)	MCI indexation	This clause sets out the method of MCI indexation. MCI indexation is only used for the indexation of professional indemnity insurance amounts in Schedule 3. Given that the indexation in Schedule 3 is not described as a ratchet the reference to escalation in clause 1(b)(v) have been replaced with references to indexation.	●
17	3	Charges, invoicing and payment	The QRC considers that some aspects of clause 3 should be made clearer. Accordingly, the QRC has proposed a number of drafting amendments to this clause. The QRC has particularly incorporated a clear mechanism to capture the logistics of the operation of adjustments.	●

Item No	Clause Reference	Issue	Description	QRC Position
18	3(b)(ii)	Adjustments	<p>Clause 3(b)(ii) allows for amounts payable by the Private Infrastructure Owner to be adjusted in accordance with the results of an audit. However, there is inconsistency between the description of the adjustment mechanism (clause 3(b)(ii)), the description of the costs that Aurizon Network may recover (clause 3(b)(vi)) and the scope of the auditor's appointment (clause 3(e)).</p> <p>The scope of the auditor's appointment is described in clause 3(e) as "<i>verifying that the costs, fees and charges invoiced to the Private Infrastructure Owner have been properly allocated to the Private Infrastructure Owner</i>".</p> <p>However, the adjustment mechanism in clause 3(b)(ii) refers to an audit that identifies an "<i>error in the levy, allocation or calculation of the reasonable and prudent costs which have been invoiced</i>".</p> <p>Furthermore, clause 3(b)(vi) allows Aurizon Network to recover certain "<i>reasonable and prudent incremental and direct costs incurred by Aurizon Network</i>". This is different to the description of the audit in clause 3(b)(ii) which refers to 'reasonable and prudent costs invoiced'.</p> <p>The QRC requests that these provisions are reviewed for consistency.</p>	
19	3(b)(vi)	Annual Service Charge	<p>If there is a possibility that multiple Private Infrastructure Owners will use a common item of Connecting Infrastructure, then this clause will need to be amended to provide for a pro-rata allocation of the Annual Service Charge.</p>	
20	3(d)(iii)	Capitalisation of accrued interest	<p>Clause 3(d)(iii) provides that all interest accrued but unpaid at the end of each day will itself bear interest. The QRC considers that compounding unpaid interest on a daily basis is not market practice and requests that the approach taken in clause 7.5(c) the Standard Train Operations Deed, which is to capitalise accrued interest at the end of each Month, should instead be used.</p>	
21	3(e)	Auditor's scope	<p>As noted above, the scope of the auditor's appointment appears to be too narrow in that it is limited to verifying whether costs, fees and charges invoiced to the Private Infrastructure Owner have been properly allocated to the Private Infrastructure Owner.</p> <p>In addition, the QRC requests that the QCA review the procedure for appointing the auditor in light of the procedure for appointing an expert under the Standard Train Operations Deed. In particular, the Standard Train Operations Deed specifies a comprehensive procedure for the appointment of an expert by the President of the Chartered Accountants in Australia (see cause 27.3 of the Standard Train Operations Deed).</p>	

Item No	Clause Reference	Issue	Description	QRC Position
			<p>The QRC also requests that the QCA considers including in the SRCA other provisions of clause 27.3 of the Standard Train Operations Deed, such as a statement as to whether a decision of the auditor, in the absence of manifest error, is final and binding on the parties (see clause 27.3(h)) and the qualifications and other requirements in relation to the auditor (see clause 27.3(f)).</p>	
22	6	Connecting Infrastructure – Private Infrastructure Connection	<p>6(b) – Aurizon Network should be required to provide the information or assistance requested by the Private Infrastructure Owner within [10] Business Days after a request is made by the Private Infrastructure Owner rather than just “promptly”.</p> <p>6(b) – Aurizon Network must be required to provide any information or assistance requested by the Private Infrastructure Owner in connection with the CI Criteria.</p> <p>6(b)(iii) – Is the reference to ‘rail infrastructure for the coal system which the Private Infrastructure Provider is developing’ intended to be a reference to the Connecting Infrastructure?</p> <p>6(c)(ii) – If Aurizon Network fails to either approve or reject the Design within the specified timeframe then it should be deemed to have accepted the Design.</p> <p>6(c)(ii) – The Private Infrastructure Owner should be entitled to dispute all or any part of a notice given by Aurizon Network under clause 6(c)(ii).</p> <p>6(c)(iii)(C) - Safety interface issues will inevitably arise where Private Infrastructure is connected to the Network. The QRC suggests that this criterion be amended to reflect the requirement to manage safety interface risks.</p> <p>6(c)(iii)(D) – The QRC requests that the meaning of “any relevant Expansion” be clarified.</p> <p>6(c)(iv) and 6(d)(ii) – The QRC requests that the meaning of “any relevant part of the Network (including any planned or anticipated Expansion)” be clarified.</p> <p>6(c)(iv) - If Aurizon Network fails to either approve or reject the Design within the specified timeframe then Aurizon Network should be deemed to have accepted the Design.</p> <p>6(c)(iv) – The Private Infrastructure Owner should be entitled to dispute all or any part of a notice given by Aurizon Network under clause 6(c)(iv).</p> <p>6(c)(iv) and 6(d)(ii) – The QRC requests that the meaning of “any planned or anticipated Expansion” in the final paragraph be clarified.</p> <p>6(c)(vii) – This clause allows Aurizon Network to require changes to the Connecting Infrastructure prior to the approval of the suitability of the Connecting Infrastructure. The QRC considers that</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
			<p>this timeframe is too late and that Aurizon Network should only be entitled to give a notice under this clause prior to commencement of construction. This would be consistent with the corresponding clause 7(a)(vii) where Aurizon Network is responsible for constructing the Connecting Infrastructure.</p> <p>6(c)(vii)(A) – Aurizon Network should be required to consult with the Private Infrastructure Owner regardless of the reason for the material change in circumstances.</p> <p>6(c)(vii)(B) – Aurizon Network should be required to pay the costs associated with the material change in circumstances where the material change is caused by Aurizon Network or an Aurizon Party.</p> <p>6(c)(vii) – The QRC notes that the procedure for varying the Design to account for the material change has not been specified.</p> <p>6(d)(i) – The Private Infrastructure Owner should be entitled to dispute a determination made by Aurizon Network under this clause.</p> <p>6(d)(iii)(B), 6(d)(v) and 6(d)(vi) – Given that the Private Infrastructure Owner is carrying out the construction of the Connecting Infrastructure it would seem reasonable that the Private Infrastructure Owner carries out the work specified in the Connecting Infrastructure Work Notice. Amendments have been made to these clauses in the submission version of the SRCA to reflect this arrangement.</p> <p>6(d)(v) – Could the QCA please clarify whether the 15 Business Day period referred to in this clause is the timeframe for commencement of the work specified in the Connecting Infrastructure Work Notice or the completion of that work.</p>	
23	7	Negotiation of a separate construction agreement	<p>7 - The QRC refers to the comments in item 2 of the table above regarding Part 9 of the Access Undertaking in relation to clause 7 of the SRCA.</p> <p>7 – Under clause 9.1(i) of the Access Undertaking, Aurizon Network must pay all reasonable costs incurred by the Private Infrastructure Owner arising out of Aurizon Network’s delay in relation to certain matters. This has not been reflected in the SRCA and the QRC requests that this amendment be made.</p> <p>7(a)(ii) – The process of Aurizon Network submitting a draft Construction Agreement and Design to the Private Infrastructure Owner after the connection proposal has been approved is not reflected in clause 9.1 of the Access Undertaking. The QRC requests that this process be accurately reflected in the Access Undertaking.</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
			7(a)(iii) – The QRC considers that the scope of the Private Infrastructure Owner’s ability to request amendments to the Design or the Construction Agreement under this clause is too narrow unless the terms and conditions of the Construction Agreement are standardised.	
24	8	Connecting Infrastructure – post commissioning	<p>8(a) - Although this clause states that the Connecting Infrastructure must be owned by Aurizon Network it does not specify the procedure for ensuring that title to the Connecting Infrastructure is vested in Aurizon Network. The QRC requests that this process be clarified.</p> <p>8(c) - Aurizon Network must also be required to maintain the Connecting Infrastructure in accordance with the standards referred to in clause 9(d), which are the standards that the Private Infrastructure Owner must comply with in relation to the maintenance of Private Infrastructure.</p> <p>8(e) - The QRC requests that the meaning of “<i>any relevant part of the Network (including any planned or anticipated Expansion)</i>” be clarified.</p> <p>8(g) – Aurizon Network must be obliged to minimise disruptions to Train Services. Aurizon Network must notify the Private Infrastructure Owner of emergency repairs and emergency maintenance as soon as reasonably practicable. The QRC’s mark-up of the SRCA reflects these changes.</p> <p>8(h) – Whilst Aurizon Network is on the Private Infrastructure, Aurizon Network should be required to comply with the requirements of the Private Infrastructure Owner in relation access to the Private Infrastructure itself.</p>	●
25	11	Accreditation	<p>The QRC has proposed various amendments to clause 11 for clarity. The QRC also considers that:</p> <ul style="list-style-type: none"> • the Private Infrastructure Owner’s obligations in relation to ensuring the Rail Infrastructure Manager’s compliance with accreditation conditions should only apply to the extent the Private Infrastructure Owner has been notified of these conditions in cases where the Private Infrastructure Owner contracts this role to another entity; and • Aurizon Network should be required to make the Private Infrastructure Owner aware where Aurizon Network receives a notice from an authority that will be likely to affect the accreditation of Aurizon Network. 	●

Item No	Clause Reference	Issue	Description	QRC Position
26	12	Exchange of safety and interface information	<p>Clause 12 contemplates that if a third party is contracted as the RIM for the Private Infrastructure, then that party will be a 'Party' for the purposes of this clause. However, without privity of contract, this arrangement is unenforceable by the third party RIM. There are other provisions in the SRCA (ie clauses 8(h) and 13.7) pursuant to which the third party RIM for the Private Infrastructure is intended to have the benefit of an obligation owed by Aurizon Network. The agreement should include a section 55 of the <i>Property Law Act 1974</i> (Qld) clause to enable the third party RIM to have the benefit of these provisions.</p> <p>The QRC has proposed amendments to clause 12 that the QRC considers are necessary for clarity. The QRC also suggests that particular aspects of clause 12 are unacceptably vague and the QRC is concerned that particular obligations are to be allocated to the parties following a separate collaboration process, as the QRC considers that this will contribute to an inefficient and delayed connection process.</p> <p>The QRC is particularly concerned that the intended operation of clause 12(e) is unclear and seeks to better understand from the QCA the intended operation of this clause. This comment is reflected in the QRC mark-up of the SRCA.</p> <p>The QRC also seeks to understand how the processes referred to in this clause are intended to interact with the Interface Risk Management Plan (where the Private Infrastructure Owner is the Rail Infrastructure Manager for the Private Infrastructure).</p>	
27	13	Interface Risk Assessment and Emergency Response Plan	<p>The QRC has proposed significant amendments to this clause for clarity and to incorporate positive and clear obligations for the parties to develop an 'Interface Risk Management Plan'. The QRC considers that the Draft Decision does not contain a clear obligation for the parties to actually develop an 'Interface Risk Management Plan'. The QRC has also proposed clarifications to the operation of the dispute resolution mechanism in this clause and other minor amendments.</p> <p>13.4(c) – The Private Infrastructure Owner should be entitled to dispute a determination by Aurizon Network under clause 13.4(c)(i)(A).</p> <p>13.7(b) – If Aurizon Network requests the Private Infrastructure Owner or the RIM for the Private Infrastructure Owner to take action in relation to the recovery of rollingstock or repairs to the Connecting Infrastructure and such action is taken, then Aurizon Network should be required to reimburse the parties for their reasonable costs incurred in taking such action (as per clause 19.4(i) of the Standard Train Operations Deed).</p> <p>13.7(e)(ii) and 13.7(g)(ii) – These clauses impose obligations on each Party to provide the other</p>	

Item No	Clause Reference	Issue	Description	QRC Position
			<p>Party with access to information and documentation relevant to an investigation. This clause should only apply to information and documentation under the control of the relevant Party and cannot be used to compel a Party to breach obligations of confidentiality to any third party.</p> <p>13.7(g) and (h) – This clause refers to the investigation of an Incident by Aurizon Network but it does not refer to Aurizon Network’s ‘Investigation Procedures’ (as defined in the Standard Train Operations Deed). Clause 19.5 of the Standard Train Operations Deed refers to the procedure for investigating an Incident and Aurizon Network’s ‘Investigation Procedures’. For consistency, the QRC suggests that Aurizon Network should also apply its Investigation Procedures to the investigation of Incident on the Connecting Infrastructure.</p> <p>13.7(g) – The term ‘Protected Information’ is used in clauses 13.7(e)(iii) and 13.7(g)(ii) but it is not defined. The QRC requests clarification as to the intended meaning of this term.</p> <p>13.7(h) – Given that Aurizon Network can suspend operation of Train Services for a failure to enter into an interface agreement under this clause, it is critical that Aurizon Network is required to act promptly, reasonably, in good faith and in accordance with good industry practice when negotiating an interface agreement with the RIM for the Private Infrastructure. The Private Infrastructure Owner must have a right to request the QCA or an expert determine the terms of the interface agreement if Aurizon Network does not comply with these obligations and does not enter into an interface agreement with the RIM for the Private Infrastructure within a specified period.</p> <p>13.7(i) – The Private Infrastructure Owner must be entitled to dispute a suspension notice issued by Aurizon Network under this clause. Whilst the suspension notice is the subject of a genuine dispute, Aurizon Network should have no right to suspend the operation of Train Services on the Connecting Infrastructure.</p>	
28	14	Train Control	<p>14(a) - The QRC is of the view that Aurizon Network’s scheduling and control of Train movements entering and exiting the Private Infrastructure must be undertaken in consultation with the Rail Infrastructure Manager for the Private Infrastructure (if it is an entity other than Aurizon Network) rather than in Aurizon Network’s absolute discretion.</p> <p>14(b)(ii) - The QRC is also of the view that Aurizon Network should only have discretion to not schedule Trains to and from the Private Infrastructure in respect of a breach by the Private Infrastructure Owner of its obligations under clause 9(d) where that breach is material and persists unremedied for 20 business days following a notice from Aurizon Network. The QRC has also proposed other minor amendments to this clause.</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
29	15	Notification of matters affecting the Private Infrastructure	<p>The QRC considers that a materiality threshold should apply to the Private Infrastructure Owner's notification obligations under clause 15.1(a) and the Private Infrastructure Owner should not be obliged to notify Aurizon Network of matters which Aurizon Network ought reasonably have been aware of.</p> <p>The QRC also considers that the notification obligations under clause 15.1(a) and clause 15.1(b) should be reciprocal – Aurizon Network should be obliged to notify the Private Infrastructure Owner of these types of circumstances.</p>	
30	17	Force Majeure Event	The QRC has proposed clarifying amendments to the force majeure regime in the SRCA. The QRC has also proposed to incorporate additional detail to support the mechanics of the notice to be given in the event of a 'Force Majeure Event'.	●
31	18	Insurance	<p>The QRC is strongly of the view that Aurizon Network should not be entitled to require adjustments to the value of the insurances effected under the SRCA, as this entitles Aurizon Network to exercise an unacceptable level of discretion. Accordingly, the QRC has proposed to delete the applicable provisions of clause 18.</p> <p>The Standard Train Operations Deed includes a comprehensive insurance clause. The QRC suggests that the following provisions from the Standard Train Operations Deed may be incorporated into the SRCA on a reciprocal basis – clause 23.4 (Failure to disclose insurance policies), clause 23.5 (Minimum terms of policies), clause 23.7 (Compliance), clause 23.8 (Notice of potential claims), clause 23.9 (Operator to pay all excess/deductibles) and 23.10 (Settlement of claims).</p>	●
32	19	Disputes	The QRC has proposed minor amendments to clause 19 for clarity and to ensure certainty of timeframes in the dispute resolution process. However, the QRC recommends that the dispute resolution process under the SRCA be aligned with the dispute resolution process under the Standard Train Operations Deed which is more comprehensive.	●
33	20	Termination and suspension	The QRC is strongly of the view that the termination rights of the Private Infrastructure Owner should be more closely aligned to those of Aurizon Network. The QRC has proposed amendments to clause 20 accordingly. The QRC has clarified certain termination events in the mark-up of the SCRA.	●

Item No	Clause Reference	Issue	Description	QRC Position
34	21	Assignment	The QRC suggests that it is appropriate for Private Infrastructure Owners to have the capability to assign and deal with their rights and obligations under the SRCA in a broader range of circumstances than currently drafted. Accordingly, the QRC has proposed amendments to broaden the assignment rights of the Private Infrastructure Owners. The SRCA should also include restrictions on Change of Control of either Party without consent.	●
35	22	Security	<p>The QRC requests that the QCA considers amending clause 22(a) to provide that where the Private Infrastructure Owners does not have a credit rating, the test to be applied in terms of whether security is similar to that specified in clause 6.2 of the Standard Access Agreement.</p> <p>The QRC has also proposed amendments to clause 22 to:</p> <ul style="list-style-type: none"> • provide that the form of security must be in a form specified in the SRCA (as described below) and at the election of the Private Infrastructure Owner rather than in any form reasonably acceptable to Aurizon Network; • provide that security may be provided in the form of a bank guarantee, a company guarantee form a company that is of sufficient financial standing or a parent company guarantee from a parent company with an Acceptable Credit Rating. • clarify the circumstances in which Aurizon Network may have recourse to security given by the Private Infrastructure Owner; and • provide specific timeframes within which Aurizon Network must return security provided to the Private Infrastructure Owner in relevant circumstances. <p>The QRC considers that these proposed amendments contribute to a certain security regime.</p>	●
36	23	Liability and exclusion of 'Consequential Loss'	The QRC has proposed various amendments to clause 23 to improve clarity.	●
37	24	Indemnities	<p>The QRC has proposed various amendments to clause 24 for clarity. In addition, the QRC has incorporated an obligation for the parties to use reasonable endeavours to mitigate the damage, cost, liability or expense in respect of which an indemnity in the SRCA applies. The QRC considers that this is a standard obligation to include in an agreement of this nature.</p> <p>The indemnity specified in clause 9.1(i) of the Access Undertaking has been omitted. The QRC requests that the indemnity be included in the SCRA.</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
38	25	Notices	Query whether Aurizon Network's email address for notices should be updated as it refers to a QRNational domain.	
39	26	Confidentiality	The QRC recommends that the confidentiality clause in the SRCA be aligned with the confidentiality clause in the Standard Train Operations Deed (see clause 33 of the Standard Train Operations Deed).	
40	28	Land access	If Aurizon Network or an Aurizon Party has access rights to land that the Private Infrastructure Owner or the Rail Infrastructure Manager also need to access in connection with the SRCA, then Aurizon Network must ensure that the rights of access are maintained during the Term and Aurizon Network must ensure that the Private Infrastructure Owner and the Rail Infrastructure Manager are provided with access to the relevant land. Clause 28 does not provide the Private Infrastructure Owner with sufficient certainty that Aurizon Network and Aurizon Parties will maintain access rights that the Private Infrastructure Owner is relying upon in connection with the SRCA.	

3 Schedule J

The QRC sets out its position in respect of the key aspects of schedule J below.

- = Agree
- = Agree subject to some comments
- = Disagree

Item No	Clause Reference	Issue	Description	QRC Position
Schedule J				
1	Throughout	Obligation for Aurizon Network to act reasonably in respect of the provisions of schedule J	The QRC suggests that Aurizon Network should be required to act reasonably when exercising its rights and obligations in schedule J in order to achieve a more commercially balanced position.	●
2	1.2	Cross-referencing error	Replace '1.7(a)' with '1.7(d)'.	●
3	1.3, 1.4 and 1.5 and 1.7	Scope of obligation to 'Prevent Coal Loss' and Aurizon Network's suspension rights where 'Private Infrastructure Owner' fails to carry out obligations	<p>The QRC is concerned that the scope of the obligation for the 'Private Infrastructure Owner' to 'Prevent Coal Loss' is too broad. Specifically, the QRC suggests that:</p> <ul style="list-style-type: none"> the requirement to satisfy all applicable laws, requirements, instructions, guidelines, standards or other directions published now or in the future by a relevant 'Authority' should be restricted to require satisfaction only to the extent that either the 'Private Infrastructure Owner' could reasonably have been expected to be aware of these or Aurizon Network has notified the 'Private Infrastructure Owner' that the relevant document is a 'Standard' for the purposes of Schedule J; and the 'Private Infrastructure Owner' should not have the primary responsibility to 'Prevent Coal Loss' on the 'Network', as the 'Private Infrastructure Owner' has minimal capability to control events beyond the 'Connecting Infrastructure' and 'Transfer Facilities'. <p>The QRC is also concerned that the suspension rights of Aurizon Network set out in clause 1.7 operates unreasonably in the context of the broad obligation for the 'Private Infrastructure Owner' to 'Prevent Coal Loss'.</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
4	1.6, 1.7 and 1.8	Oversight and monitoring by Aurizon Network	<p>The QRC is concerned that the oversight and monitoring capability of Aurizon Network in respect of coal loss prevention extends too far and should be reduced.</p> <p>1.6 – Aurizon Network must be prohibited from delaying or otherwise interfering with the operation of Train Services when carrying out any monitoring or inspection under clause 1.6 of the CLMP.</p> <p>1.6(a) – The QRC requests that this clause be amended to provide that a period of reasonable notice is a period of not less than [2] business days.</p> <p>1.6(a)(i)(B) – The QRC requests that any visit by Aurizon Network that occurs more than once in a 12 month period can only occur if Aurizon Network has demonstrated that there are reasonable grounds to believe that the private infrastructure owner is not complying with clause 1 of Schedule J.</p> <p>1.6(e) – The private infrastructure owner should be entitled to require Aurizon Network, at Aurizon Network’s cost, to properly calibrate its coal dust monitoring equipment if the private infrastructure owner is reasonably of the view that the equipment is not properly calibrated.</p> <p>1.6(f) – The private infrastructure owner should be entitled to dispute any finding made by Aurizon Network in a written report issued under this clause.</p> <p>1.7 – The private infrastructure owner must be entitled to dispute both a ‘Rectification Notice’ and a ‘Suspension Notice’ under Part 11. If the private infrastructure owner disputes a ‘Rectification Notice’ then Aurizon Network must not be entitled to issue a ‘Suspension Notice’ under clause 1.7(d) unless the dispute is resolved in favour of Aurizon Network and the private infrastructure owner has not complied with the ‘Rectification Notice’ within the specified timeframe.</p> <p>1.7(a)(iii) – The paragraph marker ‘(iii)’ is not required and should be deleted.</p> <p>1.7(e), 1.7(f), 1.7(g)(i) – The cross references to clause 1.7(a) should be replaced with a cross-reference to clause 1.7(d).</p> <p>17.1(g)(ii)(B) – This clause should be deleted. Aurizon Network should not be entitled to suspend the private infrastructure owner whilst the dispute is unresolved.</p>	●
5	1.8	Reporting	<p>The QRC considers that the drafting of the clause 1.8 reporting provisions should be clarified and should be more closely linked to the monitoring provisions at clause 1.6 (noting the QRC’s concerns in respect of this as described above).</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
6	1.9	Continuous improvement	Although the QRC supports continuous improvement of coal loss prevention practices, the QRC suggests that a quarterly meeting schedule is too onerous and should be adjusted to occur bi-annually.	

Part 10 – Reporting

This part of the QRC's Submission outlines the QRC's comments with respect to the Draft Decision in relation to reporting, as captured in Part 10 of the Undertaking.

1 Part 10 – Reporting

The QRC's specific comments in respect of Part 10 are set out in the table below.

