
QCA declarations review: applying the access criteria

Pacific National's submission in response
to the staff issues paper

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1 Overview

Pacific National (**PN**) welcomes this opportunity to respond to the QCA Staff Issues Paper (**Issues Paper**) in relation to the declarations review for the Aurizon-owned Central Queensland Coal Network (**CQCN**), the Queensland Rail (**QR**) rail infrastructure and Dalrymple Bay Coal Terminal (**DBCT**) (**Declarations Review**).

The QCA's Declarations Review is unique for at least two reasons:

- It is the first time that the new access criteria (per the amendments to both section 76 the QCA Act and Part IIIA of the *Competition and Consumer Act 2010* (Cth) (**CCA**) following the Harper Review) have been applied in practice.
- It is the first time that a question of *re-declaration* has had to be considered by the QCA. This changes the perspective from which the test (and particularly any counterfactual) is to be applied, and therefore raises important questions of principle as to how the QCA should consider the access criteria.

PN supports the careful and consultative approach reflected in the Issues Paper and welcomes ongoing consultation with the QCA on this important matter.

Declaration of the CQCN, the QR network and DBCT over the last two decades has proven critical to promoting effective competition and efficient investment across key transport supply chains in Queensland.

PN's commencement of services in Queensland both for the haulage of non-bulk freight and bulk freight, particularly coal and its subsequent success in the provision of these services is one of the clearest examples of how the declaration of Queensland's rail and DBCT infrastructure under Part 5 of the QCA Act has promoted and facilitated competition in related markets.¹

PN entered the Queensland above rail market in 2005. Since then, PN has achieved the following milestones:

- PN was the first new entrant in the provision of rail linehaul services for non-bulk freight in Queensland and has been providing rail linehaul services on QR's North Coast line since 2005. PN was the first new entrant in the provision of rail linehaul services for the movement of coal in Queensland and has been providing coal services on Aurizon Network's CQCN since 2009.
- Between 2009 and 2018, PN successfully increased its share of the Queensland coal transport and currently hauls approximately 30% of the coal transported in Queensland.
- PN was the first new entrant in Queensland's bulk freight industry and has been providing bulk freight services on Queensland Rail's Mt Isa line since 2011.
- PN now provides services in three major Queensland sectors as follows:

¹¹ Section 69E of the QCA Act.

Non- Bulk Freight. PN's Queensland intermodal business employs 140 staff operating across six locations with 14 locomotives, and 194 articulated wagons. The intrastate intermodal facilities are located at Moolabin (Brisbane), Rockhampton, Mackay, Townsville, Gladstone and Cairns. These services operate primarily on the QR rail infrastructure but also traverse sections of Aurizon Network's CQCN. PN transports approximately [redacted]TEUs² per annum within Queensland.

Coal Freight. PN's bulk coal transport business employs 325 staff in Queensland, operating across six locations using 88 locomotives and 2700 wagons. These bulk coal train services operate on the CQCN, with the majority of PN's coal freight services operating through to DBCT. PN transports approximately 55 million tonnes of coal per annum on the CQCN.

Bulk Non-Coal Freight. PN's Queensland Bulk on-Coal business employs 55 staff operating across one main location currently using 11 locomotives and 400 wagons. PN provides bulk freight services for the minerals and other industries operating on QR rail infrastructure.

In total PN operates with 520 staff operating across 13 locations using 113 locomotives and 3300 wagons.

PN's market entry and success in Queensland, across a number of varied freight tasks, relied on the stable operation of the economic regulatory framework under Part 5 of the QCA Act. PN considers that the continued declaration of the CQCN, the QR network and DBCT under Part 5 of the QCA Act is critical to retaining and growing its share. PN also considers that continued declaration is critical to promoting competition and freight transport supply chain investment moving forward.

