



QRC submission – CQCN

QCA Declaration Review

Submission on Draft Decision

11 March 2019

11 March 2019

Mr Charles Millsteed
Chief Executive Officer
Queensland Competition Authority
Level 27, 145 Ann Street
Brisbane QLD 4001
(submitted via QCA online submission form)

Dear Mr Millsteed *Charles*

The Queensland Resources Council (**QRC**) provides this submission on behalf of our Rail Working Group members to the Queensland Competition Authority (**QCA**) on its draft decision on the re-declaration of declared services in Queensland.

The QRC confirms this submission may be made public.

As our submission makes clear, the QRC submits that use of the Central Queensland Coal Network satisfies the access criteria set out in the *Queensland Competition Authority Act 1997 (Qld)*. On that basis, the QCA should recommend that the currently declared service be re-declared for at least a further 20 years.

Thank you for the opportunity to provide a submission. If you have any questions about this submission, please contact Andrew Barger at QRC on 3316 2502 or andrewb@qrc.org.au.

Yours sincerely



Ian Macfarlane
Chief Executive

1 Overview

The Queensland Resources Council (**QRC**) welcomes the opportunity to comment on the Queensland Competition Authority's (**QCA**) draft recommendation in relation to the Aurizon Network declaration review (**Draft Recommendation**). Where relevant, this submission also addresses submissions made and the QCA's draft recommendations in other ongoing declaration reviews.

The QRC agrees with the QCA's Draft Recommendation that use of the Central Queensland Coal Network (**CQCN**) (i.e. the use of a coal system for providing transportation by rail (**Service**)) should be declared. In particular, the QRC supports the approach taken by the QCA to the access criteria and considers that the QCA applied a clear decision-making framework and was appropriately satisfied that each of the access criteria are met in respect of the Service.

However, rather than the 15 year declaration period recommended by the QCA, the QRC considers that the access criteria would be satisfied over at least a 20 year declaration period and the additional certainty provided by such a declaration period would better achieve the object of Part 5 of the *Queensland Competition Authority Act 1997* (**QCA Act**). Accordingly, the QRC submits that the QCA should make a final recommendation to the Minister that the Service be declared for (at least) a further 20 year period.

There are a few minor areas where the QRC's view diverges slightly from the approach taken by the QCA, but none of these are material to the QCA's overall recommendation. As a result, the QRC has not sought to address each of these points in detail at this stage. The QRC will consider any submissions made by other parties which address any of these areas and will then decide whether to provide a further submission at that stage.

2 Background

The CQCN is a very important facility. As such, the re-declaration of the Service has significant implications for the Queensland economy. As a result, the QRC welcomes the opportunity to make this submission and is keen to discuss it further at the workshops with stakeholders and the QCA Board and Secretariat.

The QRC is the peak representative organisation of the Queensland minerals and energy sector. The QRC's membership encompasses minerals and energy exploration, production and processing companies and associated service companies. The QRC works on behalf of members to ensure that Queensland's resources are developed profitably and competitively, and in a socially and environmentally sustainable way.

All operating Queensland coal producers are members of the QRC. A number of coal mining companies in the development and operating phase are also members of the QRC. While the impacts of declaration differ between coal mining operations in terms of extent and severity, all coal mining companies serviced by the CQCN would be seriously affected if the Service were not re-declared. In that sense, there are common themes across members and those themes are the focus of this submission.