- = Agree
- = Agree subject to some comments
- = Disagree

Item No	Clause Reference	Issue	Description	QRC Position
Part 10				
1	10.1.1	Annual financial reporting	<p>The QRC supports the QCA's proposal to ensure Aurizon Network's financial accounts are:</p> <ul style="list-style-type: none"> • consistent with Aurizon Network's ringfencing obligations; • in accordance with legislative and Australian accounting standards; • subject to an independent audit; and • inclusive of self-insurance details. 	●
2	10.1.2	Annual compliance report	<p>The QRC considers that the compliance reporting obligations of Aurizon Network in respect of Part 3 of the Undertaking should be strengthened. Adequate compliance reporting obligations are key to ensuring visibility as to the effectiveness of the ringfencing regime.</p> <p>The QCA's proposed drafting provides that Aurizon Network must include in its annual compliance report the number of instances where Aurizon Network has received a written complaint from a third</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
			<p>party that it has allegedly breached its obligations in Part 3. Whilst the QRC supports that requirement, the obligation should be extended to also require Aurizon Network to disclose:</p> <ul style="list-style-type: none"> • complaints regarding any allegations of: <ul style="list-style-type: none"> – an Aurizon entity breaching a confidentiality agreement; or – a breach of the ultimate holding company support deed; and • in respect of complaints received: <ul style="list-style-type: none"> – the average complaint handling time; and – the number of instances a breach was found to be committed. 	
3	10.1.3 10.1.4	Annual maintenance plan Annual maintenance cost report	<p>The QRC agrees with clause 10.1.3 which requires Aurizon Network to provide access holders and their customers with a briefing on:</p> <ul style="list-style-type: none"> • the details of the planned scope of maintenance for the next year, three months prior to the commencement of that year; and • the contents of the maintenance cost reports, within one month following submission to the QCA. <p>The QRC also supports the proposal to consolidate the separate maintenance reports which have historically existed for the QCA and stakeholders, and to include asset renewals as part of the maintenance costs reports.</p> <p>The QCA's amendments represent the first step towards improving transparency and reporting in respect of maintenance, which has historically been a subject of great dispute between Aurizon Network and industry. Although the QRC does not consider these amendments will bridge the divide between Aurizon Network and industry, the QRC is willing to accept these amendments for the remaining term of UT4 in the hope that lessons can be learnt and a more robust maintenance regime can be developed.</p> <p>The QRC does however propose the following further amendments to clause 10.1.3 and clause 10.1.4:</p> <ul style="list-style-type: none"> • In the introductory paragraph of clause 10.1.3 "<i>For each Coal System</i>" should be inserted prior to Aurizon Network and the words "<i>if applicable</i>" should be replaced with "<i>if any</i>". • A new paragraph (c) should be inserted in clause 10.1.3 which requires Aurizon Network to brief access holders and customers on the impact, if any, of the annual maintenance plan on the 	●

Item No	Clause Reference	Issue	Description	QRC Position
			<p>capacity of each 'Coal System'.</p> <ul style="list-style-type: none"> The words “<i>for each Coal System</i>” should be added to the title of clause 10.1.4 so that it reads “<i>Annual maintenance cost report for each Coal System</i>”. Clause 10.1.4(c)(v) should refer to the defined term “<i>Coal System</i>”. Clause 10.1.4(c)(v)(B) should require reporting of OTCI results by the relevant segments within each Coal System. 	
4	10.1.5	Monthly network performance report	The QRC supports the QCA’s proposal to require monthly network performance reporting. Regular performance reporting will assist to establish more transparency and accountability.	●
5	10.1.5(a)(i)	Reporting according to each ‘Coal System’	The QRC recommends that clause 10.1.5(a)(i) requires Aurizon Network to publish a report on network performance for “ <i>each Coal System</i> ”.	●
6	10.1.5(b)(ii)	Reporting train services that did not reach their destination within the allotted time threshold	The QRC considers that clause 10.1.5(b)(ii) should be amended so that Aurizon Network is required to report on train services which fail to meet the allotted time threshold due “ <i>in any material respect</i> ” to the acts or omissions of Aurizon Network or delays attributed to a railway operator. Reference to “ <i>primarily</i> ” in this context is unnecessary and sets too high a standard.	●
7	10.1.5(d)(ii), (iii)	Availability of the network for train services	Clauses 10.1.5(d)(ii) and 10.1.5(d)(iii) should require reporting according to train services cancelled which are, or are not, attributable to an access holder (which includes cancellations attributable to that access holder’s train operator).	●
8	10.1.5(e), (f)	Safety and network service quality	The QRC supports clauses 10.1.5(e) and 10.1.5(f) which require reporting on the safety of train services and network service quality as part of the monthly network performance report.	●
9	10.1.6	Annual regulatory assets base roll-forward report	The report of the changes to the regulatory asset base should be in a format agreed with the QCA. The format of all reports under UT3 required QCA prior approval. This requirement should be reinstated in relation to all reports under UT4 to ensure consistency of reporting for the term of UT4.	●

Item No	Clause Reference	Issue	Description	QRC Position
10	10.1.7	Errors in reports	<p>The QRC supports the proposal to consolidate the provisions requiring the correction of a material error under Part 10, however, the timeframe for correcting an error should be revised. Aurizon Network should be required to rectify any material errors in a report within 1 month (rather than 3 months) of acquiring knowledge of that error.</p> <p>Clause 10.1.7(b) should also be amended to require Aurizon Network to notify the QCA of any errors promptly.</p>	
11	10.2(c), (d)	Issues register	<p>The QRC supports clauses 10.2(c) and 10.2(d) which require Aurizon Network to maintain an issues register and allow an inspection of the issues register by the QCA or an auditor appointed under Part 10. An issues register which records breaches of the Undertaking and actions taken to remedy those breaches will assist to build a more effective compliance regime.</p>	
12	10.3.1	Disclosure of access agreements	<p>Whilst the QRC supports the new clause proposed by the QCA in respect of non-standard agreements, the QRC remains concerned about the restrictions placed on the broader disclosure of access agreements. As explained in the QRC's October 2014 Submission, the QCA's right to publish the 'Below Rail' aspects of access agreements which existed under UT3 should be reinstated. The disclosure regime under UT3 achieved an appropriate balance between protecting confidentiality of access holders and ensuring transparency of compliance with the Undertaking.</p> <p>Under UT3, the QCA had the right to publish the 'Below Rail' aspects of an access agreement except to the extent certain parts were nominated by an access holder (and accepted by the QCA) as containing confidential information. Under UT4, it is proposed that the QCA will not publish details of an access agreement without the prior written consent of Aurizon Network and the relevant access holder. There are no restrictions on the right to withhold consent by either Aurizon Network or the access holder. This allows Aurizon Network and the relevant access holder to withhold their consent to the disclosure of the 'Below Rail' aspects of the relevant access agreement for any reason (including where withholding that consent is unreasonable). As a result, transparency of access agreements is defeated and without visibility to this information, stakeholders are left with no means of satisfying themselves of Aurizon Network's compliance with the provisions of the Undertaking which seek to ensure open and fair access. Without this, stakeholders can have no confidence about non-discriminatory treatment by Aurizon Network.</p>	
13	10.4	Condition based assessment	<p>Clause 10.4(a) should require Aurizon Network to procure a condition based assessment "for each Coal System" of the rail infrastructure.</p>	

Item No	Clause Reference	Issue	Description	QRC Position
14	10.6	Disclosure of expert or professional advice relied upon for certification	The QCA should have the right to request to be provided with any expert or professional advice relied upon by Aurizon Network's Executive Officer in the provision of a certification under clause 10.6. The QRC's recommended drafting is set out in the mark-up document titled "Part 10 – Reporting" in the QRC's October 2014 Submission.	
15	10.7(a)	Mandatory annual report auditing	The QRC recommends that the words " <i>if required in writing by the QCA</i> " be deleted from the beginning of clause 10.7(a). As outlined in the QRC's October 2014 Submission, the requirement for mandatory annual audits under UT3 should be maintained under UT4. The QCA appears to support this position in Chapter 5 of the QCA's Draft Decision which provides that " <i>concerns by stakeholders about frequency and triggers for audits... can be addressed through re-insertion of an automatic annual audit as per the 2010 AU</i> ". The drafting proposed by the QCA under clause 10.7(a) does not reflect that intention.	
16	10.9	Conflicts audit	The QRC supports the reinstatement of the conflicts audit provisions under clause 10.9. An audit of Aurizon Network's compliance with its obligations under Part 3 will assist in establishing the efficacy of the ringfencing regime which has been proposed under UT4. This amendment supports the improvements proposed to Part 3 in the Draft Decision.	
17	10.10(f)	Engagement of an auditor and audit costs	<p>In the QRC's October 2013 Submission and the QRC's October 2014 Submission, the QRC raised concerns as to the appointment of auditors under Part 10. In particular, the impartiality of an auditor necessitates that an auditor be engaged by the QCA so that it owes no duty to Aurizon Network and there is no potential for a conflict of interest.</p> <p>The QCA has proposed to address stakeholder concerns by requiring the QCA, rather than Aurizon Network, to appoint auditors. Despite this, Aurizon Network remains responsible for the auditor's remuneration.</p> <p>The amendments proposed by the QCA fall short of addressing the concerns raised by stakeholders. Requiring payment of an auditor by Aurizon Network will affect the impartiality of that auditor. A compliance auditor should be engaged, appointed and paid for by the QCA to ensure true independence.</p>	

Item No	Clause Reference	Issue	Description	QRC Position
18	10.10(k), (l)	Audit recommendation implementation	<p>The QRC supports the amendments to clause 10.10 which allow the QCA the right to:</p> <ul style="list-style-type: none">• request Aurizon Network to provide evidence regarding the implementation of any recommendations by an auditor; and• direct Aurizon Network to take any other necessary actions.	

Part 11 – Dispute resolution and decision making

This part of the Submission outlines the QRC's position in relation to Part 11 of the Draft Decision regarding the dispute resolution framework in the Undertaking.

1 Part 11 – Dispute resolution and decision making

The QRC sets out its position in respect of the key aspects of Part 11 below.

-  = Agree
-  = Agree subject to some comments
-  = Disagree

Item No	Clause Reference	Issue	Description	QRC Position
Part 11 – Dispute Resolution and Decision Making				
1	11.1.1(a) and (e)	Dispute parties	<p>The QRC opposes the proposed narrowing of the list of potential parties to Part 11 disputes proposed under UT4. The right of 'Access Holders', 'Customers' and 'Train Operators' to bring a dispute and become a party to a dispute should be facilitated under Part 11 to achieve a more commercially balanced position.</p> <p>The QRC notes the proposal at clause 11.1(e)(iv) that 'Train Operators' and 'Access Seekers' could become parties to a dispute by election. That clause does not go far enough.</p>	
2	11.1(a) and (b)	Scope of disputes covered by Part 11	<p>In previous submissions the QRC raised concerns that the Undertaking restricted the application of the dispute resolution process to those matters expressly required by the Undertaking to be resolved in accordance with the dispute resolution process set out in Part 11. While the QRC commends certain amendments to clause 11.1(a) which purport to expand the application of the dispute resolution process, the QRC considers that at a more fundamental level, its concerns have</p>	

Item No	Clause Reference	Issue	Description	QRC Position
			<p>not been sufficiently addressed and the proposed amendments do not go far enough. For example, the QRC is concerned that potential disputes relating to anything required “<i>not to be done</i>” by Aurizon Network under the Undertaking will not be ‘Disputes’ for the purposes of Part 11.</p> <p>The QRC maintains that the Undertaking drafting continues to unreasonably restrict the ‘Disputes’ which may be referred for resolution under Part 11 and considers that Part 11 should be expanded so that it applies to a broader range of ‘Disputes’.</p> <p>The QRC again emphasises that dispute resolution is an integral component of the accountability of Aurizon Network to users.</p>	
3	11.1.1(g)	Aurizon Network notification requirements	<p>The QRC commends the inclusion of an obligation for Aurizon Network to keep the QCA informed in relation to matters associated with a ‘Dispute’, however, suggests that clear timeframes should be incorporated in relation to these obligations to ensure greater certainty of process.</p> <p>For example, the QRC suggests that it would be appropriate to require Aurizon Network to notify the QCA within two business days following the referral of a ‘Dispute’ to mediation or to an expert for determination. As currently drafted, Aurizon Network is not subject to any hard timeframes in respect of the matters in clause 11.1.1(g).</p>	●
4	11.1.2	Chief executive resolution	<p><i>Requirement to document details of resolved ‘Disputes’</i></p> <p>The QRC supports the proposed requirement to document the resolution of ‘Disputes’ which are resolved in accordance with the chief executive process outlined in clause 11.1.2, as the QRC considers that this will contribute to certainty of outcomes.</p> <p><i>Amendments proposed by the QRC for certainty of timeframes and clarity</i></p> <p>The QRC suggests that the following amendments are required to clause 11.1.2:</p> <ul style="list-style-type: none"> • that Aurizon Network be required to provide a copy of the signed agreement under clause 11.1.2(c) to the QCA promptly and in any case no later than three business days following the date the last party to the ‘Dispute’ signs this agreement – the QRC makes this suggestion in the interests of ensuring certainty of timeframes; • that clause 11.1.2(d) be amended to more clearly express that: <ul style="list-style-type: none"> – where a ‘Dispute’ is not resolved by the chief executives or relevant nominees of the parties to the ‘Dispute’ within 10 business days after referral, the parties may agree within a further 15 business day period to refer the ‘Dispute’ to mediation, an expert, or the QCA; and 	●

Item No	Clause Reference	Issue	Description	QRC Position
			<ul style="list-style-type: none"> – where the parties cannot agree on the next resolution option within 15 business days of the expiration of the permitted 10 business days' chief executive resolution period, either party may then refer the 'Dispute' to the QCA for resolution in accordance with clause 11.1.5. <p>The QRC is particularly concerned that as presently drafted, clause 11.1.2 is unclear.</p>	
5	11.1.3(d)	Failure of mediation to resolve 'Dispute' – clarifying process of referral to an expert or the QCA	<p>The QRC broadly supports the proposed amendments to clause 11.1.3, however, suggests that clause 11.1.3(d) could be clarified to improve certainty of process where mediation fails to resolve a 'Dispute'. Specifically, the QRC considers that clause 11.1.3(d)(iv) should expressly provide that where the parties fail to agree to refer the 'Dispute' to an expert within the permitted time period, either party may then refer the 'Dispute' to the QCA for determination.</p> <p>The QRC suggests that the current language in clause 11.1.3(d)(iv), "<i>failing such agreement</i>", does not link back to the ability of the parties to refer a 'Dispute' to an expert in a sufficiently clear manner.</p>	●
6	11.1.4(a)	Reinstatement of requirement for 'Disputes' to be referred in the first instance to chief executives for resolution	<p>The QRC supports the reinstatement of the UT3 requirement for all 'Disputes' to be referred in the first instance to the chief executives of the parties for resolution. As outlined in previous submissions, the QRC maintains the view that this is commercially sensible and encourages the parties to resolve 'Disputes' prior to escalation to more formal dispute resolution mechanisms.</p> <p>However, the QRC suggests that minor amendments are necessary to the proposed drafting to ensure that the first instance referral requirement is expressed as clearly as possible. Specifically, the QRC suggests that clause 11.1.4(a)(ii) should be amended to apply where a 'Dispute' has been <i>referred</i> to the chief executives or their nominee "<i>in the first instance</i>", and has "<i>not been resolved</i>" in accordance with the chief executive resolution process.</p>	●
7	11.1.4(c)	Institute of Arbitrators and Mediators Australia	The Institute of Arbitrators and Mediators Australia no longer exists as a standalone entity. Refer to the QRC's comments in respect of clause 21.3(b) of the Standard Access Agreement.	●
8	11.1.4(b)	Expert appointment and requirements	<p><i>Appointment of an expert</i></p> <p>The QRC broadly supports the proposed simplification of the expert selection process, however, considers that consequential deletions of clauses 11.1.4(b)(ii)-(iv) inclusive, are necessary for clarity and cohesion. Specifically, the QRC considers that these clauses are no longer relevant to the operation of clause 11.1.4(b) following the QCA-proposed simplification.</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
			<p><i>Requirements of the expert</i></p> <p>The QRC proposes the following amendments to clause 11.1.4(b)(vi):</p> <ul style="list-style-type: none"> the reinstatement in clause 11.4(b)(vi)(A) of the requirement for the expert to disclose potential conflicts of interest or duty <i>in writing</i> – the QRC considers that disclosures of this nature should be in writing for record-keeping purposes and that such a requirement is not unduly onerous; the reinstatement in clause 11.1.4(b)(vi)(B) of the requirement for the appointed expert not to have provided any services to any party to the ‘Dispute’ within the previous 12 months – the QRC considers this necessary to ensure the impartiality of the expert; and the reinstatement in clause 11.4(b)(vi)(C) of the requirement for the expert to notify the parties <i>“in writing”</i> that they are willing and able to accept the appointment – the QRC again considers that this is necessary for record-keeping purposes and is not unduly onerous. 	
9	11.1.4(d)	Change in circumstances – impartiality of expert	<p>The QRC broadly supports the principle the QCA has proposed to include in clause 11.1.4(d), which requires the expert to inform the parties to a ‘Dispute’ immediately if the expert becomes aware of circumstances that might reasonably be considered to affect the expert’s capacity to act independently and impartially, and for the expert to then terminate their engagement unless otherwise agreed by the parties.</p> <p>However, the QRC considers that:</p> <ul style="list-style-type: none"> where the parties agree not to terminate the engagement of the expert, such agreement should be required to be <i>“in writing”</i> for record purposes; and clause 11.1.4(d) would benefit from being expressed more clearly. 	●
10	11.1.4(e)	Information and materials required to be provided to the expert	<p>The QRC is strongly of the view that the obligation for the parties to assist an expert in determining a ‘Dispute’ should be limited to what is reasonable. The deleted concept of reasonableness in clause 11.1.4(e) should be reinstated.</p> <p>Deleting the reasonableness requirement in this clause may potentially give rise to scenarios where parties may be subject to unduly onerous obligations to supply significant levels of material to an expert when a lesser level of material may suffice. The QRC suggests that reinstating the concept of reasonableness will contribute to a more efficient expert determination process.</p>	●

Item No	Clause Reference	Issue	Description	QRC Position
11	11.1.4(f)	Appointment of multiple experts in relation to a single 'Dispute'	The QRC would like to better understand the intent of the new clause 11.1.4(f) proposed by the QCA. Specifically the QRC seeks clarification from the QCA as to the particular scenarios where the QCA envisages multiple experts may be appointed to determine a single 'Dispute'.	
12	11.1.4	Costs – expert determination	The QRC agrees with the proposed amendments regarding the way in which the costs of an expert determination are to be borne between the parties. For clarity, the QRC's view is that it is appropriate for the costs of an expert determination to be borne by the parties equally as the expert determination process is enlivened following agreement by the parties.	
13	11.1.4(i)	Subsequent appointment of expert as arbitrator, advocate or adviser to parties to a 'Dispute'	<p>The QRC commends the proposed incorporation of the new clause 11.1.4(i), which prevents an expert from acting as an arbitrator, advocate or adviser to a 'Dispute' party in any subsequent arbitral or judicial proceedings arising out of or in connection with a 'Dispute', without the prior written consent of all the 'Dispute' parties.</p> <p>The QRC considers that this restriction is commercially sensible and contributes to a transparent and fair dispute resolution system.</p>	
14	11.1.5	Arbitration procedure	<p>The QRC commends the proposed simplification of the procedure the QCA is required to apply when resolving a 'Dispute'. The QRC previously submitted that it is inappropriate for the Undertaking to detail the procedure for arbitration by the QCA on the basis that specifying such a procedure:</p> <ul style="list-style-type: none"> • would unnecessarily duplicate the QCA Act which provides an applicable arbitration process; and • may lead to inconsistencies between the Undertaking and the QCA Act. <p>The QRC considers that the QCA's proposed simplification of clause 11.1.5 largely addresses the QRC's concerns regarding this matter. However, for the avoidance of doubt the QRC would prefer to see the reinstatement of the old clause 11.1.5(h), which provided that the QCA Act takes precedence in the event of any inconsistency between the QCA Act and Part 11.</p>	

Item No	Clause Reference	Issue	Description	QRC Position
15	11.1.5(b)	Request by parties for QCA to refer matter to expert for determination	The QRC suggests clause 11.1.5(b) should clarify that the parties are required to “ <i>jointly request</i> ” the QCA to refer a matter to an expert for determination in accordance with clause 11.1.4. As currently drafted this requirement is unclear.	●
16	11.1.5(d)	Determinations not to be inconsistent with Undertaking	The QRC broadly supports the principles included in the new clause 11.1.5(d), however, considers that the drafting would benefit from minor clarifications. Specifically, the QRC suggests that the clause should expressly refer to determinations made by the QCA in accordance with 11.1.5 as opposed to an “ <i>access determination</i> ” generally.	●
17	11.1.6	Draft determination of a ‘Dispute’	The QRC commends the deletion of the requirement for the QCA to provide the parties to a ‘Dispute’ with a draft determination of that ‘Dispute’. The QRC supports this deletion on the same basis as outlined in its October 2014 submission, including for the reason that if the requirement were to be included in the Undertaking, the decision of the QCA would be delayed while the review process was completed and this would not be conducive to an efficient dispute resolution framework.	●
18	11.1.6(a)(i)	Submissions to the QCA currently to be in writing only – oral submissions should be an option	The QRC suggests that the parties to a dispute should have the flexibility to make written “ <i>or oral</i> ” submissions to a decision maker, provided that if a submission is made orally it must be made in the presence of all other parties to the relevant ‘Dispute’. The QRC makes this suggestion on the basis that this additional option would contribute to a more efficient dispute resolution process in time sensitive scenarios where oral submissions may be the most commercially sensible option.	●
19	11.1.6(b)	Decisions to be binding	The QRC agrees with the incorporation of clear drafting in Part 11 which provides that decisions of a Part 11 decision maker will be binding on the parties to a ‘Dispute’.	●
20	11.1.6	Obligation to give effect to QCA determination	The QRC is strongly of the view that it is necessary to incorporate an additional provision in clause 11.1.6 requiring: <ul style="list-style-type: none"> the parties to a ‘Dispute’ to use reasonable endeavours to implement the effect of the final determination of a decision maker as soon as practicable following notification of a decision; and that where a party to a ‘Dispute’ delays or frustrates the above implementation, that party is to bear the costs of the party associated with the delay. 	●

Item No	Clause Reference	Issue	Description	QRC Position
			The QRC considers that this additional provision is necessary to ensure efficient dispute resolution outcomes and prompt enforcement of final determinations made in accordance with clause 11.1.6. The existing clause 11.1.6(b) does not go far enough in this respect.	
21	11.1.7	Inconsistency between Part 8 and Part 11 dispute resolution processes	The QRC suggests that it is necessary to incorporate an additional provision in clause 11.1.7 providing that to the extent there is any inconsistency between the dispute resolution processes in Part 8 and Part 11, the Part 8 process will prevail where a 'Dispute' is required to be dealt with under the Part 8 mechanism.	●
22	11.2(a)	QCA decision-making	<i>Decisions affecting Aurizon Network</i> The QRC disagrees with the deletion of "or any other party to the dispute" in clause 11.2(a). In order to achieve a commercially balanced position, the QRC considers that the restrictions on the decision-making power of the QCA which are set out in clause 11.2(a) should apply where the QCA makes a decision that may affect any party to a 'Dispute', as opposed to only Aurizon Network.	●
23	11.2(b)	QCA breach of clause 11.2 requirements	The QRC considers that as drafted, clause 11.2(b) is commercially imbalanced. Any party to a 'Dispute' should have the right to seek an order suspending the operation of a decision and a stay of any proceedings under the decision where the QCA's conduct is challenged on the basis of a breach of a requirement of clause 11.2. As drafted, Aurizon Network is the only party with this right.	●
24	Throughout	Cross-referencing errors	The QRC notes that there are a number of cross-referencing errors throughout Part 11 and suggests that these should be rectified for clarity.	●

Schedule C – Operating and other plan requirements

This part of the Submission outlines the QRC's comments with respect to the Draft Decision regarding the operating and other plan requirements as set out in Schedule C of the Undertaking.

1 Schedule C – Operating and other plan requirements

The QRC's specific comments in respect of Schedule C are set out in the table below.

- = Agree
- = Agree subject to some comments
- = Disagree

Item No	Clause Reference	Issue	Description	QRC Position
Schedule C				
1	2	Interface risk management - processes and timeframes	<p>The QRC supports the inclusion of an obligation for the parties to participate in a process that culminates in an Interface Risk Management Plan (IRMP). However, the QRC suggests that clause 2:</p> <ul style="list-style-type: none"> • would benefit from being expressed more succinctly; • would benefit from amendments to clearly establish a step-by-step 'Interface Risk Management Process'; and • should incorporate specific timeframes where Aurizon Network or an access holder are required to provide information – for example, the QRC suggests that at clause 2(ii) the relevant information should be made available no later than five business days following a reasonable request, as opposed to “<i>on a timely basis</i>”, as the QRC considers that this language is vague and uncertain. 	●

Item No	Clause Reference	Issue	Description	QRC Position
2	2	IRMP	<p>The QRC suggests that the meaning of IRMP in the context of Schedule C is potentially confusing and should be clarified. Specifically, the QRC is concerned that the Undertaking definition of IRMP states that the IRMP will include the matters required to be identified and assessed during the 'Interface Risk Assessment', but Schedule C provides that an IRMP must include a number of items which are not specified in the definition of 'Interface Risk Assessment'.</p> <p>The QRC is of the view that there should be a single consolidated set of requirements for the IRMP rather than having some requirements set out in the Undertaking definition and some in Schedule C.</p>	
3	2	Interface risk management – reference to audit, inspection and review regime	<p>While the QRC considers it appropriate to refer to the audit, inspection and review regime in the context of interface risk management, the QRC considers that the reference to this should be directly to clause 4 of Schedule C.</p> <p>As currently drafted, the reference is to the <i>“audit, inspection and review regime set out below”</i>. This is potentially confusing and could be easily resolved by a direct reference to clause 4.</p>	
4	2	Interface risk management – Aurizon Network’s entitlement to training costs	<p>The QRC agrees it is reasonable for Aurizon Network to recover the reasonable costs of providing training to a 'Train Operator' where this training can only be obtained from Aurizon Network, however, considers that the drafting in the last paragraph of clause 2 should expressly state that Aurizon Network is not entitled to recover any element of profit in relation to the provision of this training.</p>	
5	2	IRMP – schedule to train operations deed	<p>The QRC suggests that as drafted, there is no allowance for the IRMP to be a schedule to the train operations deed. The QRC therefore considers that the requirement in clause 2 of Schedule C for the IRMP to be a schedule to the train operations deed is confusing. The QRC considers that it is necessary to more directly incorporate the IRMP as a schedule to the train operations deed to overcome this.</p>	

Item No	Clause Reference	Issue	Description	QRC Position
6	3(c)	Environmental management plan – requirement to comply with ‘Environmental Authorities’ held by Aurizon Network	<p>The QRC considers that the requirement to ensure that the train operator complies with any requirements of the ‘Environmental Authorities’ held by Aurizon Network should only apply to the extent Aurizon Network has notified the train operator and access seeker in writing of these requirements.</p> <p>The QRC considers that without an appropriate drafting limit, the compliance obligation in clause 3(c) is too broad.</p>	●
7	3(f)	Environmental management plan – reference to “operator”	The QRC is of the view that for maximum clarity, the reference to “operator’s” in clause 3(f) should be to “Train Operator’s”.	●
8	4.2(a)	Appointment of inspector or auditor	The QRC submits that it is necessary to incorporate a circuit-breaking mechanism in relation to the appointment of an inspector or auditor to avoid potential delays to the audit and inspection process. As currently drafted, the conduct of an audit or inspection will stall if the parties cannot agree on an appointment.	●
9	4.2(c)(i) and (ii)	Obligations when conducting inspection or audit	<p><i>Non-interference obligation</i></p> <p>The QRC is strongly of the view that the obligation for Aurizon Network and the train operator (as applicable) to not interfere with the rail infrastructure and the other party’s trains and rollingstock or train movements when conducting an inspection or audit should be absolute. Accordingly, the QRC suggests that the obligation to not “unreasonably” interfere should be deleted.</p> <p><i>Obligation to avoid damage and injury and to minimise interruptions</i></p> <p>The QRC is strongly of the view that the obligation for Aurizon Network and the train operator (as applicable) to avoid damage or injury and to minimise any disruption to the other party’s business activities should be absolute. Accordingly, the QRC suggests that the obligation to use “reasonable endeavours” should be deleted.</p>	●
10	4.3(a)	Liability for costs of inspection or audit	As the determination of liability for the costs of an audit or inspection turn on the stated grounds for that audit or inspection, the QRC suggests that a requirement for the requesting party to have actually stated the grounds of the audit or inspection in writing to the other party prior to conducting the audit or inspection, should be incorporated.	●

Item No	Clause Reference	Issue	Description	QRC Position
11	4.3(a)(ii)	Reimbursement of costs	The QRC broadly supports the principles set out in clause 4.3(a), however, suggests that in the context of the train operations deed, the obligation to reimburse reasonable costs should reflect the payment provisions in clauses 7.3-7.6 of the train operations deed (such as in relation to interest for late payments and set-off).	

Schedule E – Regulatory Asset Base

This part of the QRC’s submission outlines the QRC’s comments with respect to the Draft Decision in relation to the Regulatory Asset Base (**RAB**), as set out in Schedule E of the Undertaking.

1 Schedule E – Regulatory Asset Base

1.1 Maintenance of RAB

Roll forward principles (Clause 1.1)

The QRC notes that the QCA has proposed to simplify the approach to asset disposals, so that the value of the asset disposed of is removed from the RAB “*unless Aurizon Network can demonstrate to the QCA’s satisfaction that less than that amount should be removed from the RAB*”. The QRC supports this simplification and considers it sensible that an asset no longer in use should be removed from the RAB, however, the QRC would like to better understand:

- the circumstances in which the QCA would be satisfied that a lesser amount should be removed from the RAB; and
- the intended treatment of sale proceeds.

If it is contemplated that the QCA may be persuaded to remove less than the full value of the asset from the RAB in a case where sale proceeds fall short of the RAB value (so that Aurizon Network does not bear this risk or loss on sale), then a reciprocal arrangement is required to account for windfalls gains in the case where an asset is sold at a price in excess of the RAB value, as this represents a recovery of past depreciation which has been paid by access holders.

The QRC considers that the following may be practical:

- retain the QCA’s proposed approach to removal of disposed asset values from the RAB;
- require Aurizon Network to report annually on gains and losses arising on the disposal of assets (i.e. sale proceeds less RAB value); and

- adjust Aurizon Network’s ‘Maximum Allowable Revenue’ in a future period, (such as the following undertaking period) to reflect gains and losses, subject to a requirement that the sale process conducted by Aurizon Network be prudent and that sales to related entities reflect an ‘arm’s length’ value.

The QRC considers that this approach should be preferred because it is reciprocal and protects Aurizon Network from losses arising on disposal, but also ensures that Aurizon Network does not retain the benefit of windfall gains arising on the sale of assets.

Adjusting the value of assets in the RAB (Clause 1.2)

The QRC supports the QCA’s proposed changes to clause 1.2 regarding adjustments to the value of assets in the RAB, including:

- allowing for consultation on proposed adjustments; and
- allowing for the QCA to reduce the RAB value if the QCA’s decision to include capital expenditure in the RAB was affected by inaccurate, inadequate or misleading information.

In relation to the second bullet point above, the QRC agrees that the question of whether Aurizon Network knew or ought to have known that the information was inaccurate, inadequate or misleading is not relevant to the question of whether the QCA’s decision should be reviewed in these circumstances.

The QRC further agrees with the QCA’s decision to include a simplified form of the UT3 provision which allows the QCA to reduce the RAB in certain circumstances. Specifically, the QRC considers that a reduction in the RAB where demand has deteriorated such that regulated prices on an un-optimised asset would result in a further decline in demand, and that decline is long term and sustained, is appropriate. However, the QRC suggests for clarity that whether a decline in demand is “*long term and sustained*” would be best assessed on a forward looking basis (that is, it should not be the case that the optimisation is deferred until the reduction in demand has actually been experienced on a long term and sustained basis).

Further, the QRC agrees that the QCA should be allowed to reduce the RAB where a condition based assessment shows a deterioration of the rail infrastructure which is greater than should occur under prudent management. The QRC considers this necessary in order to provide appropriate incentives to undertake maintenance and asset replacement.

Reports on capital expenditure and RAB roll forward (Clause 1.3)

The QRC supports the changes the QCA has proposed to clause 1.3 in respect of reports on capital expenditure and RAB roll forward.

Equity raising costs (Clause 1.4)

The QRC supports the changes proposed by the QCA in regard to equity raising costs, particularly:

- the simplification of clause 1.4;

- the extension of clause 1.4 to cover user funded expansions; and
- the clarification of the QCA's intention that equity raising costs form part of the capital cost of the relevant projects, rather than being recoverable as an operating cost.

Proposed reinstatement of UT3 obligation to maintain the network in a fit for purpose state

The QRC previously requested the reinstatement of the UT3 obligation for Aurizon Network to maintain the network in a fit for purpose state, however, cannot locate the reinstated obligation in the Draft Decision. The QRC again suggests that it would be appropriate to reinstate this obligation.

1.2 Approval of capital expenditure and voting

Requirement for QCA approval to include capital expenditure in RAB

The QRC suggests that at an overall level, it should be clarified in Schedule E that in order for capital expenditure to be included in the RAB, the QCA must have first approved this inclusion in accordance with Part 8 (in the context of expansions) and Schedule E, as applicable. The QRC notes that in previous drafts of the relevant aspects of Part 8 and Schedule E, this requirement was more clearly expressed. While the QRC acknowledges that the overall requirement for QCA approval is implied in Schedule E (such as at clause 2.1), the QRC's preference is for the more express drafting to be reincorporated in Schedule E in order to clarify this core threshold matter.

QCA acceptance, voting process and requirements

The QRC support the proposal that Aurizon Network be required to seek the QCA's acceptance for a capital expenditure project following acceptance of a voting proposal under clause 4, subject to the concerns set out below. The QRC considers that the departure from the previous position (which permitted the voting process to function as an alternative to Aurizon Network having to seek QCA acceptance) appropriately increases the level of oversight the QCA has in respect of the inclusion of capital expenditure in the RAB. However, the QRC makes the following comments:

- that Aurizon Network should be required to act reasonably at all times in carrying out the voting process and to provide comprehensive information throughout, rather than to use best endeavours to provide information if requested as currently set out at clause 4.4(b), or to only make information available when Aurizon Network considers it relevant to do so as set out at clause 4.5(a). The QRC acknowledges the very general requirement for Aurizon Network to provide information at clause 4.5(b), however, considers that this obligation does not go far enough;
- that any restrictions on Aurizon Network's obligation to provide information which are based on confidentiality obligations should be removed, as the QRC considers such caveats to be unnecessary and to undermine the transparency of the voting process; and

- that it should be clearly set out that any vote which does not substantially comply with the voting process (based on an objective assessment) be invalid and ineffective.

The QRC also considers that any approval of a capital expenditure project (whether by the QCA or a vote) should be subject to expiry after a certain period of time, after which Aurizon Network would need to seek a new vote or seek the QCA's approval again. The QRC considers two years would be an appropriate timeframe.

'Interested Participants'

The QRC is concerned that clause 4.2 'Interested Participant' test may not work effectively in the context of incremental pricing for expansion tariffs. Specifically, when dealing with incremental pricing, the timing of determining whether access charges will be affected by including the amount of capital expenditure for a capital expenditure project into the RAB may be such that it is determined after a relevant vote takes place.

Aurizon Network notification requirements

The QRC suggests that Aurizon Network should be subject to the following additional notification obligations:

- that at clause 2.1(d) Aurizon Network be required to give the necessary notice to the QCA that it is seeking a vote and of the vote outcome in writing and in respect of the notice relating to the vote outcome, that the notice specify the number of:
 - total votes;
 - no votes;
 - actual yes votes; and
 - in the event the QRC's comments in relation to the deemed votes of interested parties who do not respond or do not respond in a way that is a clear 'yes' or 'no' vote are not adopted (refer to subheading 'QCA acceptance, voting process and requirements'), the number of deemed yes votes; and
- that at clauses 4.4(e) and 4.6(e)(iii) Aurizon Network be required to give the necessary notice of the results of a vote to the interested participants in writing specifying those details the QCA has suggested above in relation to clause 2.1(d).

'Asset Management Plan'

The QRC considers that the provisions at clause 3 relating to the 'Asset Management Plan' operate ineffectively and the utility of clause 3 is low as:

- Aurizon Network "*may*" but is "*not obliged*" to prepare an 'Asset Management Plan' for approval by the QCA;
- the intended content of the 'Asset Management Plan' is vague and insufficiently prescriptive; and

- the language relating to “*prudent and efficient*” in clause 3(b) is not adequately linked to clause 2.2 of Schedule E.

The QRC suggests that Aurizon Network should be required to commit to prepare an ‘Asset Management Plan’ for approval by the QCA and to periodically update the plan. The QRC also suggests that the requirements and approval process for this plan should be substantially expanded.

Drafting amendments

The QRC suggests that some minor drafting amendments could be made to aspects of clauses 2 and 4 of Schedule E. For example, the QRC suggests that at clause 2.1(d), it should be clarified that Aurizon Network will be required to specifically “*seek the QCA’s acceptance*” of the relevant capital expenditure project. As currently drafted, this provision does not specifically require that acceptance be sought “*from the QCA*”.

Standard Access Agreement

Standard Access Agreement

The table below sets out the QRC's comments on the Access Agreement – Coal (as set out in the Draft Decision) (**Agreement**) between Aurizon Network Pty Ltd (**Aurizon Network**) and an [Access Holder] (**Access Holder**).

Capitalised terms used in the table below have the meaning given in the Agreement unless otherwise defined.

The key below has been used to grade comments on the Agreement as 'high concern', 'medium concern' or 'low concern'.

-  = Low concern
-  = Medium concern
-  = High concern

Item No	Clause reference	Description	Comments	QRC Position
Access Undertaking				
1	3.2	Changes in Access Undertaking	<p>For clarity, the QRC requests the following amendments to clause 3.2:</p> <ul style="list-style-type: none"> • Aurizon Network's right to issue an Amendment Notice should expire within 20 Business Days (or such longer period as may be agreed) after the relevant Change in Access Undertaking has occurred. • The Access Holder should also have the right to issue an Amendment Notice. • An Amendment Notice should include an amended version of the Agreement. • The Change Date must not be earlier than the date on which the Change in Undertaking was effective. 	

Item No	Clause reference	Description	Comments	QRC Position
			<ul style="list-style-type: none"> • If the Access Holder agrees to the changes to the Agreement as part of the process in clause 3.2(d), then Aurizon Network should give the Access Holder a copy of the Agreement which reflects the agreed changes (clause 3.2(g) only refers to amendments agreed under clause 3.2(c)). • Clause 3.2 should also specify the consequences of: <ul style="list-style-type: none"> – the below rail services provided by Aurizon Network ceasing to be a declared service under the QCA Act; and – the below rail services provided by Aurizon Network becoming a declared service pursuant to a Commonwealth regulatory regime. 	
Access Rights				
2	4.3	Exercise of Access Rights and Operator nomination	<p>The QRC requests the following amendments to clause 4.3:</p> <ul style="list-style-type: none"> • 4.3(b)(ii)(B) – Delete both references to “<i>and evidence</i>”. The QRC considers that the statement should be sufficient. • 4.3(d) – Aurizon Network must be obliged to accept a nomination, or variation of a nomination, of an Operator if the Operator is not in material breach of existing obligations and is Accredited. In addition, this clause must not limit Aurizon Network’s obligations under clauses 4.3(e) and 4.5(b). • 4.3(e)(i) – If Aurizon Network fails to give a notice to the Access Holder and the Operator in accordance with the timeframe specified clause 4.3(e)(i) then Aurizon Network must be deemed to have accepted the nomination. • 4.3(e)(iii) – Aurizon Network must be required to execute the Train Operations Deed or a variation to the relevant Train Operations Deed within 20 Business Days after the nomination or variation to an existing Operator nomination (as applicable) is accepted. If Aurizon Network fails to do so then the Access Holder will be relieved of liability to Aurizon Network arising from such failure or delay by Aurizon Network and Aurizon Network will indemnify the Access Holder for losses suffered in connection with the delay. 	●
3	4.4	Access Interface Deed	<p>The QRC is of the view that the requirement for an Access Interface Deed should only arise where the entity that is the Access Holder is the same as the entity that is the Operator. In this scenario, the Access Interface Deed will be required to be given by the Customer of the Access Holder/Operator. Clause 4.4 should be amended to reflect this</p>	●

Item No	Clause reference	Description	Comments	QRC Position
			<p>requirement.</p> <p>The QRC has included a recommended form of the pro-forma Access Interface Deed in this Submission at Annexure 3.</p>	
4	4.5	Changes to Operator nominations	<p>The QRC requests the following amendments to clause 4.5:</p> <ul style="list-style-type: none"> 4.5(a) – Delete “<i>or such other notice period specified in the System Operating Rules</i>”. 4.5(a)(i)(B) – After “<i>Train Path</i>” insert “<i>as defined in the Access Undertaking</i>”. 4.5(b) – If Aurizon Network fails to give any notice under clause 4.5(b) within the required timeframe then it must be deemed to have accepted the variation. 4.5(b) – This clause should include a procedure equivalent to the procedure specified in clauses 4.3(e)(ii) to (iii). See comments above in relation to clause 4.3(e)(iii), which also apply to the execution of a variation to an existing Operator nomination. 	
5	4.6	Nominations with different Train Descriptions	<p>The QRC requests that clause 4.6 be amended to provide that:</p> <ul style="list-style-type: none"> the Access Charge Rates specified in Schedule 4 must not be varied to any greater extent than that required to compensate Aurizon Network for any reasonable and direct increase in cost to Aurizon Network as a result of the nomination, or variation to the nomination of, the Operator; and if Aurizon Network seeks to increase the Access Charge Rates then it must provide reasonable justification for such increase and its calculation of the proposed increase. 	
6	4.8	Operation of Ad Hoc Train Service	<p>The QRC requests the following amendments to clause 4.8:</p> <ul style="list-style-type: none"> 4.8(a)(ii) – Replace “<i>Train Operations Agreement</i>” with “<i>Train Operations Deed</i>”. 4.8(a)(iii) – Under clause 5.4(c) of Schedule G of the Access Undertaking, Aurizon Network must, subject to certain conditions, schedule the DTP in variation to the ITP where at least 48 hours before the Day of Operation Aurizon Network receives a notice from an Access Holder to run an Ad Hoc Train Service. Clause 4.8(a)(iii) should not allow Aurizon Network to avoid this obligation by only requiring Aurizon Network to use reasonable endeavours to schedule the Ad Hoc Train Service. In relation to any request by the Access Holder for an Ad Hoc Train Service after the relevant DTP is 	

Item No	Clause reference	Description	Comments	QRC Position
			<p>scheduled, Aurizon Network should be required to use “<i>best endeavours</i>” to schedule the Ad Hoc Train Service (for consistency with clause 4.3(a) of the Standard Train Operations Deed).</p> <ul style="list-style-type: none"> 4.8(a)(iv) – Replace “<i>schedules</i>” with “<i>scheduled</i>”. 	
7	4.9	Supply Chain Rights	<p>The QRC requests the following amendments to clause 4.9:</p> <ul style="list-style-type: none"> 4.9(c) – insert “<i>Type</i>” at the end of the paragraph. 4.9(e) – Replace “<i>[insert] times</i>” with “<i>once</i>”. 	
Billing and payment				
8	5.1	Charges	<p>The final paragraph of clause 6.5.2 of the Access Undertaking specifies that a Standard Access Agreement must contain review provisions in compliance with clause 6.5.2. However, the Agreement does not appear to contain these review provisions.</p> <p>The QRC requests that these review provisions be provided for consideration by the QRC.</p>	
9	5.2	Invoicing	<p>To avoid ambiguity in terms of the order of operation, the QRC suggests that clause 5.2(a) should be reformatted the way that clause 7.2(a) of the Standard Train Operations Deed has been formatted.</p>	
10	5.3	Payment	<p>The QRC requests the following amendments to clause 5.3:</p> <ul style="list-style-type: none"> 5.3(a) - The Access Holder should not be liable to pay the amount specified in an invoice unless the invoice complies with the requirements specified in clause 5.2(d) and specifies the relevant bank account details (if clause 5.3(b)(ii)(A) applies). 5.3(b) – Insert “<i>to Aurizon Network</i>” after “<i>payable</i>” (as per the Standard Train Operations Deed). 5.3(b)(ii) – Query whether the words ‘subject to clause 5.3(c)’ are appropriate. 5.3(b)(ii)(A) – The bank account details must be specified in the invoice. The words in brackets in this clause should be deleted unless required under the SUFA arrangements. 5.3(b)(ii)(B) – Delete unless Aurizon Network provides specific examples of other payment methods. 	

Item No	Clause reference	Description	Comments	QRC Position
11	5.4	Disputes	<ul style="list-style-type: none"> 5.4(a) – This clause requires invoicing disputes to be dealt with by authorised representatives or an expert. Is it intended that an invoicing dispute may not be referred to arbitration or the QCA? Presumably the trigger for referral of a dispute to court under clause 21.6 is still intended to apply? 5.4(b) – This clause only applies to invoices given by Aurizon Network. However the Access Holder may issue invoices to Aurizon Network for claims under the Agreement. On this basis clause 5.4(b) and 5.4(c) would need to be reciprocal. 5.4(c)(ii) – delete “(as if Aurizon Network was the Access Holder, and the Access Holder was Aurizon Network, for the purposes of clause 5.5)”. 	●
12	5.7(b)	Consequences of failure to comply with Performance Levels	<p>The mechanism in clause 5.7(b) for crediting amounts to the Access Holder should reflect the mechanism in clause 5.4(c)(ii), particularly in relation to the application of credit to subsequent invoices until the relevant amount has been fully credited to the Access Holder.</p> <p>The term ‘Performance Levels’ is defined as having the meaning given in the Train Operations Deed however, this term is not defined in the Standard Train Operations Deed.</p>	●
Security				
13	6.1(b)	Requirement to provide Security	<p>The QRC considers that clause 6.1 should be amended to reflect the following:</p> <ul style="list-style-type: none"> Aurizon Network may require the Access Holder to provide security under the Agreement if the Access Holder is not financially sound; the Access Holder may dispute the requirement to provide security if it considers that it is financially sound; the requirement to provide security only applies for the period during the term that the Access Holder is not financially sound – the right in clause 6.7 to simply ask Aurizon Network to review the requirement to provide security is insufficient; if the Access Holder is required to provide security then the form of the security must be at the election of the Access Holder and the form of security may be: <ul style="list-style-type: none"> a bank guarantee; a parent company guarantee (for payment obligations only) from an investment grade entity; or a company guarantee (for payment obligations only) from a company that is of sufficient financial standing; 	●

Item No	Clause reference	Description	Comments	QRC Position
			<p>and</p> <ul style="list-style-type: none"> if the Access Holder is required to provide security and elects to provide a bank guarantee, then the amount of the bank guarantee must be equivalent to the maximum amount of aggregate take or pay charges for all Train Service Types under the Agreement that could potentially be payable, on average, for all Train Service Types during any 6 month period during the term assuming: <ul style="list-style-type: none"> all of the Train Services were not operated for the Access Holder during the applicable 6 month period; and the reason that the Train Services are not operated is not as a result of an Aurizon Network Cause. 	
14	6.6	Recourse to Security	6.6(b) – The “ <i>reasonable period</i> ” must be a period of not less than 20 Business Days.	●
15	6.8	Return of Security	<p>If Aurizon Network wishes to retain Security after the date of termination or expiry of the Agreement pursuant to its rights of recourse under clause 6.6 then it should only be allowed to retain Security in an amount equivalent to the lesser of:</p> <ul style="list-style-type: none"> the Security Amount as at the date of termination or expiry; and an amount equivalent to the amount which has been determined by an expert to be the subject of the relevant right of recourse. 	●
16	Schedule 1, item 4	Reference Schedule	See comments at item 13 in this table in relation to the amount of the bank guarantee.	●
Accreditation				
17	New clause 7	Accreditation	<p>The QRC requests the following new clause 7 (as per clause 8 of the Standard Train Operations Deed):</p> <ul style="list-style-type: none"> Aurizon Network must have and maintain Accreditation to the extent required to perform its obligations and to exercise its rights under this Agreement and, if requested to do so in writing by the Access Holder, provide to the Access Holder copies of documentation evidencing currency, renewal or amendment of its Accreditation within five Business Days after such request. Aurizon Network must notify the Access Holder as soon as possible of any notice from an Authority or any 	●