3 Key Takeaways

The QRC considers that the QCA has fully analysed the factual, legal and economic information provided by stakeholders in making the Draft Recommendation. There are several significant points that are worth noting:

- in relation to criterion (b), it is clear that the CQCN is likely to be able to meet total foreseeable demand at least cost for any foreseeable declaration period. In particular, the QCA observed that although currently only moderate expansion is required to meet total foreseeable demand, Aurizon Network's own data indicates that the existing capacity of the CQCN is capable of being more than doubled at least cost and the most economical option for meeting foreseeable demand is more than likely to be using and expanding the CQCN;¹
- in relation to criterion (a), the Draft Recommendation concludes that access to the Service promotes a material increase in competition in the above-rail haulage market. The QRC agrees with the QCA that access would also materially improve the environment and conditions for competition in other markets such as the coal tenements market (as participants in that market rely on above-rail haulage to transport product from mine to port), but the QRC agrees that it is not necessary for the QCA to reach a definitive conclusion in relation to these additional markets given that criterion (a) is in any event satisfied in relation to the above rail haulage market;²
- in relation to criterion (c), the QCA concludes that the CQCN is significant in size and importance to the Queensland economy. The QRC strongly agrees with this conclusion; and
- in relation to criterion (d), the QCA has made clear that access to the Service, on reasonable terms and conditions, would promote the public interest. The QRC reiterates that industry is willing to bear reasonable administrative and compliance costs, which reflects the efficiency of these costs (i.e. they lead to significant benefits to industry and the broader economy).

4 Declaration Period

4.1 Draft Recommendation

Table 2 of the Draft Recommendation summarises and compares the key positions of Aurizon Network, other stakeholders, and the QCA (in draft) in relation to the issues that arise under section 76(2)(b) of the QCA Act.³ This table indicates that other stakeholders (including QRC) support a 15 year declaration period.

In its full submission, the QRC stated that the Service should be re-declared for a *minimum* of 15 years⁴ and that '*...given the importance of the Service and the cost of the re-declaration process... a longer declaration period would also be appropriate*'.⁵ Similarly, Pacific National submitted that the declaration period should be extended for the longest period for which the QCA is satisfied the declaration criterion are met.⁶

¹ Draft Recommendation, page 28.

² Draft Recommendation, page 45.

³ Draft Recommendation, page 7.

⁴ QRC submission dated 30 May 2018, page 10.

⁵ QRC submission dated 30 May 2018, page 10.

⁶ Pacific National, sub. 9, p. 11.

4.2 Access criteria satisfied for at least 20 year declaration period

The QRC considers that the access criteria would also be satisfied over at least a 20 year declaration period, including because:

- such a period would provide significant certainty for users of the Service, who lack the protections offered by evergreen renewal rights enjoyed by Dalrymple Bay Coal Terminal users, while balancing the interest of Aurizon Network in having the CQCN subject to declaration only as long as is necessary;
- mining operations typically have an economic life of 20-30 years, during which access to the Service will be required.⁷ As a result, declaration of rail access services has typically been for long periods of time. For example, as noted by the QCA, the service provided by the Goldsworthy Railway (Western Australia) was declared for 20 years;⁸
- the QCA's conclusions that substantial changes in the market for the Service are unlikely over a 10 to 15 year timeframe are equally applicable to a 20 year (or longer) timeframe. No other service provider is likely to enter the market due to the breadth of the service offered by Aurizon Network; and
- a 20-year (or longer) declaration period allows the QCA to make sufficiently robust predictions about the future market conditions, while also providing an opportunity for review. The QCA should consider total foreseeable demand and factors that may affect this over the proposed (at least) 20 year declaration period. The QRC agrees with the QCA's analysis that these factors are relatively certain. The QCA can therefore predict future market conditions over a 20-year declaration period with a reasonable degree of certainty. In any event, as noted by the QCA, the level of demand should not impact the QCA's conclusions.⁹

4.3 20 year (or longer) declaration period better satisfies the QCA Act

The object of Part 5 of the QCA Act is to '*promote the economically efficient operation of, use of and investment in, significant infrastructure by which services are provided, with the effect of promoting effective competition in upstream and downstream markets*'.¹⁰

In the introduction document of its draft recommendations (**Introduction to Draft Recommendations**), the QCA notes that the QCA Act does not necessarily require it to recommend declaration of a service over the longest period for which each of the access criteria may be satisfied, and that the QCA might determine that a shorter period of declaration would be appropriate.¹¹ However, the QRC considers that in determining the appropriate declaration period, the QCA should weigh each of the relevant factors to identify the declaration period that best serves the object of Part 5 of the QCA Act.