Item No	Clause reference	Description	Comments	QRC Position
			other matter affecting, or likely to affect, its Accreditation, and must provide a copy of the notice or details of the relevant matter (as applicable) to the Access Holder on request.	
Resumption of Access Rights				
18	7	Resumption of Access Rights	<p>The QRC requests the following amendments to clause 7:</p> <ul style="list-style-type: none"> 7(c)(i) – Replace “a notice triggering a proposed resumption” with “a ‘Resumption Notice’ (as defined in the Access Undertaking)”. 7(c)(i) – In order to preserve the Access Holder’s right to determine the reduction of Access Rights as between its Operators, the Access Holder should be allowed ten Business Days, rather than two Business Days after receiving the Resumption Notice to dispute the proposed resumption. 7(c)(ii) – Replace with the following drafting: <ul style="list-style-type: none"> (ii) if: <ul style="list-style-type: none"> (A) there is a dispute under this Agreement or the Access Undertaking in connection with a decision by Aurizon Network to resume the Access Holder’s Access Rights; and (B) the outcome of the dispute resolution process is that Access Rights must be resumed, then within ten Business Days after the dispute resolution process has been concluded.” <p>7(c) – At the end of the clause insert “or as determined under the relevant dispute resolution process”.</p>	●
Reduction of Conditional Access Rights due to Capacity Shortfall				
19	8.3	Effect on Operator nominations	8.3(a)(i) – The QRC requests that “two Business Days” is replaced with “ten Business Days”.	●
Weighbridges and Overload Detectors				
20	15.1	Verification	<p>The QRC suggests the following amendments to clause 15.1:</p> <ul style="list-style-type: none"> 15.1(a) – This clause must be subject to clause 15.1(b). The term ‘Maximum Desirable Gross Tonnage’ needs to be defined. 	●

Item No	Clause reference	Description	Comments	QRC Position
			<ul style="list-style-type: none"> 15.1(b) – This clause should also apply to Overload Detectors. 	
Insurance				
21	16.4	Failure to disclose	The requirement for the Access Holder to reimburse Aurizon Network must be subject to clause 5.4.	●
22	16.5	Minimum terms of policies	The QRC requests that in clause 16.5(a), after “contractor” insert “of the Access Holder engaged by the Access Holder in relation to the performance of the Access Holder’s obligations under this Agreement”.	●
23	16.8	Notice of potential claims	16.8(b) – Replace “that event” with “the Claim”.	●
24	16.10	Settlement of claims	The QRC suggests that this clause be deleted because the only insurance required to be effected by the Access Holder is workers compensation insurance.	●
Indemnities				
25	17.3	Indemnity by Access Holder	This indemnity should be subject to the limitations and exclusions of liability in clause 18. The paragraphing (a) and (b) are not required.	●
Limitations and exclusions of liability				
26	18.1	Exclusion of Consequential Loss	The QRC is of the view that a Party should not have the benefit of an exclusion of liability for Consequential Loss if it has committed fraud, gross negligence or a wilful default.	●
27	18.3	Claims and exclusions re: Infrastructure Standard	The QRC requests that the carve-out should be redrafted as follows: “except to the extent that such loss, damage, injury or death, cost or expense results from a breach of this Agreement or any negligent act or omission of Aurizon Network or Aurizon Network’s Staff”.	●

Item No	Clause reference	Description	Comments	QRC Position
28	18.4	Claims and exclusions in respect of non-provision of access	<p>The QRC requests the following amendments to clause 18.4:</p> <ul style="list-style-type: none"> 18.4(a) – Replace clause 18.4(a) with “<i>Aurizon Network did not reschedule the relevant Train Service to a Scheduled Time in the Train Schedule that was able to be utilised by the relevant Operator to operate the relevant Train Service</i>”. 18.4(b) – Replace this paragraph with the following: <i>“if the failure by Aurizon Network to make the Infrastructure available was caused by or the result of an Operational Constraint, that Operational Constraint was not permitted under this Agreement or was attributable to a breach of this Agreement by, or negligent act or omission of Aurizon Network”.</i> 18.4(c) – Replace this paragraph with the following: <i>“the failure by Aurizon Network to make the Infrastructure available was not permitted under this Agreement or was attributable to a breach of this Agreement by, or negligent act or omission of Aurizon Network”.</i> 18.4(d)(iii) – Delete this clause – the Access Holder should not be required to take on the risk of other Railway Operators’ acts or omissions. 18.4(d)(v) – Delete this clause – it is Aurizon Network’s responsibility to manage and schedule Major Period Maintenance and Infrastructure Enhancements in a way that does not interfere with the Scheduled Train Services that Aurizon Network has itself scheduled. 18.4(d)(vi) – Delete “<i>the unavailability in the Infrastructure is attributable to</i>”. 18.4(d)(vi)(B) – Insert at the end of this clause “<i>and the reason for the Capacity Shortfall is not attributable to an act or omission of Aurizon Network</i>”. 18.4(e) – Clause 18.4(e)(i) gives Aurizon Network a buffer of 5% of the total number of Train Services scheduled in the DTP for the relevant Billing Period. Given that clause 18.4(e)(i) is more likely to apply than clause 18.4(e)(ii) and there is no justification for allowing Aurizon Network the 5% buffer, the QRC is of the view that clause 18.4(e) should be deleted. 	
29	18.5	Claims and exclusions in respect of delays to Train Movements	<p>The QRC requests that clause 18.5(b) be replaced with the following: <i>“if the delay was caused by or the result of an Operational Constraint:</i> <i>(i) where Aurizon Network is the Affected Party, the Operational Constraint resulted from a breach of this Agreement by the Access Holder; or</i></p>	

Item No	Clause reference	Description	Comments	QRC Position
			<p>(ii) where the Access Holder is the Affected Party, the Operational Constraint was not permitted under this Agreement or resulted from a breach of this Agreement by, or negligent act or omission of Aurizon Network”.</p> <p>The QRC requests that the following clauses be deleted:</p> <ul style="list-style-type: none"> • 18.5(c)(ii) – the Access Holder should not be required to take on the risk of other Railway Operators’ acts or omissions. • 18.5(c)(iv) – it is Aurizon Network’s responsibility to manage and schedule these events. 	
30	18.6	Defence of Claims by Third Parties	18.6(b) – The QRC requests that this obligation be subject to clause 5.4 (ie disputes in relation to invoices).	
Determination of liability and loss adjustment				
31	19	Determination of liability	The QRC requests that the reference to “\$200,000” in clauses 19.1(c) and 19.4(b) be replaced with “\$100,000” for consistency with clause 26.1(c) of the Standard Train Operations Deed.	
Material Change				
32	20.1	Adjustment for a Material Change	<p>In relation to clause 20.1, the QRC considers that:</p> <ul style="list-style-type: none"> • If a Material Change only affects the financial position of Aurizon Network, then it should not trigger the Material Change process. In order for the Material Change process to be triggered, the Material Change must have a direct effect on the cost to Aurizon Network of performing the Agreement. • The Access Holder should be entitled to notify Aurizon Network if it is of the view that a Material Change has occurred that would justify a reduction in Access Charges and trigger the Material Change process. In this scenario, clause 20.1(a)(ii) will need to be amended to require the parties to negotiate in good faith any appropriate adjustments to the amounts payable under the Agreement to reflect the reduction in the costs to Aurizon Network of providing access. • Given that the Access Holder has no visibility on Aurizon Network’s third party land access arrangements, it is not appropriate that a purported change in the costs incurred by Aurizon Network due to requirements of Landowners in respect of Third Party Land should be a Material Change. In terms of risk allocation, the QRC 	

Item No	Clause reference	Description	Comments	QRC Position
			considers it appropriate that Aurizon Network, rather than the Access Holders, should bear the risk of a change in costs for Third Party Land access arrangements. Accordingly, clause 31.17(d) and the last paragraph of the definition of 'Material Change' should be deleted.	
Disputes				
33	21.2	Authorised representative resolution	The QRC considers that clause 21.2(d) should be amended to clarify that if the Parties do not agree, within five Business Days, to refer the Dispute to either an Expert or the courts of the State, then the Dispute must be referred to the courts of the State in accordance with clause 21.6(a).	●
34	21.3(b)	Expert	The QRC suggests that clause 21.3(b)(ii) be amended to reflect that the Institute of Arbitrators & Mediators Australia no longer exists as a standalone entity. On 1 January 2015 LEADR and the Institute of Arbitrators & Mediators Australia joined to become LEADR & IAMA. 21.3(j) – Replace both reference to “ <i>this Deed</i> ” with “ <i>this Agreement</i> ”.	●
35	21.4	Arbitration	In relation to the reference to the “ <i>Institute of Arbitrators</i> ” see comment above in relation to LEADR & IAMA. The appointment of an arbitrator by the President of LEADR & IAMA under this clause should presumably be subject to the same procedure as the appointment of an expert by the President of LEADR & IAMA under clauses 21.3(b) and (c).	●
36	21.6	Determination by Court	The QRC considers that the referral of a Dispute to the courts of the State should be at the discretion of either party rather than a contractual requirement.	●
Suspension				
37	23	Suspension	The QRC considers that the Access Holder should be expressly entitled to dispute a Suspension Notice given by Aurizon Network and, where it is determined that there were no reasonable grounds for Aurizon Network to issue the Suspension Notice, to have the Suspension Notice lifted and taken not to have been given. The QRC considers that the Access Holder should also be able to dispute the contents of the Suspension Notice, including the actions required to have the suspension lifted.	●

Item No	Clause reference	Description	Comments	QRC Position
38	23.2	Suspension	The QRC considers that this clause should be deleted. A suspension under an Access Holder Agreement and the repercussions of such suspension should stand alone. If the event which caused the suspension right to arise under the Access Holder Agreement does not also give rise to a suspension right under the Agreement then there should be no suspension right exercisable by Aurizon Network under the Agreement.	●
39	23.5	Duration of suspension	The QRC considers that if the Access Holder takes the actions specified in the Suspension Notice as being required to have the suspension lifted (see clause 23.3(c)), then the Access Holder should be taken to have remedied the relevant default or non-compliance and be entitled to have the Suspension Notice lifted.	●
Termination				
40	25.1(b)	Termination of Agreement	The QRC requests that this clause be amended to provide that Aurizon Network must not issue a notice of termination for a Termination Event unless at least 20 Business Days have elapsed since Aurizon Network issued a notice of suspension for the corresponding Suspension Event.	●
41	25.2	Termination by the Access Holder	The QRC requests the following amendments to clause 25.2: <ul style="list-style-type: none"> Subject to the assignment provisions being amended, the Access Holder should have a right of termination if Aurizon Network assigns the Agreement in breach. 25.2(b) – Insert “<i>or amended</i>” after “<i>cancelled</i>”. 	●
Assignment				
42	26.1	Assignment by Aurizon Network	The QRC requests that the restriction on Assignment should be reciprocal, particularly in relation to: <ul style="list-style-type: none"> Aurizon Network only being allowed to assign its rights or obligations under the Deed if it is not in default of any of its obligations under the Deed or any Access Agreement; Aurizon Network’s Assignee being financially sound and capable of performing Aurizon Network’s obligations; the deed of covenant entered into by Aurizon Network’s assignee being on terms acceptable to the Access Holder; there being no release given to Aurizon Network of any accrued obligations or liabilities prior to the assignment 	●

Item No	Clause reference	Description	Comments	QRC Position
			<p>becoming effective; and</p> <ul style="list-style-type: none"> there being no change in control of Aurizon Network without the Access Holder's prior written consent <p>Aurizon Network's Assignee must be Accredited.</p>	
43	26.2	Assignment by Access Holder	<p>26.2(b) – After “<i>the whole</i>” insert “<i>or any part</i>”.</p> <p>26.2(b)(ii) - Replace “<i>not be unreasonably withheld</i>” with “<i>be granted</i>”.</p> <p>The QRC requests a definition of ‘Control’ to ensure that the definition of ‘Change in Control’ can be properly understood.</p>	●
44	26.3	Charging	The QRC considers that the term ‘Charge’ needs to be defined.	●
Relationship with Train Operations Deed				
45	29.1(c)	Disputes	<p>29.1(c)(i) – The Access Holder should not be required to comply with the Train Operations Deed unless and until it has been given a copy of the relevant provisions of the Train Operations Deed.</p> <p>29.1(c)(iii) – For clarity the QRC suggests that there should be a carve-out in respect of clause 29.1(c) itself.</p>	●
Notices				
46	30.2	Method of service	30.2(e) – Insert “ <i>and the Access Holder</i> ” after “ <i>Aurizon Network</i> ”.	●
General				
47	31.3	Entire agreement	The QRC considers that clause 31.3(c) should be reciprocal.	●
48	31.17	Third Party Land	<p>The QRC makes the following comments in relation to clause 31.17:</p> <ul style="list-style-type: none"> 31.17(c) – The QRC considers that this clause is unreasonable should be deleted. Aurizon Network is asking the Access Holder to agree to unspecified and unrestricted requirements of a third party. This exposes the 	●

Item No	Clause reference	Description	Comments	QRC Position
			<p>Access Holder to uncapped risk and liability. By way of example, this clause could be used to require the Access Holder to pay onerous fees and charges to a Landowner or to perform unreasonable obligations at the discretion of and in favour of the Landowner. The Access Holder has no visibility on Aurizon Network's land access arrangements with Landowners in respect of Third Party Land, it has no contractual relationship with the Landowners and it does not have any control over Aurizon Network's acts or omissions with respect to Third Party Land or its interactions with Landowners.</p> <ul style="list-style-type: none"> • 31.17(d) – As noted above at item 32, the QRC requests that clause 31.17(d) be deleted. • 31.17(e) – For the reasons specified above in relation to clause 31.17(c), the QRC considers that clause 31.17(e) is similarly unreasonable and should be deleted. The QRC considers that Aurizon Network should instead be required to maintain throughout the term its rights in respect of Third Party Land. If Aurizon Network fails to maintain its rights in respect of Third Party Land then it must promptly notify the Access Holder, the Access Holder may terminate the Agreement and the Access Holder may claim damages against Aurizon Network. 	
Most favoured nation status				
49	32.2(c)(ii)	Aurizon Network's response	The reduction in Access Charges should take effect from the date the access charge applicable to the Like Train Service was developed. Aurizon Network must be required to reimburse the Access Holder for any overpayments.	●
50	32.4	Interaction with other Network Customers	The Access Holder must be given a right to consider the claims by the other Network Customer and to dispute Aurizon Network's proposed variation to the Access Charge. In the definition of 'Network Train Service', replace " <i>Origins</i> " with " <i>origins</i> ".	●
JV Participants and liability				
51	33.4	Liability of JV Participants	Where the Financial Obligation is a payment obligation which does not have a specified due date, then this clause must not take effect unless and until Aurizon Network has notified the JV Participants of the failure to comply with the Financial Obligation and a reasonable time for remedy, of not less than 20 Business Days, has elapsed.	●
Train Descriptions				

Item No	Clause reference	Description	Comments	QRC Position
52	Schedule 2, Part B clause 1.3	Cycle description	The term 'Train Services cycle description' is not used in the body of the Agreement. What is the relevance of this term? The QRC requests that the discrepancy between this clause and clause 1.5 of Part A of Schedule 2 also be addressed.	●
53	Schedule 2	Appendix B	The definition of 'AAP' in Appendix B to Schedule 2 refers to a 'Notice of Intention to Increase Nominal Payload', which appears to be a typographical error. The QRC requests clarification.	●
Typographical corrections				
54	1.1	Various	There are a number of defined terms that are no longer used in the Agreement including: Adjustment Charge, Ancillary Access Rights, Available Capacity, Committed Capacity, Common Costs, Compliance Date, Connecting Infrastructure, Discount Rate, Efficient Cost, Environmental Harm, Environmental Protection Act, Existing Capacity, Interface Risk Assessment, Maintenance Work, Master Train Plan, Obstruction, Planned Capacity, Quarter, Safety Law and System Rules.	●
55	1.1	'Reduction Factor'	Insert a definition of 'Reduction Factor' as this term is used in clause 11.1(a).	●
56	1.1	'Reference Tariff Type'	This definition should instead refer to the 'Applicable Reference Tariff' as per Item 1.1 of Part A of Schedule 2.	●
57	1.1	'Sectional Running Times'	The term 'Planned Dwell Times' is used in the definition of 'Sectional Running Times' but is not defined. There are references to 'Section Running Times' and 'Sectional Running Times' throughout the Agreement, which should presumably be made consistent.	●
58	1.1	'Stowage'	This term is defined differently in the Agreement and the Undertaking. Is a different meaning intended?	●
59	1.1	'TOP Charges'	In paragraph (b) include carveout for Train Services not operated due to an Aurizon Network Cause.	●
60	1.1	'Train Service'	This term is defined differently in the Agreement and the Undertaking. Is a different meaning intended?	●

Item No	Clause reference	Description	Comments	QRC Position
61	1.1	'Wagon'	The definition of 'Wagon' is circular as it refers to an item of 'Rollingstock' which refers to a 'Wagon'.	●
62	28.2	Permitted disclosures	28.2(b)(x) – Replace “User Funding Arrangement” with “User Funding Agreement”.	●
63	31.20	PPS Act	31.20(b) – ‘Verification Statement’ should be defined as having the meaning given in the PPS Act.	●
64	Reference Schedule	Item 7	Delete ‘Network Customer’.	●

Standard Train Operations Deed

Standard Train Operations Deed

The table below sets out the QRC's comments on the Train Operations Deed – Coal (as set out in the Draft Decision) (**Deed**) between Aurizon Network Pty Ltd (**Aurizon Network**) and an [Operator] (**Operator**).

Capitalised terms used in the table below have the meaning given in the Deed unless otherwise defined.

The key below has been used to grade our comments on the Deed as 'high concern', 'medium concern' or 'low concern'.

- = Low concern
- = Medium concern
- = High concern

Item No.	Clause Reference	Description	Comments	QRC Position
Access Undertaking				
1	3.2	Changes in Access Undertaking	<p>The QRC requests the following amendments to clause 3.2:</p> <ul style="list-style-type: none"> • Aurizon Network's right to issue an Amendment Notice should expire within 20 Business Days (or such longer period as may be agreed) after the relevant Change in Access Undertaking has occurred. • The Operator should also have the right to issue an Amendment Notice. • An Amendment Notice must include the proposed amended version of the Deed. • The Change Date must not be earlier than the date on which the Change in Undertaking was effective. • If the Operator agrees to amendments to the Deed during the process specified in clause 3.2(d), then Aurizon Network must give the Operator a copy of the amended Deed which reflects the agreed amendments. • 3.2(c) and 3.2(c)(i) – Replace references to "<i>the Agreement</i>" with "<i>the Deed</i>". 	●

Item No.	Clause Reference	Description	Comments	QRC Position
			<ul style="list-style-type: none"> Clause 3.2 should also specify the consequences of: <ul style="list-style-type: none"> the below rail services provided by Aurizon Network ceasing to be a declared service under the QCA Act; and the below rail services provided by Aurizon Network becoming a declared service pursuant to a Commonwealth regulatory regime. 	
Operational Rights				
2	4.3	Operation of Ad Hoc Train Service	Under clause 5.4(c) of Schedule G of the Access Undertaking, Aurizon Network must, subject to certain conditions, schedule the DTP in variation to the ITP where at least 48 hours before the Day of Operation Aurizon Network receives a notice from an Access Holder to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any Access Holder's scheduled Train Services or Planned Possessions not being met. Clause 4.3(a) should not allow Aurizon Network to avoid this obligation by only requiring Aurizon Network to use best endeavours to schedule the Ad Hoc Train Service.	●
Nomination of the Operator				
3	6.1 and 6.3	Nomination Variation of Nomination	<p>The QRC requests Aurizon Network to issue the relevant Schedules to the Train Operations Deed within 2 Business Days after the nomination or variation of the nomination of the Operator is accepted. If Aurizon Network fails to do so then:</p> <ul style="list-style-type: none"> the Operator will be relieved of liability to Aurizon Network arising from such failure by Aurizon Network; and Aurizon Network will indemnify the Operator for losses suffered in connection with the delay. <p>The date specified by Aurizon Network under clause 6.1(b) must be in accordance with the relevant date determined under the Access Agreement.</p>	●
Billing and payments				
4	7.3	Payment	<p>The QRC requests the following amendments to clause 7.3:</p> <ul style="list-style-type: none"> 7.3(a) - The QRC considers that the Operator should not be liable to pay the amount specified in the invoice unless the invoice complies with the requirements specified in clause 7.2(c) and specifies the relevant bank 	●

Item No.	Clause Reference	Description	Comments	QRC Position
			<p>account details (if clause 7.3(b)(ii)(A) applies).</p> <ul style="list-style-type: none"> 7.3(b)(ii)(A) – The bank account details must be specified in the invoice. Amend the reference to “<i>the one bank account</i>” if the nomination of more than one bank account is required for consistency with SUFA arrangements. 7.3(b)(ii)(B) – Delete this clause unless Aurizon Network provides specific examples of other payment methods. 7.3(c) – Delete to the extent this clause is inconsistent with the SUFA arrangements. 7.3(d) – Delete the words in brackets unless required under the SUFA arrangements. 	
5	7.4	Disputes	<ul style="list-style-type: none"> 7.4(a) – This clause requires invoicing disputes to be dealt with by authorised representatives or an expert. Is it intended that an invoicing dispute may not be referred to arbitration or the QCA? Presumably the trigger for referral of a dispute to court under clause 21.6 is still intended to apply? 7.4(b) – This clause only applies to invoices given by Aurizon Network. However the Access Holder may issue invoices to Aurizon Network for claims under the Agreement. On this basis clause 5.4(b) and 5.4(c) would need to be reciprocal. 7.4(c)(ii) – delete “(as if Aurizon Network was the Operator, and the Operator was Aurizon Network, for the purposes of clause 7.5)”. 	●
Accreditation				
6	8	Accreditation	In clause 8(a), the reference to “ <i>before commencement of any Train Services</i> ” is presumably intended to refer to the period before the date the Operator operates the first Train Service under the Deed. However, the phrase “ <i>before commencement of any Train Services</i> ” is ambiguous because it could capture every Train Service. The QRC requests drafting clarification.	●
Operation of Train Services				
7	9.1	Operation of Train Services	An ‘Ad Hoc Train Service’ includes a Network Train Service which is not a Train Service for a Train Service Type and will therefore not have a ‘Train Description’. Clause 9.1 must therefore be amended to expressly allow the Operator to operate Train Services within the scope of paragraph (b) of the definition of ‘Ad Hoc Train Services’.	●

Item No.	Clause Reference	Description	Comments	QRC Position
8	9.2	Commencement of Train Services	<p>The QRC requests the following amendments to clause 9.2:</p> <ul style="list-style-type: none"> 9.2(a)(iv) – This clause provides that the Operator may only operate Train Services if an IRMP has been agreed or determined under clause 21. However, clause 21 does not specify the procedure for an IRMP to be agreed or determined. The preparation of an IRMP is referred to in clause 4.10.2(b) and Item 2 of Schedule C of the Access Undertaking. This requires clarification. 9.2(b) – Aurizon Network must be required to act promptly and in good faith in relation to facilitating the Operator’s compliance with clause 9.2(a). 9.2(c) – Insert “<i>or a Force Majeure Event</i>” after “<i>not due to Aurizon Network’s breach of clause 9.2(b)</i>”. 9.2(c) – This provision allows Aurizon Network to give the Operator a notice if the Operator has not complied with certain requirements by the Compliance Date or the Commitment Date. The Operator should be entitled to give Aurizon Network a notice when it considers that it has complied with the requirements in clause 9.2(a) and, subject to Aurizon Network disputing that notice within a specified period, the Operator will be taken to have so complied. 9.2(c) – Aurizon Network must not be allowed to issue a notice under clause 9.2(c) that requires the Operator to comply with clause 9.2(a) on a date which is before the Commitment Date. 9.2(e) – The Access Holder is the party that will seek to enforce the benefit of clause 9.2(e) and, on that basis, this clause should also be included in the Access Agreement and redrafted as an express right in favour of the Access Holder. 	
9	9.3	Commencement of Train Services for a Train Service Type	<p>The QRC requests the following amendments to clause 9.3:</p> <ul style="list-style-type: none"> 9.3(b) – Aurizon Network must be required to act promptly and in good faith in relation to facilitating the Operator’s compliance with clause 9.3(a). 9.3(c)(ii) – Insert “<i>or a Force Majeure Event</i>” after “<i>not due to Aurizon Network’s breach of clause 9.3(b)</i>”. 9.3(c)(iii) and (iv) - Aurizon Network must not be allowed to issue a notice under clause 9.3(c)(iii) that requires the Operator to comply with clause 9.3(a) on a date which is before the Train Service Commitment Date. 9.3(c)(iv)(A)(2) - The Access Holder is the party that will seek to enforce the benefit of this clause and, on that basis, this clause should also be included in the Access Agreement and redrafted as an express right in favour of the Access Holder. 	

Item No.	Clause Reference	Description	Comments	QRC Position
Power				
10	9.4	Power	The QRC considers that it is not reasonable for Aurizon Network to simply pass through to the Operator its contractual obligations to its electricity retailer. The words “ <i>it complies with</i> ” should be replaced with “ <i>in operating Train Services, the Operator must ensure that it does not cause Aurizon Network to breach</i> ”. Aurizon Network could have various financial and non-financial obligations to the electricity retailer which are irrelevant to the Operator’s obligations under the Deed and which the Operator should not be required to assume simply because those obligations have been notified to the Operator.	
Day to day Train Movements				
11	10.2	Train Control rights and obligations – Aurizon Network	For clarity, the QRC considers that clause 10.2(b) should be split into two provisions as follows: “(b) <i>In exercising Train Control, Aurizon Network must act reasonably and have regard to the safe conduct of rail operations on the Infrastructure.</i> (c) <i>Subject to clause 10.2(b), Aurizon Network may, in exercising Train Control:</i> (i) <i>delay, alter or add...</i> ”	
12	10.3	Train Control rights and obligations – Operator	The QRC requests the following amendments to be made to clause 10.3: <ul style="list-style-type: none"> 10.3(c) – This obligation should be limited to the Operator’s Train drivers. 10.3(e) – The obligation to notify the Train Controller of “<i>any circumstances which have affected or may affect Train Control</i>” is unduly onerous and should be deleted. 	
13	10.5	Removal at the end of Authorised Parking	The QRC requests the following amendments to be made to clause 10.5: <ul style="list-style-type: none"> 10.5(a)(i) – The Operator’s obligation should be to cease the Stowage or temporary parking, not to entirely remove the Train or Rollingstock from the Nominated Network. For example, a Train which has been Stowed or temporarily parked on the Nominated Network may be required to undertake a Train Service, in which case it will need to remain on the Nominated Network. 10.5(a)(i)(B) – 12 hours should be replaced with 24 hours and the 24 hour period should commence upon receipt of the notification by the Operator. 	

Item No.	Clause Reference	Description	Comments	QRC Position
			<ul style="list-style-type: none"> 10.5(a)(ii)(A) – Aurizon Network must be obliged not to damage the Train or Rollingstock and to indemnify the Operator for loss suffered as result of any action taken under this clause. 10.5(a)(ii)(A) – The remedy does not need to be removal from the Nominated Network. Rather the situation can be remedied by cessation of Stowage or temporary parking. 10.5(a)(ii)(B) – Insert “<i>within 20 Business Days after receiving such demand</i>” at the end of this clause. 	
Compliance				
14	11.1	General requirements	<p>The QRC requests the following amendments to clause 11.1:</p> <ul style="list-style-type: none"> 11.1(a)(ii)(F) – The QRC is concerned that the drafting in this clause does not work. Apart from the drafting issue, Aurizon Network must be required to actually specify in a schedule to the Deed, the Environmental Authorities and other Approvals that the Operator must comply with and the Operator’s obligations should be limited to those authorities and approvals unless Aurizon Network becomes subject to a new authority or approval and can demonstrate to the Operator that the relevant obligations must be passed through to the Operator. 11.1(a)(ii)(G) – If multiple Authorities publish standards, codes or guidelines on the management of railway noise (ie a local government authority and a State Government), then it is unclear as to which ‘Noise Code’ the Operator is required to comply with. This will become an issue where there are inconsistencies between the standards, codes or guidelines (as applicable). 11.1(a)(iii)(B) – Given that Aurizon Network is required to comply with the Emergency Procedures under clause 11.1(a)(i)(H), clause 11.1(a)(iii)(B) should, presumably, instead refer to the Emergency Response Plan. In which case, the Emergency Response Plan should be included in clause 11.1(a)(i) and deleted from clause 11.1(a)(ii)(D). 11.1(a)(iii) – Insert “<i>Network</i>” after “<i>Aurizon</i>”. New 11.1(a)(iii)(E) – Aurizon Network should also be obliged to comply with the Noise Code. 	●
15	11.2	Non-compliance by Operator with Train	<p>The QRC requests the following amendments to clause 11.2:</p> <ul style="list-style-type: none"> 11.2(a)(i) – Insert “<i>consistently</i>” before “<i>comply</i>”. 	●

Item No.	Clause Reference	Description	Comments	QRC Position
		Description	<ul style="list-style-type: none"> 11.2(a) – Given that clauses 13.4(a) and 13.4(b) of the Access Agreement do not exist, the cross references require correction. 11.2(a) – Aurizon Network must give the Operator and Access Holder 20 Business Days’ notice of its intention to vary the Train Description. 	
16	11.3	Certain matters to apply consistently to all Railway Operators	Could Aurizon Network please explain the reason for limiting this clause to destinations in the same Coal System. By way of example, consider a scenario where an Incident occurs in a Coal System and two Railway Operators are involved in the Incident. One Railway Operator’s destination is in the Coal System in which the Incident occurred but the other Railway Operator’s destination is in a different Coal System. Applying the clause as currently drafted, the Investigation Procedures applied to those Railway Operators will not be consistent because they have destinations in different Coal Systems. Is this the intended outcome?	●
17	11.4	Provision of information	11.4(a)(ii) – The term ‘Operation Agreement Document’ is not defined.	●
Plans				
18	12.1	Approval of Plans	<p>The QRC requests the following amendments to clause 12.1:</p> <ul style="list-style-type: none"> 12.1(a) – The Operator should only be obliged to comply with this obligation prior to the Commitment Date rather than before the commencement of any Train Services. Replace “<i>commencement of any Train Services</i>” with “<i>the Commitment Date</i>”. 12.1(b) – If Aurizon Network fails to give a notice then it should be deemed to have approved the relevant Plan. 12.1(c)(iii) and 12.1(e)(ii)(B) – If the Parties cannot agree the IRMP it should be determined by an expert. Aurizon Network should not have the right to determine the IRMP. 12.1(d) – If the Parties do not reach agreement within the timeframe specified in clause 12.1(c)(ii), then the matter should simply be deemed to be a Dispute and the Dispute provisions will then apply. 12.2(e) – If a Plan is deemed to be approved because Aurizon Network has not responded within the required timeframe under clause 12.1(b) then the effective date of the relevant Plan will be the date that it is deemed to have been approved. 	●

Item No.	Clause Reference	Description	Comments	QRC Position
19	12.2	Amendments to Plans	12.2(a)(ii)(A) – The drafting needs to be clarified. Consider replacing “ <i>or the Train Service Description for an existing Train Service Type</i> ” with “ <i>or the Train Service Description for an existing Train Service Type is varied</i> ”.	●
Compliance with Scheduled Time				
20	13.2	Alterations to Train Services	The Network Management Principles specify a procedure for scheduling a DTP in variation to the ITP and for varying the DTP after it is scheduled but there does not appear to be a process for rescheduling Train Services, as contemplated by clause 13.2(c). The QRC considers that the Network Management Principles require further amendment to reflect the rescheduling procedure.	●
21	13.4	Notification	The QRC requests the following amendments to clause 13.4: <ul style="list-style-type: none"> 13.4(a) – Delete the words “<i>but excluding circumstances which the Operator is aware or ought to have been aware</i>”. 13.4(a)(i) – For consistency with the Train Controller’s obligations under clause 1.3 of schedule 10, delete the word “<i>materially</i>” in both instances. 13.4(c) – Amend this clause to provide that Aurizon Network must notify the Operator if it becomes aware of the relevant failure by the Operator. 	●
22	13.5	Operator to supply information	The QRC requests the following amendments to clause 13.5: <ul style="list-style-type: none"> Clause 13.5(a)(i) should be reciprocal given that this is an interface. Aurizon Network should be required to provide to the Operator and maintain at all times operable software, hardware and associated communication links to establish and maintain an interface with the Operator’s information systems. Aurizon Network must also be required to cooperate with the Operator in relation to the communication links and interface. Given the seriousness of the consequences for the Operator if it fails to provide information to Aurizon Network, it is also important that the Operator is relieved from its obligation to provide information under clause 13.5(a)(ii) to the extent that an act or omission of Aurizon Network or Aurizon Network’s staff has contributed to the Operator being unable to provide such information. 	●

Item No.	Clause Reference	Description	Comments	QRC Position
			<ul style="list-style-type: none"> 13.5(b) – This clause appears to be in the nature of a warranty given by the Operator but the drafting is unclear. The Operator will use reasonable endeavours to achieve this outcome but will not give the warranty. 	
Authorisation of Rollingstock and Rollingstock Configurations				
23	14.3	Compliance Statement	The QRC considers that Aurizon Network should, as at the Commencement Date, be obliged to identify in the Deed three persons that will be considered 'Certifiers'. This is intended to mitigate any potential delay in the process for seeking authorisation of Rollingstock and Rollingstock Configurations. Aurizon Network should also be required to keep updated the details of those three persons from time to time so that the Operator always has a current list of Certifiers.	●
Amendments to System Wide Requirements				
24	15.1	Amendment Notice	<p>The QRC requests the following amendments to clause 15.1:</p> <ul style="list-style-type: none"> Aurizon Network must be required to consult with the Operator for at least 20 Business Days after giving the Operator a valid Amendment Notice. Aurizon Network must be obliged to take account of the Operator's reasonable views in relation to the Amendment Notice prior to implementing an amendment to a System Wide Requirement on the grounds referred to in 15.1(a)(i) or 15.1(a)(ii). The words at the end of clause 15.1(a)(i) are not sufficient. The commencement of the 20 Business Day consultation period must not begin until Aurizon Network has given the Operator an Amendment Notice which satisfies the requirements specified in clause 15.1(b). Aurizon Network must give the Amendment Notice at least 20 Business Days before the proposed implementation date of the proposed amendments to the System Wide Requirements. The words "<i>reasonably in advance</i>" in clause 15.1(b) are not sufficiently clear. Except in the case of an emergency, Aurizon Network must not be allowed to implement the proposed amendments unless and until the consultation period has expired (which, as noted above, must not commence until Aurizon Network has given a valid Amendment Notice). 15.1(a)(iii)(A) – Delete the words "<i>(such agreement not to be unreasonably withheld or delayed)</i>" on the basis that the remainder of clause 15 specifies the circumstances in which the Operator may disagree with a Discretionary System Amendment. 	●

Item No.	Clause Reference	Description	Comments	QRC Position
			<ul style="list-style-type: none"> 15.1(a)(i) - Insert "<i>Nominated</i>" before "<i>Network</i>". 	
25	15.2	Response to a Discretionary System Amendment	<ul style="list-style-type: none"> 15.2(a)(i) and 15.3(b) – Delete the references to the Operator’s operations being fundamentally frustrated over a sustained period of time. Retain the reference to a material impact only. <p>The QRC also requests the following amendments to clause 15.2:</p> <ul style="list-style-type: none"> The timeframe in clause 15.2(a) must not commence unless and until Aurizon Network has given a valid Amendment Notice in accordance with clause 15.1; and 15.2(a)(ii) – at the end of this clause insert "<i>payable by the Access Holder under the Access Agreement</i>". It is unclear which "<i>annual period</i>" will apply and how take or pay charges will be taken into account. This requires clarification. 	●
26	15.3	Discretionary System Amendment which frustrate operations	<p>The QRC considers that clause 15.3 should be amended to reflect the following procedure:</p> <ul style="list-style-type: none"> If the Operator gives Aurizon Network a notice under clause 15.2(a)(i), then Aurizon Network must, within 20 Business Days after receipt of the Operator’s notice, give the Operator a notice which specifies whether it agrees or disagrees with the Operator. If Aurizon Network gives the Operator a notice in the 20 Business Day timeframe which specifies that it agrees with the Operator, then the procedure specified in clause 15.3(b) will apply (subject to the comments below). If Aurizon Network gives the Operator a notice in the 20 Business Day timeframe which specifies that it disagrees with the Operator, then the procedure specified in clause 15.3(c) will apply. If Aurizon Network fails to give the Operator any notice in the 20 Business Day timeframe, then Aurizon Network will be deemed to have agreed with the Operator (and the procedure specified in clause 15.3(b) will apply). <p>15.3(b) – If this clause applies then Aurizon Network must be prohibited from implementing the proposed amendments unless the amendments are amended to ensure that there is no material impact on the Operator’s operation of Train Services under the Deed.</p> <p>15.3(b) – Aurizon Network must be obliged to provide to the Operator a copy of the amendments to the proposed amendments within 2 Business Days after it determines what those amendments should be.</p>	●

Item No.	Clause Reference	Description	Comments	QRC Position
27	15.4	Discretionary System Amendment with negative financial impact	<p>The QRC requests the following amendments to clause 15.4(c):</p> <ul style="list-style-type: none"> Where the Discretionary System Amendment is attributable to an act or omission of Aurizon Network, then Aurizon Network must indemnify the Operator for the Net Financial Effect of the Discretionary System Amendment on the Operator. Where the Discretionary System Amendment is not attributable to an act or omission of Aurizon Network, then the negotiation under clause 15.4(c) must be conducted by applying the principle, to the extent possible, of retaining the relative financial position of the Parties prior to the Discretionary System Amendment. 	
28	15.6	Costs of implementing amendments to a System Wide Requirement	<p>The QRC requests the following amendments to clause 15.6:</p> <ul style="list-style-type: none"> 15.6(a) - Insert "<i>Aurizon Network and</i>" at the beginning of the clause. 15.6(b) – Clause 15.4 applies in relation to a Discretionary System Amendment. It is unclear then how it relates to an amendment to a System Wide Requirement to ensure the ongoing safe operation of the Network (ie on the grounds specified in clause 15.1(a)(i) rather than 15.1(a)(iii))? 15.6(c) – If the Operator has incurred costs in reliance on Aurizon Network’s decision to implement a System Wide Requirement and then Aurizon Network elects not to proceed, Aurizon Network must reimburse the Operator for the costs it has incurred. 15.6(d) – The requirement to account for contributions must be subject to clause 7.4 (ie disputes in relation to invoices). 	
29	15.7	Implementation	For clarity, the QRC suggests that " <i>to the System Wide Requirements</i> " should be inserted after " <i>proposed amendments</i> " in line 1 and line 4 of clause 15.7(a) and in line 4 of clause 15.7(b).	
Weighbridges and Overload Detectors				
30	16.4	Verification	<p>The QRC requests the following amendments to clause 16.4:</p> <ul style="list-style-type: none"> 16.4(a) - Given that the determination of the person conducting tests of a Weighbridge or Overload Detector is final and binding on the Parties, the QRC considers that the person who tests the accuracy of the Weighbridge or Overload Detector should be an independent third party expert. 16.4(c) – Replace "<i>Unless otherwise determined by calibration testing under clause 16.4(b)</i>" with "<i>Subject to</i> 	

Item No.	Clause Reference	Description	Comments	QRC Position
			<p><i>clause 16.4(e)</i>".</p> <ul style="list-style-type: none"> 16.4(e) – This clause should also apply to Overload Detectors. 16.4(f) – The cost of adjusting the Weighbridge or Overload Detector to correct the calibration should also be borne by the Party responsible for the Weighbridge or Overload Detector if it is not measuring within the relevant tolerances. 16.4(f)(ii) – The requirement to reimburse the other Party for costs should be subject to clause 7.4 (ie disputes in relation to invoices). 16.5 – It is unreasonable that the Operator will have no Claim against Aurizon Network where Aurizon Network has delayed or cancelled Train Services because it requires a Weighbridge or Overload Detector to be tested and the Weighbridge or Overload Detector is then found to be measuring within the specified tolerances. 	
Performance Levels				
31	17.1	Performance levels	The Deed provides that the Performance Levels are set out in the Access Agreement. However, the Performance Levels are not specified in the Access Agreement. Rather, the Performance Levels will be included in schedule 6 (Performance Levels) of the Train Operations Deed. On this basis then, clause 17.1 should refer to schedule 6 (rather than the Access Agreement).	●
32	17.3	Review of Performance Levels	<p>17.3(b) and (c) – These clauses are for the benefit of the Access Holder and must therefore be enforceable by the Access Holder against Aurizon Network. On that basis, the QRC considers that these clauses should also be included in the Access Agreement.</p> <p>17.3(c) – The QRC considers that the Parties must be permitted to refer disputes regarding variations to Performance Levels to an Expert for determination.</p> <p>17.3(c) – For clarity, is the cross-reference to clause 11.2 intended to be a reference to clause 11.2(a)(iv)?</p>	●
Infrastructure Management				
33	18.2	Maintenance of Nominated	<p>The QRC requests the following amendments to clause 18.2:</p> <ul style="list-style-type: none"> 18.2(a) – Aurizon Network's maintenance obligations are subject to derogations in the Network Management 	●

Item No.	Clause Reference	Description	Comments	QRC Position
		Network	<p>Principles. If derogations in the Network Management Principles allow Aurizon Network to Maintain the Nominated Network in a way that does not allow the Operator to operate Train Services in accordance with Schedule Times, then the Operator should similarly be relieved of its obligations to operate Train Services in accordance with Scheduled Times.</p> <ul style="list-style-type: none"> • 18.2(b) – Aurizon Network must act reasonably in imposing Operational Constraints. • 18.2(d) – Aurizon Network should be required to publish the Possession Protocols on its website. • 18.2(e) – Aurizon Network has a reasonable endeavours obligation to carry out Emergency Possessions within seven days after detection of the relevant fault and to carry out Urgent Possessions within a period of between seven days and three Months after detection of the relevant fault. The QRC considers these timeframes are relatively long – please provide an explanation for the timeframes. 	
Incident Management				
34	19.1	Compliance	<p>The QRC to consider whether it wishes to take a similar approach to identifying personnel in the Emergency Response Plan as it has in relation to the nomination of personnel for Safety Related Work? If so, then replace “names and positions” with “position titles (and, if reasonably required by Aurizon Network, the names)”.</p> <p>The term ‘Environment’ is used in the definition of ‘Emergency Procedures’ but is not defined.</p>	●
35	19.2	Obstructions	<p>The QRC considers that the obligation in clause 19.2 should not apply where the Obstruction is permitted under the Deed or otherwise authorised by Aurizon Network.</p>	●
36	19.3(a)	Notification	<p>The notification obligation in clause 19.3(a) is very broad and requires a materiality threshold. There should also be a carveout for matters which the Operator, acting reasonably, considers that Aurizon Network ought reasonably to have been aware of.</p>	●
37	19.4	Management of Incident response	<p>The QRC requests the following amendments to clause 19.4:</p> <ul style="list-style-type: none"> • 19.4(b)(i)(B)(1) and (3) – The Operator must make arrangements to effect Recovery and Retrieval within 3 hours after an Incident occurred and effect the Recovery and Retrieval within 12 hours after the Incident occurred. These timeframes are subject to consideration by the QRC. 	●

Item No.	Clause Reference	Description	Comments	QRC Position
			<ul style="list-style-type: none"> • 19.4(e) – The words at the end of this clause which exclude Aurizon Network’s liability for damage or loss to freight or Rollingstock should be deleted on the basis that the exclusion is dealt with in clause 19.4(h). • 19.4(f) – The procedure in clause 19.4(f) only applies in relation to ‘Relevant Rollingstock’. In order for Rollingstock to be ‘Relevant Rollingstock’ it must have a minimum value of \$1 million. This value is subject to consideration by the QRC. • In addition, ‘Relevant Rollingstock’ must be specified in schedule 5. If there is a risk that schedule 5 will not be completed by the parties during the actual negotiation of the Train Operations Deed, then the requirement in the definition of ‘Relevant Rollingstock’ for the Relevant Rollingstock to be specified in schedule 5 should be deleted. • 19.4(f)(iii) and (iv) – This provision allows six hours for the initial negotiation regarding the removal of Rollingstock and a further two hours for negotiation between representatives with the requisite authority. These timeframes are subject to consideration by the QRC. • 19.4(g) – This clause refers to negotiations between “<i>chief executives</i>” whereas clause 19.4(f)(iv) only requires negotiations between “<i>representatives with authority to make the necessary decisions</i>”. These clauses should be consistent. • 19.4(i) – This clause should be subject to the completion of the process in clauses 19.4(f) and 19.4(g), where applicable. • 19.4(k) – This release conflicts with clause 19.4(h) and should be deleted. This exclusion of liability is already covered by clause 25.5. • 	
38	19.6	Management of Environmental Incidents	<ul style="list-style-type: none"> • 19.6(b) – Aurizon Network should not be allowed to redact any information which relates to the Activities of Aurizon Network. • 19.6(c) – The Operator’s obligation to pay the costs of Aurizon Network’s action must be subject to clause 7.4 (ie disputes in relation to invoices). 	