After weighing these factors, the QRC considers that the additional certainty of a 20 year (or longer) declaration period (which more closely aligns with mine lives and therefore will be more likely to materially impact investment decisions) significantly outweighs any potential costs of the slightly increased declaration period.

⁷ Draft Recommendation, page 20.

⁸ Draft Recommendation, page 19.

⁹ Draft Recommendation, page 7.

¹⁰ Section 69E of the QCA Act.

¹¹ Introduction to Draft Recommendations, page 7.

5 Other matters

5.1 Parts of a service

The QRC agrees with the QCA's view in the Draft Recommendation that the QCA is not required to separately consider and determine whether each 'part' of the Service satisfies the access criteria before it can recommend that the Service be declared. The starting point for the QCA's analysis is to consider whether the Service satisfies the access criteria. Nothing in the QCA Act requires the QCA to deconstruct the Service into a series of smaller services, and then apply the access criteria to each one. Doing so would be unnecessarily burdensome, inefficient, and would lack statutory support.

The QRC notes that in the QCA's draft recommendation in relation to the Queensland Rail declaration review, the QCA determined that parts of the service provided in connection with the entire Queensland Rail network could be declared. Furthermore, the QCA indicated that it has flexibility to examine parts of a service. While the QRC has no particular comment on the application of the access criteria to that network, the QRC reiterates its position that the re-declaration assessment of the CQCN should be made in relation to the entire Service.

In any event, under the QCA's current approach to the analysis, the QRC submits that no evidence arises in relation to the CQCN that demonstrates that any part of the Service is either itself a service or has characteristics that require different or further consideration from that given to the Service as a whole. As noted in the QRC's original submission, users avail themselves of all coal systems that form part of the CQCN (and extensions thereof). As such (and in line with the way the Service is defined under the QCA Act), it follows that there is a single Service involving the use of all of the coal systems provided by Aurizon Network's 2,718 km multi-user track network known as the CQCN.¹²

In such circumstances, it would not be appropriate to assess part of the Service individually against the access criteria, or to otherwise declare only part of the Service.

5.2 Expansion at least cost

The QCA noted the differences between stakeholder estimates of the total capacity of the CQCN, with the QRC estimating an existing capacity of 275 mt, and Aurizon Network providing multiple numbers in the 2016 Baseline Capacity Assessment Report (397.4 mt) and its network development plans (**NDP**) (310 mt).¹³ The QRC agrees that it is not necessary for the QCA to make a determination regarding the correct capacity estimate and that, regardless of the estimate used, the access criteria will be satisfied.

Importantly, Aurizon Network's NDP indicates that the existing capacity of the CQCN could increase up to 630 mt (more than double NDP estimates).¹⁴ The QRC agrees with the QCA's conclusion that until all incremental expansion options have been exercised and the CQCN has reached its maximum capacity, using and expanding the CQCN will be at least cost compared to using any alternative facilities.

¹² QRC submission dated 30 May 2018, page 6-7.

¹³ Draft Recommendation, page 24.

¹⁴ Draft Recommendation, page 27.

6 Conclusion

Overall, the QRC supports the approach taken in the Draft Recommendation but considers that a 20 year (or longer) declaration period would better meet the object of Part 5 of the QCA Act. This would increase the level of certainty for industry and benefit the broader Queensland economy.

It is clear that, under any reasonable estimate of demand over at least a 20 year period, the CQCN will be able to meet demand at least cost (noting the wide range of expansion options available and the relatively low cost of expansion) and will promote a material increase in competition in the above-rail market.

As such, the access criteria will be satisfied and the Service should be declared for at least 20 years.