Item No.	Clause Reference	Description	Comments	QRC Position
Operator's staff				
39	20.1	Safety of Operator's Staff	The indemnity in this clause must be subject to the exclusions and limitations of liability in clause 25. Replace " <i>breach of agreement or negligence</i> " with " <i>breach of this Deed by Aurizon Network or any negligent act or omission of Aurizon Network or Aurizon Network's Staff</i> ".	●
40	20.2	Qualifications of Operator's Staff	The QRC requests the following amendments to clause 20.2(c): <ul style="list-style-type: none"> • Replace "<i>requested by</i>" with "<i>reasonably required by</i>". • The QRC requests the deletion of the words "<i>whose details have been provided to Aurizon Network in accordance with this clause 20.2 and</i>". Safety Related Work should be able to be performed by any of the Operator's Staff who satisfy the requirements of clause 20.2. 	●
41	20.3	Entry onto Aurizon Network Land	'Aurizon Network Land' is land in respect of which entry is required to be given by Aurizon Network as part of the definition of Access. Clause 20.3 provides that the Operator's Staff must not enter Aurizon Network Land without prior written approval of Aurizon Network. This would mean that prior written approval is required for every member of the Operator's Staff that is engaged in the operation of Train Services. Is this the intended outcome of this clause?	●
Interface and environmental risk management				
42	21.4	Training	The QRC considers that this clause can be deleted on the basis that it appears in the final paragraph in section 2 of Schedule C (Operating and other plan requirements) of the Access Undertaking. If this clause is intended to appear in both the Standard Train Operations Deed and the Access Undertaking then the words " <i>a reasonable commercial charge for providing such training</i> " in clause 21.4 should be replaced with " <i>its reasonable costs for providing such training</i> " (as per Schedule C of the Access Undertaking).	●
43	21.8	Carriage of Dangerous Goods on Train Services	21.8(a)(i) and (iii) – after " <i>Dangerous Goods Code</i> " insert " <i>in relation to the Train Service</i> ".	●

Item No.	Clause Reference	Description	Comments	QRC Position
44	21.9	Noise management during Train Services	This clause should be deleted if these costs are factored into Aurizon Network's calculation of Access Charges.	●
45	21.10(b)	Community liaison and environmental compliance procedures	The QRC considers that the requirement for the Operator to invite Aurizon Network to community meetings organised by the Operator should be limited to those that relate to the operation of Train Services under the Train Operations Deed.	●
46	21.12	Notification	<p>21.12(a) - The QRC should only be obliged to notify Aurizon Network of the Operator's material failure to comply with the Environmental Management Plan or its obligations under any Safety Law or Environmental Law provided that the failures by the Operator are directly relevant to the Operator's Activities under the Deed. The QRC considers that Aurizon Network should have the same self-reporting obligation.</p> <p>21.12(c) – This clause allows Aurizon Network to give the Operator a notice to cease conduct which causes or threatens to cause a risk to safety or persons or property or harm to the Environment. The QRC considers that Aurizon Network should not be able to give this notice to the extent the Operator is complying with the IRMP. The IRMP recognises that there are Interface Risks and Environmental Risks that arise from the Operator's operations and those risks are identified and managed through the IRMP.</p> <p>21.12(d) – The QRC considers that this obligation should be reciprocal. Aurizon Network should be required to provide to the Operator any notice, directions or orders relating to the operation of Train Services that it receives from any Safety Regulator or Environmental Regulator.</p>	●
Inspection and audit rights				
47	22.2	Right of inspection	22.2(b) – The QRC considers that Aurizon Network must indemnify the Access Holder and the Operator for any loss suffered by the Access Holder or the Operator in connection with the Operator's compliance with Aurizon Network's requirement that the Operator's Rollingstock be made available at certain locations for inspection. The Access Holder should also be granted relief from take or pay charges to the extent it cannot operate a Train Service because Aurizon Network has required the Rollingstock, which are otherwise required for the operation of the Train Service, to be made available for inspection.	●

Item No.	Clause Reference	Description	Comments	QRC Position
			22.2(d) - The requirement for the Operator to reimburse Aurizon Network must be subject to clause 7.4 (ie disputes in relation to invoices).	
Insurance by Operator				
48	23	Insurance by Operator	In relation to the use of the phrase " <i>before the commencement of Train Services</i> " in clauses 23.1 and 23.3, see comments above in relation to clause 8 (Item 6).	●
49	23.4	Failure to disclose insurance policies	The QRC considers that the requirement for the Operator to reimburse Aurizon Network must be subject to clause 7.4 (ie disputes in relation to invoices).	●
50	23.5	Minimum terms of policies	After " <i>contractor</i> " insert " <i>of the Operator engaged by the Operator in relation to the performance of the Operator's obligations under this Deed</i> ".	●
51	23.8(b)	Notice of potential claims	Replace " <i>that event</i> " with " <i>the Claim</i> ".	●
52	23.10	Settlement of claims	The QRC considers that the Operator's obligation to pass through to Aurizon Network monies paid in settlement of insurance claims should only apply to the extent that: <ul style="list-style-type: none"> • Aurizon Network has made a valid Claim against the Operator for damage to the Infrastructure. • Aurizon Network's Claim against the Operator for damage to the Infrastructure is in respect of the same matter as the claim that has been settled; and • the Operator has not disputed Aurizon Network's Claim and the Operator has no counterclaim against Aurizon Network in respect of the Claim. 	●

Item No.	Clause Reference	Description	Comments	QRC Position
Indemnities				
53	24.1	Indemnity for personal injury and property damage	The term 'Staff', if retained in this clause, needs to be defined.	●
Limitations and exclusions of liability				
54	25.3	Claims and exclusions	The carve-out should be redrafted as follows: <i>“except to the extent that such loss, damage, injury or death, cost or expense results from the breach of this Deed or any negligent act or omission of Aurizon Network or Aurizon Network’s Staff”</i> .	●
55	25.4	Claims and exclusions in respect of non-provision of access	<p>The QRC requests the following amendments to clause 25.4:</p> <ul style="list-style-type: none"> 25.4(a) – Replace clause 25.4(a) with <i>“Aurizon Network did not reschedule the relevant Train Service to a Scheduled Time in the Train Schedule that was able to be utilised by the Operator to operate the relevant Train Service”</i>. 25.4(b) – Replace this paragraph with the following: <i>“if the failure by Aurizon Network to make the Infrastructure available was caused by or the result of an Operational Constraint, that Operational Constraint was not permitted under this Deed or was attributable to a breach of this Deed by, or negligent act or omission of Aurizon Network”</i>. 25.4(c) – Replace this paragraph with the following: <i>“the failure by Aurizon Network to make the Infrastructure available was not permitted under this Deed or was attributable to a breach of this Deed by, or negligent act or omission of Aurizon Network”</i>. 25.4(d)(iii) – Delete this clause – the Operator should not be required to take on the risk of other Railway Operators’ acts or omissions. 25.4(d)(v) – Delete this clause – it is Aurizon Network’s responsibility to manage and schedule Major Period Maintenance and Infrastructure Enhancements in a way that does not interfere with the Scheduled Train Services that Aurizon Network has itself scheduled. 	●

Item No.	Clause Reference	Description	Comments	QRC Position
			<ul style="list-style-type: none"> 25.4(d)(vi) – Replace cross reference with clause 25.4(d)(iv). 25.4(e)(i) – Given that clause 25.4(e)(i) is more likely to apply than clause 25.4(e)(ii) and there is no justification for allowing Aurizon Network the 5% buffer, the QRC is of the view that clause 25.4(e) should be deleted. 25.4(e)(ii) – Replace “clause 176” with “clause 17”. 	
56	25.5	Claims and exclusions in respect of delays to Train Movements	<ul style="list-style-type: none"> The QRC requests that clause 25.5(b) be replaced with the following: <i>“if the delay was caused by or the result of an Operational Constraint:</i> <ul style="list-style-type: none"> (i) <i>where Aurizon Network is the Affected Party, the Operational Constraint resulted from a breach of this Deed by the Operator; or</i> (ii) <i>where the Operator is the Affected Party, the Operational Constraint was not permitted under this Deed or resulted from a breach of this Deed by, or negligent act or omission of Aurizon Network.”</i> <p>The QRC requests the following clauses to be deleted:</p> <ul style="list-style-type: none"> 25.5(c)(ii) – the Operator should not be required to take on the risk of other Railway Operators’ acts or omissions. 25.5(c)(iv) – it is Aurizon Network’s responsibility to manage and schedule Major Period Maintenance and Infrastructure Enhancements in a way that does not interfere with the Scheduled Train Services. 	●
57	25.6	Defence of Claims by Third Parties	25.6(b) – The QRC requests that this obligation be subject to clause 7.4 (ie disputes in relation to invoices).	●
Determination of liability and loss adjustment				
58	26	Determination of liability and loss adjustment	The QRC requests that in clause 26.4(b) “\$200,000” be replaced with “\$100,000”.	●

Item No.	Clause Reference	Description	Comments	QRC Position
Disputes				
59	27.2	Authorised representative resolution	The QRC considers that clause 27.2(d) should be amended to clarify that if the Parties do not agree, within five Business Days, to refer the Dispute to either an Expert or the courts of the State, then the Dispute must be referred to the courts of the State in accordance with clause 27.6(a).	●
60	27.3(b)	Expert	The QRC requests that clause 27.3(b)(ii) be amended to reflect that the Institute of Arbitrators & Mediators Australia no longer exists as a standalone entity. On 1 January 2015 LEADR and The Institute of Arbitrators & Mediators Australia joined to become LEADR & IAMA.	●
61	27.4	Arbitration	In relation to the reference to the " <i>Institute of Arbitrators</i> " see comment above in relation to LEADR & IAMA. The appointment of an arbitrator by the President of LEADR & IAMA under this clause should presumably be subject to the same procedure as the appointment of expert by the President of LEADR & IAMA under clauses 27.3(b) and (c).	●
62	27.6	Determination by Court	The QRC considers that the referral of a Dispute to the courts of the State should be at the discretion of either party rather than a contractual obligation.	●
Force Majeure				
63	28.1	Claim of Force Majeure	The QRC considers that notices of a Force Majeure Event should be required to be given in electronic form in addition to any other acceptable form. The QRC also considers that Aurizon Network should be required to provide updates on the matters specified in clauses 28.1(a) to (d) on a regular basis.	●
64	28.5	Reduction of Access Rights due to loss or damage to Nominated Network	The QRC makes the following comments in relation to clause 28.5: <ul style="list-style-type: none"> • 28.5(a)(vi) – This clause is inconsistent with clause 7.7.3(a)(vi) of the Undertaking. • 28.5(b) – This clause is inconsistent with clause 7.7.3(b) of the Undertaking. • 28.5(c) – This clause is imposing on the Operator liability for shortfalls in amounts paid by the Access Holder which does not seem appropriate. This clause also provides that overpayments by the Operator will be refunded to the Access Holder which also does not seem appropriate. 	●

Item No.	Clause Reference	Description	Comments	QRC Position
			<ul style="list-style-type: none"> 28.5(c)(ii) – The QRC considers that there must be a method for minimising the Operator’s exposure to liability under this clause. 	
Suspension				
65	29	Suspension	<p>The QRC considers that the Operator should be entitled to dispute a Suspension Notice given by Aurizon Network and, where it is determined that there were no reasonable grounds for Aurizon Network to issue the Suspension Notice, to have the Suspension Notice withdrawn.</p> <p>The QRC considers that the Operator should also be able to dispute the contents of the Suspension Notice, including the actions required to have the suspension lifted.</p>	●
66	29.3	Suspension of certain Rollingstock or Rollingstock Configurations	<p>29.3(a)(iii) – A reasonable period of time for rectification should be not less than 20 Business Days.</p> <p>29.3(b) – Aurizon Network should not be entitled to suspend Train Services based on an “<i>anticipation</i>” of breach. The QRC considers that this clause should be deleted.</p>	●
67	29.6	Effect of suspension	<p>The QRC requests the following amendments to clause 29.6:</p> <ul style="list-style-type: none"> 29.6(c)(i) - Replace “, and only, if, no reasonable person in Aurizon Network’s position could have formed the view that the stated grounds for the suspension existed,” with “the stated grounds for the suspension did not exist” and delete clause 29.6(c)(ii). 29.6(d) – This exclusion should only apply to the extent that the Access Holder actually recovers an amount from Aurizon Network in respect of the relevant claim under the contract between Aurizon Network and the Access Holder. 	●
68	29.7	Duration of suspension	<p>The QRC considers that if the Access Holder takes the actions specified in the Suspension Notice as being required to have the suspension lifted (see clause 29.5(c)), then it should be taken to have satisfied this obligation in respect of both remedying the default and preventing recurrence.</p>	●

Item No.	Clause Reference	Description	Comments	QRC Position
69	29.1, 29.2, 29.3, 29.4	Suspension	The QRC considers that these clauses should be clarified to provide that if Aurizon Network exercises a suspension right then it must give a Suspension Notice either before or immediately after the suspension right has been exercised. The requirement to give the notice must not be discretionary where Aurizon Network has exercised the suspension right.	●
Termination				
70	30.1	Termination of Train Services for a Train Service Type	The QRC requests that this clause be amended to provide that Aurizon Network must not reduce Operational Rights under clause 30.1(a) for a Termination Event unless at least 20 Business Days have elapsed since Aurizon Network issued a notice of suspension for the corresponding Suspension Event.	●
71	30.2	Termination of [Deed]	The QRC requests that this clause be amended to provide that Aurizon Network must not issue a notice of termination for a Termination Event unless at least 20 Business Days have elapsed since Aurizon Network issued a notice of suspension for the corresponding Suspension Event.	●
72	30.3	Termination by the Operator	The QRC requests the following amendments to clause 30.3: <ul style="list-style-type: none"> 30.3 – Subject to the assignment provisions being amended, the Operator should have a right of termination if Aurizon Network assigns the Deed in breach. 30.3(b) – Replace “<i>cancelled</i>” with “<i>suspended, cancelled or amended</i>”. This is consistent with the corresponding termination event in respect of the Operator. 	●
73	30.6	Removal of Rollingstock following termination	The QRC requests the following amendments to clause 30.6: <ul style="list-style-type: none"> 30.6(a) – The requirement to remove Rollingstock within 12 hours after termination should be replaced with a requirement to remove Rollingstock “<i>as soon as practicable</i>” after termination. 30.6(b) – Insert “<i>in accordance with clause 30.6(a)</i>” after “<i>the Nominated Network</i>”. 30.6(c) – Aurizon Network should be required to: <ul style="list-style-type: none"> act reasonably and in accordance with good industry practice in removing the Operator’s Rollingstock from the Nominated Network; 	●

Item No.	Clause Reference	Description	Comments	QRC Position
			<ul style="list-style-type: none"> – use all reasonable endeavours to mitigate loss or damage arising from such removal; and – give the Operator minimum notice of its intention to exercise its rights under this clause. • Aurizon Network must be expressly prohibited from disposing of the Operator's Rollingstock in any way including by way of sale or lease of all or any part of the Rollingstock. • 30.6(d) – The indemnity must be subject to the exclusion of the Operator's liability for Consequential Loss. The indemnity should also be subject to the costs incurred by Aurizon Network being reasonably incurred. 	
Assignment				
74	31.1	Assignment by Aurizon Network	<p>The QRC considers that the restriction on Assignment should be more reciprocal, particularly in relation to:</p> <ul style="list-style-type: none"> • Aurizon Network only being allowed to assign its rights or obligations under the Deed if it is not in default of any of its obligations under the Deed or any Access Agreement; • Aurizon Network's Assignee being financially sound and capable of performing Aurizon Network's obligations; • the deed of covenant entered into by Aurizon Network's assignee being on terms acceptable to the Operator; • there being no release given to Aurizon Network of any accrued obligations or liabilities prior to the assignment becoming effective; and • there being no change in control of Aurizon Network without the Operator's prior written consent. <p>Aurizon Network's Assignee must be Accredited.</p> <p>Insert a definition of 'Control' to ensure that the definition of 'Change in Control' can be properly understood.</p>	
75	31.2	Assignment by Operator	<p>31.2(b) – After "<i>the whole</i>" insert "<i>or any part</i>".</p> <p>31.2(b)(iii) - Replace "<i>not be unreasonably withheld</i>" with "<i>be granted</i>".</p>	
76	31.3	Charging	The QRC considers that the term 'Charge' needs to be defined.	

Item No.	Clause Reference	Description	Comments	QRC Position
Relationship with Access Agreements				
77	34(c)		<p>34(c)(i) – The QRC considers that the Operator should not be required to comply with the Access Agreement unless and until it has been given a copy of the relevant provisions of the Access Agreement.</p> <p>34(c)(iii) – Presumably there should be a carve-out in respect of clause 34(c) itself?</p>	●
Notices				
78	35.2	Method of service	35.2(e) – Insert “ <i>and the Operator</i> ” after “ <i>Aurizon Network</i> ”.	●
General				
79	36.3	Entire agreement	The QRC considers that clause 36.3(c) should be reciprocal.	●
80	36.17	Third Party Land	<p>The QRC makes the following comments in relation to clause 31.17:</p> <ul style="list-style-type: none"> 36.17(c) – The QRC considers that this clause is unreasonable and should be deleted. Aurizon Network is asking the Operator to agree to unspecified and unrestricted requirements of a third party. This exposes the Operator to uncapped risk and liability. By way of example, this clause could be used to require the Operator to pay onerous fees and charges to a Landowner or to perform unreasonable obligations at the discretion of and in favour of the Landowner. The Operator has no visibility on Aurizon Network’s land access arrangements with Landowners in respect of Third Party Land, it has no contractual relationship with the Landowners and it does not have any control over Aurizon Network’s acts or omissions with respect to Third Party Land or its interactions with Landowners. 36.17(d) – As noted above, the QRC requests that clause 36.17(d) should be deleted. 36.17(e) – For the reasons specified above in relation to clause 37.17(c), the QRC considers that clause 36.17(e) is similarly unreasonable and should be deleted. The QRC considers that Aurizon Network should instead be required to maintain throughout the term its rights in respect of Third Party Land. If Aurizon Network fails to maintain its rights in respect of Third Party Land then it must promptly notify the Operator, the Operator may 	●

Item No.	Clause Reference	Description	Comments	QRC Position
			terminate the Deed and claim damages against Aurizon Network.	
Train Descriptions				
81	Schedule 2	Train Descriptions	The QCA is proposing to delete schedule 2 (Train Descriptions) on the basis that the schedule in the associated Access Agreement can be relied on. The QRC considers it would be preferable for schedule 2 of the Train Operations Deed to be retained so that the Operator does not need to rely on the Access Agreement (which it is not a party to).	●
82	Schedule 2, Part B, clause 1.3	Cycle description	The term 'Train Services cycle description' is not used in the body of the Deed. What is the relevance of this term? The QRC also queries the discrepancy between the drafting in this clause and clause 1.3 of Part A of schedule 2.	●
83	Schedule 2, Appendix B	Nominated Monthly Train Services	The definition of 'AAP' in Appendix B to Schedule 2 refers to a 'Notice of Intention to Increase Nominal Payload', which appears to be a typographical error. The QRC requests clarification.	●
Performance Levels				
84	Schedule 6, Appendix	Calculation of Below Rail Transit Time	<p>The QRC makes the following comments in relation to the calculation of BRRT:</p> <p>'Standard SRT'</p> <ul style="list-style-type: none"> Is the word "<i>additional</i>" required or is it simply the time taken to start or stop as specified in appendix A of schedule 2 for the relevant Train Service Type? Insert "<i>and</i>" between (a) and (b). Insert "<i>of</i>" between 'the additional time' in the fourth last line. <p>'Non BR Start Stop Time' – It is not clear what is meant by "<i>non-below rail dwell</i>" and "<i>non-below rail</i>" delay. Nor is it clear how a "<i>dwell</i>" in the definition of 'Standard SRT' differs to "<i>non-below rail dwell</i>".</p> <p>'BR Delay'</p> <ul style="list-style-type: none"> Paragraph (a) and (b) - The exclusion of delays contributed to by other Railway Operators should be removed in 	●

Item No.	Clause Reference	Description	Comments	QRC Position
			<p>both paragraphs.</p> <ul style="list-style-type: none"> Paragraph (b) – Replace “<i>directly caused by the activities of Aurizon Network in maintaining the Infrastructure</i>” with “<i>caused or contributed to by Aurizon Network (to the extent of such contribution)</i>”. Paragraphs (c) and (d) – Aurizon Network should manage these obligations through appropriate scheduling. 	
85	Schedule 7	High visibility clothing, Emergency Procedures and Environmental Management Standards	<p>The QRC makes the following comments in relation to schedule 7:</p> <ul style="list-style-type: none"> 1.2 – The term “<i>Aurizon Network’s safety management system</i>” is not defined, however, the Operator is obliged to ensure that its staff and visitors comply with that system. The QRC requests further clarification of the scope of this obligation. 3 – This section seeks to impose upon the Operator a number of obligations which already appear to be covered in clause 11.1 (General requirements) of the Deed. Items 3.1(b)(i), 3(c) (first paragraph, second sentence and second paragraph, second sentence), 3(d)(i), 3(f)(i) and 3(g)(i) should be deleted to avoid inconsistency. The last paragraph of Item 3(c) should be deleted as it overlaps with the obligation in clause 21.10 of the Deed. 3 – This section refers to a number of matters that must be addressed by the parties in an Interface Risk Assessment. However, the Interface Risk Assessment process specified in clause 4.10.2(b) of the Access Undertaking does not refer to these requirements. Rather, it refers to provisions in the Standard Access Agreement. The relationship between this section of schedule 7 and the interface risk assessment process in the Access Undertaking needs to be clarified. 3 – The QRC notes that the matters that must be assessed and considered under this section are very broad. The QRC requests further clarification of the scope of the assessment requirements. For example, section 3.1(e)(i) refers to an assessment of the impact on “<i>flora and fauna including sensitive receptors</i>”, which is potentially very broad. 3.1(c) – Replace “<i>proposed operations</i>” with “<i>proposed Activities</i>”. 3.1(d)(iii) – Insert “<i>that may be caused by the Operator’s proposed Activities</i>” at the end of the sentence. 3.1(f)(iii) – Insert “<i>required as part of the Operator’s proposed Activities</i>” after “<i>management of Dangerous Goods</i>”. 	●

Item No.	Clause Reference	Description	Comments	QRC Position
Suspension and Termination				
86	Schedule 9, Part A	Suspension Events and Termination Events	<p>The QRC requests the following amendments to Schedule 9, Part A:</p> <ul style="list-style-type: none"> • 2 – The Operator must not be suspended under Item 2 if it has operated the Train Service in accordance with Train Control Directions. • 2(b)(i) – Delete “, or is likely to adversely affect,”. • 2(b)(ii) – Delete “, or is likely to cause”. 	
87	Schedule 9, Part B	Suspension Events and Termination Events	<p>The QRC requests the following amendments to Schedule 9, Part B:</p> <ul style="list-style-type: none"> • 1 – Replace 10 Business Days with 20 Business Days. • 2 – Delete the square brackets. • 2(a) – Delete “or is likely to adversely affect”. • 2(b) – Delete “or is likely to cause”. Insert “increased” before “material risk to property”. • 3(a) – Delete 3(a) in both columns as this is covered by item 2. • 6 – See comments above in relation to clause 21.12(c). • 7 – The Operator should not be at risk of suspension or termination under this item unless and until the relevant direction, notice or order is given to the Operator. It is unreasonable for the Operator to be required to comply with a timeframe in a notice it has not been given or which Aurizon Network has been slow to give to the Operator. • 8 – This item should be deleted as it overlaps with item 6. • 9 – Suspension Event – 20 Business Days; Termination Event – 40 Business Days. • 9(b) – This item should refer to a failure to provide evidence within the timeframe specified in clause 23.3. • 11(d) – Replace “Safety Standard” with “Applicable Safety Standard”. • 11 – There should be a mechanism whereby the Operator can dispute a Suspension Notice given under item 11 and, where it is determined that there were no reasonable grounds for Aurizon Network to issue the Suspension 	

Item No.	Clause Reference	Description	Comments	QRC Position
			Notice, the Suspension Notice is taken not to have been given for the purpose of calculating the number of Suspension Notices given in a 12 month period.	
Interface Coordination Arrangements				
88	1.2(a)(i)	Train Control Procedures	The QRC considers that the timeframe for the notification obligation be “as soon as reasonably practicable” rather than “immediately”.	●
89	2	Train Operations Procedures	The QRC considers that the Operator should only be obliged to provide Safety Notices and Train Notices to its staff to the extent that the Operator has actually been provided with the relevant notice.	●
90	4	Possession Protocols	The QRC considers that the Possession Protocols should be made available on the Website.	●
91	5	Document Control Procedures	The QRC considers that the Operator should only be responsible for distribution of documents to the extent it has been provided with the relevant documents.	●
Typographical corrections				
92	1.1	Various	There are a number of defined terms that are no longer used in the Deed including: Acceptable Credit Rating, Good Engineering Practices, Master Train Plan, Private Facilities, Railway Manager, Regenerative Brake and Through-Running Train Service. The term ‘Environment’ is used in the definition of ‘Emergency Procedures’ but is not defined.	●
93	1.1	‘Daily Train Plan’	This term is defined differently in the Deed and the Undertaking. Is a different meaning intended?	●

Item No.	Clause Reference	Description	Comments	QRC Position
94	1.1	'Network Customer'	This term is used in Recital B but is not defined.	●
95	1.1	'Rollingstock' and 'Wagon'	The definition of 'Wagon' seems to be circular as it refers to an item of 'Rollingstock' which in turn refers to a 'Wagon'.	●
96	1.1	'Sectional Running Times'	The term 'Planned Dwell Times' is used in the definition of 'Sectional Running Times' but is not defined. There are references to 'Section Running Times' and 'Sectional Running Times' throughout the Deed, which should presumably be made consistent.	●
97	1.1	'Stowage'	This term is defined differently in the Deed and the Undertaking. Is a different meaning intended?	●
98	1.1	'Train Service'	This term is defined differently in the Deed and the Undertaking. Is a different meaning intended?	●
99	3.1	Incorporation	Insert 'into' after 'incorporated'. The term 'Train Operator' is not defined.	●
100	12	Plans	12.1(a)(i)(A)(2) – Replace “ <i>addressing</i> ” with “ <i>addresses</i> ” and insert “ <i>and</i> ” at the end. 12.1(a)(i)(B)(2) – Insert “ <i>and</i> ” at the end. 12.1(b) - Formatting of subclauses is incorrect. 12.1(c) and (d) – Replace references to “ <i>parties</i> ” with “ <i>Parties</i> ”. 12.1(e)(ii)(B) – Insert “ <i>Network</i> ” after Aurizon. 12.2(a)(ii)(A) – Replace “ <i>Train Service Description</i> ” with “ <i>Train Description</i> ”. 12.2(d) – Cross referencing errors. 12.2(d) – Insert “ <i>Network</i> ” after Aurizon.	●

Item No.	Clause Reference	Description	Comments	QRC Position
101	14.7	Issue of Train Route Acceptance or Authority to Travel	Insert " <i>for the Train Service Type</i> " at the end of this clause.	●
102	33	Confidentiality	33.2(b)(x) – Replace ' <i>User Funding Arrangement</i> ' with ' <i>User Funding Agreement</i> '.	●
103	Schedule 6	Development of Performance Levels	<p>1.4 – Replace "<i>Agreement</i>" with "<i>Deed</i>".</p> <p>The following terms are not defined in clause in clause 1.1 but are used in this Schedule:</p> <ul style="list-style-type: none"> • Average Below Rail Transit Time Factor • Average Below Rail Transit Time Threshold • Below Rail Transit Time 	●

Standard Studies Funding Agreement

Standard Studies Funding Agreement

The table below sets out the QRC's comments on the Studies Funding Agreement – [Prefeasibility] [Feasibility] Study (as set out in the Draft Decision) (**QCA SFA**) between Aurizon Network Pty Ltd (**Aurizon Network**) and a [Study Funder] (**Study Funder**). This table also compares provisions in the QCA SFA against corresponding provisions in the standard study funding agreement which was submitted by the QRC to the QCA in October 2013 (**QRC SFA**).

Capitalised terms used in the table below have the meaning given in the QCA SFA unless otherwise defined.

The key below has been used to grade comments on the QCA SFA as 'high concern', 'medium concern' or 'low concern'.

- = Low concern
- = Medium concern
- = High concern

Item	Clause Reference	Description	Comment	QRC Position
Overview				
1	N/A	<p>The QRC SFA potentially covers funding arrangements during the Concept Stage, Pre-Feasibility Stage and Feasibility Stage.</p> <p>Whereas the QCA SFA will only cover funding arrangements for either a Prefeasibility Study or Feasibility Study (as applicable). The QCA SFA is not intended to be used for a Concept Study.</p> <p>Clause 8.3.1(a) of the Access Undertaking provides that Aurizon Network must undertake a Concept Study:</p> <ul style="list-style-type: none"> for capacity consistent with capacity identified in a Demand Assessment report; and 	Given that Aurizon Network may require a person to fund a Concept Study, the QRC considers that it is appropriate that the proposed funding methodology for a Concept Study should be included in a Standard Studies Funding Agreement for a concept study.	●

Item	Clause Reference	Description	Comment	QRC Position
		<ul style="list-style-type: none"> if requested by any person, in which case Aurizon Network may require the person to fund the Concept Study, unless a sufficient Concept Study for the Expansion is already underway or completed. 		
2	N/A	Clauses 8.3 and 8.4 of the Access Undertaking are relevant to the QCA SFA.	As discussed in further detail below, it appears that further work may be required to ensure that the provisions of the QCA SFA are consistent with clauses 8.3 and 8.4 of the Access Undertaking.	●
Conditions precedent				
3	2.6(d)	<p>This clause of the QCA SFA provides that if one or more Other Funding Agreements have terminated under clause 2 of those agreements after completion of the process under clause 5.3(b) to 5.3(d)(ii), then Aurizon Network must terminate the QCA SFA and each Other Funding Agreement (unless otherwise agreed). However, the process in clause 5.3(d) indicates that:</p> <ul style="list-style-type: none"> under clause 5.3(d)(i), Other Funding Agreements may continue despite the Study Funder not agreeing to be a Continuing Study Funder; or under clause 5.3(d)(ii), if the Study Funder and all Other Study Funders have not agreed to be Continuing Study Funders then the Study Funder and each Other Study Funder will be taken to have given Aurizon Network a termination notice. 	There seems to be inconsistency between the prescribed termination of all study funding agreements under clause 2.6(d) (after following the process under clause 5.3(b) to 5.3(d)(ii)) and the termination options in clause 5.3(d) (which contemplates termination of either some or all study funding agreements). The QRC considers that this requires further clarification.	●
Study funder's funding				
4	5.1 (Funding commitment) 5.2 (Drawdown	<p>The Study Funder agrees to provide interest free loans to Aurizon Network for:</p> <ul style="list-style-type: none"> if the Rail Study is a Feasibility Study, the Study Funder's 	As described in the opposite column, the QCA SFA funding methodology is structured by way of monthly, interest free loans by Study Funders to Aurizon Network.	●

Item	Clause Reference	Description	Comment	QRC Position
	of Study Funder funding)	<p>Share of Prefeasibility Costs; and</p> <ul style="list-style-type: none"> Drawdown Amounts specified in Drawdown Notices given by Aurizon Network. <p>The maximum aggregate amount the Study Funder is obliged to lend to Aurizon Network at any time is:</p> <ul style="list-style-type: none"> if the Rail Study is a Feasibility Study, the Study Funder's Share of Prefeasibility Costs; plus the Study Funder's Study Commitment at that time. <p>After the end of each Month, Aurizon Network must give the Study Funder a notice specifying the Drawdown Amount for the Month and the Study Funder's Estimated Study Costs as at the end of the Month.</p> <p>Subject to any Dispute, the Study Funder must pay the Drawdown Amount specified in the Drawdown Notice.</p>	<p>Whereas there are two different options for funding methodologies under QRC SFA:</p> <ul style="list-style-type: none"> funding of study works by Users – under this arrangement Aurizon Network submits claims for invoices on a monthly basis based on actual progress; or underwriting – under this arrangement Users only pay if costs are not included in the RAB. <p>The QRC would like to understand the tax drivers for structuring the QCA SFA and would like to discuss whether there are simpler arrangements that could be put in place.</p> <p>The QRC would like to understand how a Study Funder's liability for its share of Pre-feasibility study costs under a QCA SFA for a Feasibility Study will be determined if the Study Funder has already loaned amounts to Aurizon Network under the QCA SFA for the Pre-feasibility Study.</p>	
5	'Study Costs'	Based on the description of the various components of the 'Study Costs' it appears that it is Aurizon Network's intention that Study Costs will extend to costs incurred by Aurizon Network before the QCA SFA becomes effective.	The QRC considers that any costs incurred by Aurizon Network before the QCA SFA becomes effective must not be included in Study Costs unless and to the extent that the exact amount of those costs, the categorisation of such costs and the reason for incurring such costs, is specified in an agreed schedule to the QCA SFA which is included in the QCA SFA as at the date of execution.	
6	'Study Costs'	<p>The following margins are proposed to be applied to the relevant components of the Study Costs:</p> <ul style="list-style-type: none"> Internal Costs – [8]% Additional Costs – [8]% External Costs – [1]% 	<p>The QRC notes that the margins are in addition to the Project Management Fee, which does not seem commensurate with the level of risk that Aurizon Network is taking under the QCA SFA.</p> <p>The margin of 8% on Additional Costs is not acceptable unless the scope of Additional Costs is significantly narrower and limited to direct costs of Aurizon Network. It seems to the QRC that the margin of 8% should cover a number of the costs which are intended to be reimbursed as Additional Costs or Internal Costs.</p>	

Item	Clause Reference	Description	Comment	QRC Position
			As noted below, schedule 4 (Study Costs and Allocation Principles) requires significant amendment and simplification.	
7	5.3 (Total Study Commitment reached)	<p>Aurizon Network must notify All Study Funders if:</p> <ul style="list-style-type: none"> it anticipates the Study Funder’s Estimated Study Costs may exceed the Study Funder’s Study Commitment; or the Study Funder’s Estimated Study Costs specified in a Drawdown Notice exceed the Study Funder’s Study Commitment. <p>If all Other Study Funders have not agreed to be Continuing Study Funders (by agreeing to fund at least 115% of the Funding Shortfall) then Aurizon Network will have no obligation to continue to carry out the Rail Study.</p> <p>The Funding Shortfall is the difference between the Estimated Total Study Costs and the Total Study Commitment as at that time.</p> <p>Under the QRC SFA, Aurizon Network is expressly excluded from incurring any cost or expense or seeking reimbursement of any sum in excess of the approved budget (clause 3.4(b)).</p>	<p>The QCA SFA should include an express acknowledgement that:</p> <ul style="list-style-type: none"> under no circumstances will the Study Funder’s Study Commitment be varied without the express written consent of the Study Funder; and the Study Funder is not liable to Aurizon Network under the QCA SFA, and Aurizon Network has no claim against the Study Funder, for any amount that exceeds the Study Funder’s Study Commitment. <p>The QRC considers that under clauses 5.3(d)(i) and 9.5(c), the Study Funder should have the option of having its obligations either suspended or terminated for the relevant time, rather than automatic termination. The suspension option would allow the Study Funder to recommence funding at a time when it was financially able to do so.</p> <p>The QRC queries why the definition of ‘Study Funder’s Study Commitment’ does not refer to a variation under clause 9.5?</p>	●
			<p>As noted above, the QRC considers that further clarification is required as to whether:</p> <ul style="list-style-type: none"> in the circumstances described in clause 5.3(d)(i), the Other Funding Agreements of the Other Study Funders who have agreed to be Continuing Study Funders will continue (despite the termination of the Study Funding Agreement); and if less than all Study Funders agree to be Continuing Study Funders, will the Continuing Study Funders’ liability for 115% of the Funding Shortfall be determined on a pro-rata basis in accordance with their Study Percentages (similar to the process in clause 2.7) or will the liability be agreed pursuant to the meeting 	●

Item	Clause Reference	Description	Comment	QRC Position
			referred to in clauses 5.3(b) and 5.3(c). The QRC recommends that a notification process is included to clarify the new Study Percentage and the date from which the new Study Percentage applies.	
8	6.1 (Repayment if Feasibility Study)	<p>Aurizon Network is only required to repay the Loaned Amount for a Pre-feasibility Study if:</p> <ul style="list-style-type: none"> • Aurizon Network enters into a Study Funding Agreement for a Feasibility Study of the proposed Expansion; • the Study Funding Agreement becomes unconditionally binding; and • Aurizon Network is paid funds under the Study Funding Agreement which it is permitted to apply in repaying loans made by the Study Funder under the QCA SFA for the Pre-feasibility study and Other Funding Agreement. 	<p>The Access Undertaking includes a corresponding provision to clause 6.1 of the QCA SFA in clause 8.4.4(a)(iii)(A). However the test is different to the test in the QCA SFA. The test in the Access Undertaking simply requires the Study Funding Agreement for the Feasibility Study to have become unconditional. The QRC considers that the test in the Access Undertaking should be reflected in the QCA SFA.</p> <p>The concept of an 'Expansion' needs to be broader to ensure that if the nature of the 'Expansion' changes between the Pre-feasibility Study and the Feasibility Study (within an acceptable range), then the Feasibility Study will still be taken to be in respect of the same Expansion as that for which the Pre-feasibility Study was undertaken. The QRC considers that Aurizon Network should be required to:</p> <ul style="list-style-type: none"> • use best endeavours to ensure the Study Funding Agreement becomes unconditionally binding; and • ensure that it is granted permission under the relevant Study Funding Agreement to apply funds paid under that Agreement in repayment of loans made by the Study Funder for the Pre-feasibility Study. <p>The QRC considers that Aurizon Network should also be obliged to take all steps reasonably required to ensure the costs of performing the Pre-feasibility Study are included in the RAB (see clauses 9.1 and 10.2 of the QRC SFA).</p>	●
9	6.2(a) and (b) (Repayment if	This clause provides that Aurizon Network is only required to repay the Loaned Amount for a Feasibility Study if:	The Access Undertaking includes a corresponding provision to clauses 6.2(a) and (b) of the QCA SFA in clause 8.4.4(a)(iii)(B).	●

Item	Clause Reference	Description	Comment	QRC Position
	Project Agreement)	<ul style="list-style-type: none"> • Aurizon Network subsequently enters into Project Agreements for the proposed Expansion; • the Project Agreements become unconditionally binding; and • under the Project Agreements, Aurizon Network is solely responsible for funding the Rail Study Works. <p>Under the QCA SFA, 'Project Agreements' are defined as an agreement (or series of related agreements) setting out the terms and conditions on which Aurizon Network and/or users will carry out, or procure the carrying out of, the construction of the whole or part of the Rail Study Works.</p>	<p>However, the test is different to the test in the QCA SFA. The test in the Access Undertaking does not differentiate as to whether Aurizon Network has become solely responsible for funding the Rail Study Works.</p> <p>The QRC considers that the test in the Access Undertaking should be reflected in the QCA SFA.</p> <p>In addition, rather than referring to entry into 'Project Agreements' the Access Undertaking refers to the Access Seekers (or their Customers) entering into:</p> <ul style="list-style-type: none"> • agreements for the funding and construction of the Expansion; or • the Access Agreement(s) for utilisation of the Expansion. <p>The QRC considers that the definition of 'Project Agreements' in the QCA SFA should be made consistent with the agreements referred to in clause 8.4.4(a)(iii)(B) of the Access Undertaking.</p> <p>The concept of an 'Expansion' needs to be broader to ensure that if the nature of the 'Expansion' changes between the Feasibility Study and the Project Agreement stage (within an acceptable range), then the Project Agreement will still be taken to be in respect of the same Expansion as that for which the Feasibility Study was undertaken.</p> <p>The QRC considers that Aurizon Network should be required to use best endeavours to ensure the Project Agreement becomes unconditionally binding.</p> <p>The QRC considers that Aurizon Network should be obliged to take all steps reasonably required to ensure the costs of performing the Feasibility Study are included in the RAB (see clauses 9.1 and 10.2 of the QRC SFA).</p>	
10	6.2(c) (Repayment if Project Agreement)	<p>If:</p> <ul style="list-style-type: none"> • Aurizon Network enters into Project Agreements; • the Project Agreements become unconditionally binding; and 	<p>The Access Undertaking includes a corresponding provision to clause 6.2(c) of the QCA SFA in clause 8.4.4(a)(iii)(B). However, the test is different to the test in the QCA SFA. The test in the Access Undertaking does not require Aurizon Network to be permitted to</p>	●

Item	Clause Reference	Description	Comment	QRC Position
		<ul style="list-style-type: none"> Aurizon Network is paid funds under the Project Agreements which it is permitted to apply in repaying loans made by the Study Funder under the Agreement and by Other Study Funders under Other Funding Agreements (other than the amount of Land Acquisition Costs), <p>then Aurizon Network must repay a proportion of the funds received to the Study Funder calculated as a proportion of the Loaned Amount to the aggregate of the Loaned Amount and loans by Other Study Funders under Other Funding Agreements.</p>	<p>apply funds in repayment of loans made by the Study Funder. The QRC considers that the test in the Access Undertaking should be reflected in the QCA SFA.</p> <p>In addition, rather than referring to entry into 'Project Agreements', the Access Undertaking refers to the Access Seekers (or their Customers) entering into:</p> <ul style="list-style-type: none"> agreements for the funding and construction of the Expansion; or the Access Agreement(s) for utilisation of the Expansion. <p>The QRC considers that the definition of 'Project Agreements' in the QCA SFA should be made consistent with the agreements referred to in clause 8.4.4(a)(iii)(B) of the Access Undertaking.</p> <p>The concept of an 'Expansion' needs to be broader to ensure that if the nature of the 'Expansion' changes between the Feasibility Study and the Project Agreement stage (within an acceptable range), then the Project Agreement will still be taken to be in respect of the same Expansion as that for which the Feasibility Study was undertaken.</p> <p>QRC considers that Aurizon Network should be required to:</p> <ul style="list-style-type: none"> use best endeavours to ensure the Project Agreement becomes unconditionally binding; and ensure that it is granted permission under the relevant Project Agreement to apply funds paid under that Agreement in repayment of loans made by the Study Funder. <p>The QRC considers that Aurizon Network should be obliged to take all steps reasonably required to ensure the costs of performing the Feasibility Study are included in the RAB (see clauses 9.1 and 10.2 of the QRC SFA).</p> <p>The QRC would like further information in relation to the repayment of Land Acquisition Costs.</p>	

Item	Clause Reference	Description	Comment	QRC Position
11	6.3 (Other repayment)	<p>This clause provides that if Aurizon Network does not become obliged to repay the Loaned Amount to the Study Funder within 9 years and 11 months after the Commencement Date then:</p> <ul style="list-style-type: none"> • Aurizon Network will grant the Study Funder a Rail Study Licence; • the Study Funder will be liable to pay the Licence Fee to Aurizon Network (which is an amount equal to the Loaned Amount); and • the Loaned Amount will be repaid by Aurizon Network (because the Licence Fee will be deducted from the Loaned Amount payable by Aurizon Network). <p>The Study Funder's right to repayment of the Loaned Amount is subordinate to the rights of all other debts and liabilities of Aurizon Network. The Study Funder will have no entitlement to recourse to any assets of Aurizon Network.</p>	<p>The QRC wishes to understand:</p> <ul style="list-style-type: none"> • the significance of the 9 years and 11 month period; • the reasons for structuring the repayment in this way; and • the reasons for the subordination of the Study Funder's right of repayment. 	
Rail Study				
12	7.1 (Conduct of Rail Study) 7.2 (Target Study Cost and Target Date)	<p>Under the QCA SFA, Aurizon Network must carry out, or procure the carrying out of, the Rail Study (which is a study in accordance with the Scope of Work).</p> <p>In relation to Aurizon Network's obligations when Incurring Study Costs, Aurizon Network is only required to act reasonably and properly when Incurring Additional Costs (item 1 of Schedule 4). The other components of the Study Costs, being External Costs and Internal Costs, are not limited to costs reasonably and properly Incurred (item 1 of Schedule 4).</p> <p>Under the QRC SFA, Aurizon Network has more fulsome obligations in relation to the standard of work it must perform. In particular, Aurizon Network must:</p> <ul style="list-style-type: none"> • perform the Services in accordance with Good Industry 	<p>The QRC considers that all Study Costs including External Costs and Internal Costs should be restricted to costs reasonably and properly Incurred.</p> <p>The QRC requires that the QCA SFA include the obligations specified in the opposite column that were included in the QRC SFA with respect to standard of work.</p> <p>See further comments below in relation to Schedule 4.</p>	

Item	Clause Reference	Description	Comment	QRC Position
		<p>Practice, all relevant Laws, applicable Authority Approvals, the Approved Work Plan, the Agreement and so as to achieve the Capacity Increment (clause 2.1(b));</p> <ul style="list-style-type: none"> perform the Services expeditiously and without unreasonable or unnecessary delay and in accordance with the requirements of the Access Undertaking (clause 2.2(c)); on request by the User Committee, obtain any long lead Authority Approvals required by the Extension works (clause 2.1(e)); and give the User Committee notice of any event or circumstance which has occurred or may occur and has or is likely to have an adverse impact on Aurizon Network's ability to perform and complete the Services for a Stage or meet the target date for commissioning of the Expansion (clause 2.3). 		
13	7.3 (Monthly Progress Report)	<p>Under the QCA SFA:</p> <ul style="list-style-type: none"> the Pre-feasibility Study and Feasibility Study must be carried out in accordance with the relevant Scope of Works (clause 7.1); Aurizon Network must also ensure the Study Costs do not exceed the Target Study Cost and the Rail Study is completed by the Target Date (clause 7.2); and Aurizon Network must give the Study Funder a monthly Progress Report specifying reasonable details of progress in relation to carrying out the Rail Study as at the end of the Month. <p>Whereas under clause 7 of the QRC SFA, Aurizon Network must develop, in consultation with the User Committee, a Work Plan for each Stage. The Work Plan includes a schedule of the Services to be undertaken and a budget for the Services to be undertaken.</p>	<p>There is no requirement for Aurizon Network to provide a programme or budget to the Study Funders. The QRC considers that Aurizon Network should be required to provide a Scope of Work Plan for the Study Funder Committee's approval that includes, in reasonable detail:</p> <ul style="list-style-type: none"> the scope of the Expansion to be investigated to achieve the capacity increase; and a schedule and budget for the Scope of Work. <p>The QCA SFA should also specify a procedure for agreeing variations to the Scope of Work Plan.</p> <p>The QRC considers that the monthly Progress Report which is submitted by Aurizon Network under clause 7.3 must include details which describes Aurizon Network's progress against the Scope of Work Plan.</p>	●

Item	Clause Reference	Description	Comment	QRC Position
		The QRC SFA also includes a detailed procedure for variations to the Approved Work Plans.		
14	7.4 (Provision of Rail Study Report)	<p>Aurizon Network must deliver the Rail Study Report to the Study Funder within 20 Business Days after the date of the Completion Notice. The Rail Study Report must comply with the requirements specified in schedule 3 and include the information required for the relevant Rail Study in the Access Undertaking.</p> <p>The definition of 'Rail Study Report' in the QCA SFA refers to a report setting out the outcomes of the Rail Study.</p> <p>The definitions of 'Feasibility Study' and 'Prefeasibility Study' in the Access Undertaking specify that each study must include a written report. The definitions also specify what must be included in those written reports.</p>	<p>The contents of the Rail Study Report are variously described in clause 7.4 of the QCA SFA, the definition of 'Rail Study Report' in the QCA SFA and the definitions in the Access Undertaking. The QRC considers that the inconsistency between clause 7.4 of the QCA SFA, the definition of 'Rail Study Report' in the QCA SFA and the description of these reports in the Access Undertaking needs to be addressed.</p> <p>The QRC considers that the 'Rail Study Report' should be defined in the QCA SFA as a report that complies with the requirements specified in the Access Undertaking for such a report.</p> <p>It is critical to the QRC that the contents of the relevant Rail Study Report are comprehensive otherwise the Study Funder's ability to negotiate on the scope of an expansion project will be jeopardised.</p> <p>The reference in clause 7.4 of the QCA SFA to the requirements specified in schedule 3 appears to be an error and requires clarification.</p> <p>Paragraph (i) in the second half of the definition of 'Pre-feasibility Study' in the Access Undertaking appears to be incomplete.</p>	●
Intellectual Property Rights				
15	[7.6] (Intellectual Property Rights)	<p>[Note: there is a problem with clause numbering because the heading 'Intellectual Property Rights is incorrectly located within clause 7.5(a).]</p> <p>Under clause [7.5(d)/7.6(c)] Aurizon Network grants the Study Funder a non-exclusive licence to use a Pre-feasibility Study Rail Study Report (referred to in clause 7.5(a)) until the Loaned Amount for the Pre-feasibility Study is repaid under clause 6.1.</p>	<p>The QRC requests clarification as to whether clause [7.5(d)/7.6(c)] is intended to only apply where the Study Funding Agreement is for a Pre-feasibility Study. If it is intended to apply where the Study Funding Agreement is for a Feasibility Study, the licence to use information in relation to the Feasibility Study will expire when the Loaned Amount for the Pre-feasibility Study is repaid, which does not seem appropriate.</p> <p>If it is only intended to only apply where the Study Funding</p>	●

Item	Clause Reference	Description	Comment	QRC Position
			Agreement is for a Pre-feasibility Study, it is not acceptable that the licence to use the Pre-feasibility Rail Study Report will expire on the date the Loaned Amount for the Pre-feasibility Study is repaid to the Study Funder. Nor is it acceptable for a licence to use a Feasibility Study to expire on the date the Loaned Amount for the Feasibility Study is repaid to the Study Funder.	
Subcontractors				
16	N/A	Clause 6 (Subcontractors) of the QRC SFA imposes various obligations on Aurizon Network with respect to subcontracting.	<p>The QRC requests that a subcontracting provision be included in the QCA SFA which includes the following concepts:</p> <ul style="list-style-type: none"> • Aurizon Network must consult with Study Funders in relation to subcontracting; • subcontracting does not relieve Aurizon Network from its obligations under the Studies Funding Agreement; and • Aurizon Network must not subcontract to its related bodies corporate except with the prior written consent of the Study Funders. 	
Variations to Scope of Works				
17	9.2 (Variations to Scope of Works due to Scope Change Event) 9.3 (Consequential variations to Target Date and Target	<p>If Aurizon Network consider it reasonably necessary to vary the Scope of Works due to a Scope Change Event then Aurizon Network may vary the Scope of Works by issuing a Variation Notice.</p> <p>A 'Scope Change Event' means:</p> <ul style="list-style-type: none"> • a Change in Law; • a Latent Condition encountered while carrying out the Rail Study; or 	The third element of the 'Scope Change Event' should exclude any event or circumstance that is caused or contributed to by Aurizon Network.	

Item	Clause Reference	Description	Comment	QRC Position
	Study Cost) 9.6 (Expert determination)	<ul style="list-style-type: none"> the occurrence of any event or circumstance which impacts materially on any aspect of the coal supply chain of which the Expansion will form part. <p>If Aurizon Network considers a proposed variation under clause 9.2 requires a variation to the Target Date or Target Study Cost then Aurizon Network may request the consent of All Study Funders to the variation.</p> <p>If the Study Funder does not consent to a proposed variation then the matter must be referred for Expert determination.</p>		
18	9.5 (Meeting process)	Under this clause, Other Study Funders that do not agree to continue to fund the Rail Study after a proposed variation of the Scope of Works, the Target Date and/or the Study Costs will presumably have their Other Study Funding Agreements terminated.	<p>The QRC requests further clarification as to whether:</p> <ul style="list-style-type: none"> in the circumstances described in clause 9.5(c)(i), the Other Funding Agreements of the Other Study Funders who have agreed to be Continuing Study Funders will continue; and if less than all Study Funders agree to be Continuing Study Funders, will the Continuing Study Funders' liability for 115% of the Funding Shortfall be determined on a pro-rata basis in accordance with their Study Percentages (similar to the process in clause 2.7) or will the liability be agreed pursuant to the meeting referred to in clauses 9.5(a) and 9.5(b). The QRC recommends that a notification process is included to clarify the new Study Percentage and the date from which the new Study Percentage applies. 	●
19	9.7 (Variations to Scope of Works requested by Study Funder)	The Study Funder may request Aurizon Network to propose variations to the Scope of Works. If the Study Funder provides a request to Aurizon Network, then the consultation process in clause 9.1 will apply.	<p>The QRC considers that if a request for variation is put to Aurizon Network under clause 9.7(a) and the request is agreed by the Study Funders Committee, then the Study Funder Committee should be entitled to direct Aurizon Network to vary the Scope of Works.</p> <p>Further, the QRC considers that Aurizon Network should be required to promptly implement the variation unless to do so would require</p>	●

Item	Clause Reference	Description	Comment	QRC Position
			Aurizon Network to breach a law or the Access Undertaking.	
Variations due to Adjustment Event				
20	10.1 (Variation due to Adjustment Event)	<p>If an Adjustment Event occurs, then Aurizon Network must notify All Study Funders and may:</p> <ul style="list-style-type: none"> vary the Target Date; and vary the Target Study Cost by increasing it by the amounts that Aurizon Network considers reasonable as a result of the Adjustment Event. <p>Aurizon Network must invite All Study Funders' Representatives to a meeting to discuss options for funding the Rail Study after the proposed variations.</p> <p>If the parties cannot agree, then the Study Funder may give a Dispute Notice and the Dispute may ultimately be determined by an Expert.</p>	The definition of 'Adjustment Event' must expressly exclude any event, circumstance or change that was caused or contributed to by Aurizon Network.	
Audit of Study Costs				
21	11.3 (Audit of Study Costs)	<p>When required, Aurizon Network must appoint an Auditor to verify the amount of Study Costs Incurred by Aurizon Network, Drawdown Amounts specified in Drawdown Notices and/or the Provisional Project Management Fee, the Project Management Fee and the Adjustment Amount.</p> <p>There is a different and potentially broader audit regime under clause 3.5 of the QRC SFA, which provides that Aurizon Network must, on request of the User Committee:</p> <ul style="list-style-type: none"> permit a peer review team to independently review and assess the studies, advices and reports obtained by Aurizon Network in the course of performing the Services for a Stage; and 	<p>The QRC considers that the audit regime included in the QRC SFA should also be included the QCA SFA.</p> <p>The QRC considers that the Auditor should be required to consider whether the Study Costs Incurred by Aurizon Network were reasonable having regard to the Scope of Work Plan.</p>	

Item	Clause Reference	Description	Comment	QRC Position
		<ul style="list-style-type: none"> make its records relating to costs incurred by Aurizon Network in performing the Services for each Stage available to the Funding User (or its nominee) for auditing purposes and must provide copies of such information to the Funding User (or its nominee) upon request. 		
22	11.3 (Audit of Study Costs) 13 (Project Management Fee)	<p>As noted above, there are specific events which will trigger a requirement for Aurizon Network to cause an Audit to be conducted.</p> <p>However, these events do not include Aurizon Network giving a notice to the Study Funder setting out the Provisional Project Management Fee, the Project Management Fee and the Adjustment Amount under clause 13.1 even though it is contemplated, in clause 13.2, that these amounts may be subject to the Auditor's report.</p>	The QRC recommends Aurizon Network be required to cause an audit to be conducted if Aurizon Network gives a notice to a Study Funder setting out the Provisional Project Management Fee, the Project Management Fee and the Adjustment Amount under clause 13.1.	●
23	11.4 (Dispute about Drawdown Amounts)	11.4(e) – The Study Funder only has 10 Business Days to give a Dispute notice in respect of a Drawdown Amount after the Auditor's report has been given to it. The Study Funder's right to Dispute is extinguished if it fails to issue a Dispute notice within the specified timeframe.	11.4(e) – The QRC considers that the Study Funder should be given at least 20 Business Days to consider the Auditor's report and to issue a Dispute notice in relation to a relevant Drawdown Amount.	●
24	11.5 (Capacity Review)	<p>If All Study Funders appointed a Capacity Reviewer and the Capacity Review determines that the Capacity is incorrect, then Aurizon Network must prepare and re-issue the Rail Study Report on the basis of the correct Capacity Model.</p> <p>The costs and expenses of the Capacity Reviewer must be borne solely by All Study Funders.</p>	<p>The QRC queries why the Capacity Model can only be reviewed after the Rail Study Report is issued. If the monthly Progress Report indicates that there are problems with the Capacity Model then the Study Funders should be able to request a review.</p> <p>The QRC does not consider it appropriate that the Study Funders should be liable for the costs and expenses of the Capacity Review and Aurizon Network's costs in correcting errors in the Capacity Model.</p>	●

Item	Clause Reference	Description	Comment	QRC Position
Bank Guarantee				
25	12 (Bank Guarantee)	<p>The provision of a Bank Guarantee for the Bank Guarantee Amount is a condition precedent to the QCA SFA.</p> <p>As at the Commencement Date, the Bank Guarantee Amount will be the amount of the Study Funder's Study Commitment as at the Commencement Date (which is 115% of the Study Funder's Estimated Study Costs as at the Commencement Date).</p> <p>Aurizon Network must decrease the Bank Guarantee on a quarterly basis to reflect the Study Funder's Study Commitment at the end of the Quarter less the Loaned Amount as at the end of the Quarter.</p> <p>Where the Study Funder agrees to cover a Funding Shortfall, the Study Funder will be required to provide additional Bank Guarantees (see clauses 5.3(c)(iii) and 9.5(b)(iv)).</p> <p>Aurizon Network must return the Bank Guarantee to the Study Funder:</p> <ul style="list-style-type: none"> • if the Agreement is terminated under clause 17 (Termination and step-in), within four months after the date of termination (clause 12.5(c)); and • other than for termination under clauses 2.3(a), 5.3(d) or 9.5(c), within two months after Aurizon Network provides the Rail Study Report to the Study Funder (clause 12.5(d)). 	<p>Clause 8.4.4(b) of the Access Undertaking provides that if a Pre-feasibility Study or Feasibility Study for an Expansion is funded by more than one Pre-feasibility Funder or Feasibility Funder under Studies Funding Agreements, then Aurizon Network must ensure that each Pre-feasibility Funder or Feasibility Funder either:</p> <ul style="list-style-type: none"> • provides a bank guarantee for the amount required in the relevant Study Funding Agreement as a condition precedent to that relevant Study Funding Agreement; or • has the ability to meet its financial obligations under the relevant Study Funding Agreement. <p>The QRC considers that this optionality must be reflected in the QCA SFA.</p> <p>The QRC also considers that if the Study Funder is required to provide security then the Study Funder should have the option of providing:</p> <ul style="list-style-type: none"> • a bank guarantee; • a parent company guarantee (for financial obligations only) from an investment grade entity; or • a company guarantee (for financial obligations only) from a company that is of sufficient financial standing <p>Furthermore, the QRC does not consider it reasonable for Aurizon Network to require a bank guarantee for the entire amount of the Study Funder's Study Commitment at commencement. Only a proportionate amount should be required at commencement.</p> <p>The QRC queries the periods of delay in returning the Bank Guarantee, as specified in clauses 12.5(c) and (d).</p>	●

Item	Clause Reference	Description	Comment	QRC Position
26	12.2 (Recourse to Bank Guarantee)	This clause specifies the circumstances in which Aurizon Network may draw on the bank guarantee.	<p>The QRC considers that Aurizon Network should only be allowed to have recourse to a Bank Guarantee where the Study Funder fails to pay an amount payable by the Study Funder to Aurizon Network under the Agreement:</p> <ul style="list-style-type: none"> • if the amount is payable by a specified date, by the due date for payment; • if the amount is not payable by a specified date, within a reasonable period of not less than 20 Business Days after Aurizon Network has requested payment of the relevant amount; and • if the amount is the subject of a Dispute, in accordance with the relevant provision. 	
Project Management Fee				
27	13 (Project Management Fee) Schedule 6 (Calculation of Project Management Fee)	<p>The Provisional Project Management Fee is a percentage of the other components of the Study Costs, as specified in paragraph (d) of the definition of 'Study Costs'.</p> <p>The actual Project Management Fee is also a percentage of the other components of the Study Costs but it is calculated using a percentage determined by reference to the actual date on which the Rail Study is completed (as against the Target Date) and the actual Study Costs for the Rail Study (as against the Target Cost).</p> <p>The Provisional Project Management Fee and the actual Project Management Fee are then used to determine the Adjustment Amount. The Adjustment Amount must be repaid by Aurizon Network to the Study Funder.</p> <p>If the Provisional Project Management Fee is greater than the Project Management Fee, the Adjustment Amount is the difference between the Provisional Project Management Fee and the Project Management Fee.</p> <p>If the Project Management Fee is greater than or equal to the</p>	<p>The QRC requests that a standard range of percentages are specified for paragraph (d) of the definition of 'Study Costs' which may be used in default of agreement between the parties.</p> <p>The QRC also requests that a standard range of percentages are specified for the Final Time Measure and Final Cost Measure in item 3 of schedule 6 which may be used in default of agreement between the parties.</p>	

Item	Clause Reference	Description	Comment	QRC Position
		<p>Provisional Project Management Fee, the Adjustment Amount is zero.</p> <p>Although the table of percentages in schedule 6 has not been completed, it appears that if the Rail Study is completed late or the actual Study Costs are higher than the Target Study Cost, then the Project Management Fee will be decreased, potentially to zero. If the Project Management Fee is zero then the Adjustment Amount will be the entire Provisional Project Management Fee, which must then be repaid by Aurizon Network to the Study Funder.</p>		
28	13.2 (Dispute)	If the Study Funder does not give Aurizon Network a Dispute notice which Disputes the amount of the Provisional Project Management Fee, the Project Management Fee and/or the Adjustment Amount within 10 Business Days after Aurizon Network gives the Study Funder a copy of the Auditor's report, then the Study Funder's right to issue a Dispute notice is extinguished.	The QRC considers that the Study Funder should be given at least 20 Business Days to consider the Auditor's report and to issue a Dispute notice in relation to the amount of the Provisional Project Management Fee, the Project Management Fee and/or the Adjustment Amount.	●
Force majeure				
29	15 (Force majeure)	<p>The interaction between clause 15 (Force majeure) and clause 10.1 (Variations due to Adjustment Event) is unclear.</p> <p>The definition of 'Adjustment Event' is drafted similarly to the definition of 'Force Majeure Event' and overlaps in some respects, however, there is no contractual connection between the two provisions.</p>	The QRC considers that drafting clarification is required.	●
30	15 (Force majeure)	The Force Majeure Event clause does not allow the parties to terminate for a prolonged Force Majeure Event.	There should be a right to terminate for an extended Force Majeure Event.	●

Item	Clause Reference	Description	Comment	QRC Position
Disputes				
31	16 (Disputes)	There are references to the Institute of Arbitrators and Mediators Australia throughout clause 16.	The Institute of Arbitrators & Mediators Australia no longer exists as a standalone entity. On 1 January 2015 LEADR and The Institute of Arbitrators & Mediators Australia joined to become LEADR & IAMA.	●
32	16.10 (Time bar)	If a Party does not give a Dispute Notice within 12 Months after it becomes aware, or ought reasonably to have become aware, of the event of circumstance giving rise to the Dispute, the Party will not have, and must not make, any claim against the other Party in respect of the Dispute.	A 12 month period is not practical given that issues are only likely to arise later in an expansion project. The need of the 12 month limitation is not justified given that Aurizon Network's liability is already limited. The time bar acts as an additional significant limitation of liability.	●
Termination				
33	17.1 (Termination for convenience by All Study Funders)	If All Study Funders terminate the Agreement and each other Funding Agreement without cause, then clause 6.3 will be taken to apply on the date of termination. Clause 6.3 is the mechanism whereby the Loaned Amount will be repaid by Aurizon Network pursuant to the grant of the Rail Study Licence (because the Licence Fee is equal to, and deducted from, the Loaned Amount payable by Aurizon Network).	For clarity, is it intended that, by operation of clause 17.1(b), the reference to " <i>nine years and 11 months after the Commencement Date</i> " is replaced with " <i>the date of termination of this Agreement</i> "? 17.1(b)(ii)(B)(2) – The QRC considers that Aurizon Network should only be entitled to include in 'Study Costs' those costs that arise as a " <i>direct</i> " consequence of the cessation of the Rail Study. 17.1(b)(iii) – This clause refers to the licence granted under clause 7.5(d) becoming an " <i>irrevocable licence</i> " however clause 7.5(d) describes the licence as an " <i>irrevocable licence</i> ".	●
34	17.2 (Termination for convenience)	If an Other Study Funder terminates the Agreement for convenience, then Aurizon Network must invite All Study Funders' Representatives to a meeting to discuss options for funding and carrying out the Rail Study after termination of the Agreement.	For clarity, is it intended that, by operation of clause 17.2(b)(ii), the reference to " <i>nine years and 11 months after the Commencement Date</i> " is replaced with " <i>the date of termination of this Agreement</i> "? 17.2(b)(i)(B)(2) – The QRC considers that Aurizon Network should only be entitled to include in 'Study Costs' those costs that arise as a " <i>direct</i> " consequence of the cessation of the Rail Study. 17.2(b)(i) – This clause refers to the licence granted under clause	●

Item	Clause Reference	Description	Comment	QRC Position
			7.5(d) becoming an “ <i>irrevocable licence</i> ” however clause 7.5(d) describes the licence as an “ <i>irrevocable licence</i> ”.	
35	17.3 (Termination under clause 5.3(d))	This clause describes the consequences of termination of the Agreement where the Study Funder’s Estimated Study Costs exceed the Study Funder’s Study Commitment.	This clause refers to the licence granted under clause 7.5(d) becoming an ‘irrevocable licence’ however clause 7.5(d) describes the licence as an ‘irrevocable licence’.	
36	17.6 (Step-in)	<p>This clause of the QCA SFA provides that the QCA SFA will terminate if:</p> <ul style="list-style-type: none"> the Access Regulator determines that Aurizon Network has been the cause of a ‘Performance Delay’ and the Rail Study may be undertaken by a nominee of All Study Funders; and All Study Funders have appointed an appropriately qualified and experienced nominee. <p>Whereas under the QRC SFA, upon an Event of Default in respect of Aurizon Network, the Participating Funding User may step-in and complete the Services and Reports for each Stage for themselves. Aurizon Network is required to assist with the exercise of step-in rights and must continue to comply with its other obligations under the QCA SFA as the Funding User specifies.</p> <p>Clause 8.6 of the Access Undertaking specifies a corresponding step-in procedure to the procedure specified in clause 17.6 of the QCA SFA. However there are some differences between the step-in procedure in the QCA SFA and the step-in procedure in the Access Undertaking.</p> <p>In particular, under clause 17.6(b)(ii) of the QCA SFA, Aurizon Network must provide the nominee with “<i>all information</i>” reasonably required to undertake the Rail Study.</p> <p>Whereas under clause 8.6(c)(iii) of the Access Undertaking,</p>	<p>The step-in arrangements in the QCA SFA need to be reconciled with the step-in arrangements in the Access Undertaking.</p> <p>17.6(b)(iv) - This clause refers to the licence granted under clause 7.5(d) becoming an “<i>irrevocable licence</i>” however clause 7.5(d) describes the licence as an “<i>irrevocable licence</i>”.</p> <p>17.6(b)(ii) – Aurizon Network’s obligation under clause 17.6(b)(ii) is considerably narrower than its corresponding obligation under clause 8.6(c)(iii) of the Access Undertaking. The QRC considers that clause 17.6(b)(ii) should be amended to include the broader obligations specified in clause 8.6(c)(iii).</p>	

Item	Clause Reference	Description	Comment	QRC Position
		Aurizon Network must provide the nominee with “ <i>all reasonable assistance</i> ”, including information, required by the nominee to undertake the applicable study.		
Liability				
37	18.1 (Consequences of Target Study Cost being exceeded or Target Date not being met)	A failure by Aurizon Network to comply with clause 7.2 will reduce (potentially to zero) the Project Management Fee payable by the Study Funder. Aurizon Network will have no other liability to the Study Funder arising out of a failure by Aurizon Network to comply with clause 7.2.	The QRC queries why, in the circumstances in clause 18.1(a), the Study Funder should not be entitled to pursue a claim against Aurizon Network for loss suffered by the Study Funder as a result of the Target Study Cost being exceeded or the Target Date not being met. For example, it would seem unreasonable that if the Target Study Cost was exceeded or the Target Date was not met because Aurizon Network had committed fraud, Gross Negligence or Wilful Default, then the Study Funder’s liability should be limited to the amount of the Project Management Fee.	●
38	18.2 (Limitation of Aurizon Network’s liability)	Except to the extent Aurizon Network has committed fraud, Gross Negligence or Wilful Default, or except as otherwise prohibited by law, Aurizon Network’s liability to the Study Funder in respect of a Claim arising out of the Agreement (except in respect of non-payment by Aurizon Network of any amount required to be paid) is limited to the Project Management Fee.	The QRC considers that clause 18.2 imposes an unreasonable limitation on the liability of Aurizon Network under the Agreement. In addition, the QRC considers that it is appropriate that Aurizon Network acknowledges that: <ul style="list-style-type: none"> • monetary damages alone would not be adequate compensation to the Study Funder for Aurizon Network’s breach of its obligation to undertake the Rail Study; and • specific performance of that obligation is an appropriate remedy. 	●
39	18.5 (Claims against Aurizon Network)	The Study Funder will not have any Claim against Aurizon Network in relation to the Agreement unless the Study Funder gives Aurizon Network notice of the claim, allows Aurizon Network a reasonable period to rectify the relevant default and Aurizon Network fails to rectify the default within the reasonable period.	The QRC considers that this clause should be reciprocal.	●

Item	Clause Reference	Description	Comment	QRC Position
Assignment by Aurizon Network				
40	19.2 (Assignment by Aurizon Network)	Under clause 19.3 the Study Funder is not entitled to Assign the Agreement if it is in breach of any of its obligations under the Agreement.	The QRC considers that the same restriction should apply to Assignments by Aurizon Network.	●
Study Costs and Allocation Principles				
41	Schedule 4	Schedule 4 specifies details of the various categories of Study Costs and the allocation principles for such costs.	<p>This schedule requires significant amendment and simplification.</p> <p>The QRC considers that all Study Costs including External Costs and Internal Costs should be restricted to costs reasonably and properly Incurred.</p> <p>There must be a provision in schedule 4 which prohibits Aurizon Network from double or triple recovering the same cost as Additional Costs, Internal Costs and External Costs.</p> <p>Aurizon Network should also be prohibited from separately recovering any costs that should otherwise be covered by a margin.</p> <p>There is substantial overlap between Internal Costs and Additional Costs. As noted above, the margins on Additional Costs and Internal Costs seem to cover matters which are proposed to be reimbursed as Additional Costs.</p>	●
42	Schedule 4 'External Costs'	<p>This definition refers to amounts payable by Aurizon Network before the date of the Agreement to Study [Contractors].</p> <p>This definition also refers to 'Study Contractors', which is not a defined term.</p>	<p>As noted above, Aurizon Network should be prohibited from claiming costs incurred before the date of the Agreement unless those costs are agreed and the exact amounts of such costs are specified in a schedule to the Agreement as at the date of the Agreement.</p> <p>"Study Contractors" should be replaced with "Study Consultants".</p>	●

Item	Clause Reference	Description	Comment	QRC Position
43	Schedule 4 'Personnel Costs'	This definition includes the indirect costs of Employees and Internal Contractors.	The scope of 'Personnel Costs' is too broad. For example, indirect costs of Employees and Internal Contractors should be excluded from Personnel Costs and the scope of costs of an Internal Contractor is too wide.	

Typographical errors

Clause reference	Comment
1 1.1 'Rail Study'	The definition of 'Rail Study' is circular as it refers to a study in accordance with the 'Scope of Works' and the definition of 'Scope of Works' refers to a scope of works for a 'Rail Study'.
2 1.1 'Scope of Work'	This definition must be clarified to expressly refer to the scope of work specified in the definition of 'Pre-feasibility Study' and 'Feasibility Study' in the Access Undertaking.
3 6.1(b) (Repayment if Feasibility Study)	Replace " <i>Study Funding Agreement becomes</i> " with " <i>Study Funding Agreements become</i> ".
4 7.4(e) (Provision of Rail Study Report)	The paragraph marked '(e)' should not be marked with a paragraph marker and paragraph (f) should become paragraph (e).
5 7.5(a)	The heading 'Intellectual Property rights' is incorrectly located within clause 7.5(a).

6 Cross referencing errors

- 'Additional Costs'
- 'Allocation Principles'
- 'Internal Costs'
- 'External Costs'
- Clause 2.7(b)
- Schedule 4, item 1, line 1
- Clause 8.3(a) – references to schedule 8 should be references to schedule 7
- Various cross-referencing errors throughout Schedule 4.

Annexure 1 – Part 4 Mark-up

Please refer to External Document: 'QRC Submission UT4 – Annexure 1 – Part 4 Mark-up'.

Annexure 2 – Clause 7.5 Mark-up

Please refer to External Document: 'QRC Submission UT4 – Annexure 2 – Clause 7.5 Mark-up'.

Annexure 3 – Access Interface Deed

Please refer to External Document: 'QRC Submission UT4 – Annexure 3 – Access Interface Deed'.

Annexure 4 – Standard Rail Connection Agreement Mark-up

Please refer to External Document: 'QRC Submission UT4 – Annexure 4 – Standard Rail Connection Agreement Mark-up'.

Glossary of terms

Term	Meaning
2013 DAU	Aurizon Network's 2013 Draft Access Undertaking
2014 DAU	Aurizon Network's 2014 Draft Access Undertaking
Act / QCA Act	<i>Queensland Competition Authority Act 1997</i> (Qld)
Aurizon	Aurizon Group
Aurizon Group	the group of companies for which Aurizon Holdings Limited ACN 146 335 622 is the ultimate holding company
Aurizon Network	Aurizon Network Pty Ltd ACN 131 181 116
CQCN	Central Queensland Coal Network
Draft Decision	The QCA's January 2015 draft decision on Aurizon Network's 2014 Draft Access Undertaking
IRMP	Interface Risk Management Process
QRC's October 2013 Submission	The QRC's October 2013 submission in relation to the 2014 DAU
QRC's October 2014 Submission	The QRC's October 2014 submission in relation to the 2014 DAU
QCA	Queensland Competition Authority
QRC	Queensland Resources Council
RAB	Regulatory Asset Base as defined under the Undertaking
Reference Tariff	The reference tariff under the Undertaking
Standard Access Agreement	The standard form access agreement under the Undertaking
Standard Rail Connection Agreement / SRCA	The standard form rail connection agreement under the Undertaking
Standard Studies Funding Agreement	The standard form studies funding agreement under the Undertaking

Term	Meaning
Standard Train Operations Deed	The standard form train operations deed under the Undertaking
Standard User Funding Agreement / SUFA	The standard form of user funding agreement under the Undertaking
Submission	This QRC submission in response to the Draft Decision
TOP	Take or pay
Undertaking / UT4 / Access Undertaking	The access undertaking 4
UT1	QR's 2001 Access Undertaking
UT2	QR's 2006 Access Undertaking
UT3	QR Network's 2010 Access Undertaking (1 October 2010)
UT3 Standard Access Agreements	The standard form access agreements under UT3
WIRP	Wiggins Island Rail Project