PN broadly supports the QCA approach to the access criteria, subject to a small number of comments set out in the body of this submission. PN considers that each of these criteria are satisfied in relation to each of the CQCN, the QR rail infrastructure and DBCT. In particular:

- declaration would enhance the competitive environment in at least one related market, compared to a scenario in which declaration is removed. Specifically:
 - maintaining declaration of the CQCN will promote competition in the market in which coal haulage services are provided;
 - maintaining declaration of the QR rail infrastructure will promote competition in the market in which freight haulage services are provided;
 - maintaining declaration of DBCT will promote competition for above-rail services into DBCT, in addition to other related markets;
- each of the facilities are natural monopoly facilities;
- each of the facilities are of state significance, in light their importance to key supply chains;

² A TEU is a twenty-foot equivalent unit container and is used as a measure of intermodal container movements

- maintaining declaration will deliver material public benefits, including economic benefits associated with efficient investment and efficient supply chain operation; and
- declaration will support the competitiveness of rail freight transport as against road transport (i.e. on key freight corridors served by QR infrastructure), and will provide broader social and environmental benefits, including reduced heavy vehicle congestion on Queensland's road networks, reduced number and severity of road fatalities and lower carbon emissions.

2 Pacific National

PN is a major rail freight operator in Australia with rail services delivering freight to all mainland Australian states. PN transports containerised freight, coal, grain, minerals, steel, building products, waste products and other bulk services and also operates freight terminals, facilities and rail yards to support the delivery of its national rail freight services.

Across Australia PN has approximately 3500 employees, 595 locomotives and 12,000 rail wagons.

As outlined in section 1 above, PN has 520 staff, 113 locomotives and 3300 wagons across Queensland. PN operations in Queensland are approximately a quarter of PN's total operations. The size of PN's operations in Queensland demonstrates the critical commercial nature of PN's involvement in the movement of freight in Queensland. PN's position has been facilitated and fundamentally underpinned by the regulatory certainty that declaration under Part 5 of the QCA Act has brought to above rail operations in Queensland.

3 Observations on QCA task and process

3.1 A 'redeclaration' task is unique and reshapes the question to be asked

This is the first time that the QCA has been required to review a declaration and consider whether a service should be *re-declared*. The question of whether to re-declare a service has also not arisen to date under the national access regime (under the CCA).

The QCA's review has important implications for how the declaration criteria should be approached. Declaration has delivered clear benefits, including by providing a platform for entry and effective competition in dependent markets. A key question to be asked in this declaration inquiry is:

What would be likely to occur if declaration were to be removed, and in particular, would these benefits delivered by declaration be likely to dissipate, and/or would potential further benefits (e.g. potential further growth of competition) be foregone?

In short, the question is whether removal of declaration is likely to negatively impact competition in upstream and downstream markets, investment in upstream and downstream markets and the public interest, compared to a world in which declaration continues.

In this context, it will be important for the QCA to consider the benefits that declaration and the resultant competition has delivered. These extend well beyond simply constraining the exercise of market power and ensuring that a balanced risk profile underpins the setting of terms and conditions for access. Declaration has facilitated the introduction of important structural and behavioural constraints, such as ring fencing, pricing principles and non-discrimination rules, and has underpinned the growth of competition in related upstream and downstream markets. This competition has, in turn,

brought significant benefits such as increased operational efficiency, increased innovation in related markets and price reductions, on average, for all end customers. A simple example of increased innovation is PN's introduction of ECP³ braking into its fleet when it commenced providing coal services in Queensland, and which has delivered ongoing operational and capacity benefits for Queensland's coal transport supply chains.

PN brings a unique perspective to the QCA's review. Declaration and effective regulation has facilitated the entry of, and strong business growth for, PN in Queensland.

PN is acutely aware of the business risks that would adversely impact on its current position in Queensland should the QCA remove declaration from any of the rail corridors that PN operates its services on. In particular this raises concerns regarding the provision of ongoing service provision after the expiry of current access agreements.

3.2 The new access criteria need to be approached with care

The recent amendments to the declaration criteria reflect amendments to the criteria under Part IIIA of the CCA. These legislative amendments are the product of protracted policy debates, including in the context of the Productivity Commission review of the national access regime and the subsequent Harper Review. These reviews were informed by judicial consideration of the previous Part IIIA criteria, and concerns as to how those previous criteria were being applied.

In the light of this background, the QCA should conduct this review with care particularly given the precedent-forming nature of its final recommendation. The QCA will need to develop a clear-eyed view of its statutory task under each criterion from an early stage, as this will necessarily drive the approach stakeholders take in providing the necessary information required by the QCA, as well as drive the approach the QCA takes in analysing and assessing the evidence submitted.

PN therefore supports the careful consideration that was reflected in the Issues Paper and supports the QCA consulting widely on its approach as this review process unfolds. PN welcomes any future opportunity to meet with the QCA to gain a deeper understanding of the issues, concerns and evidence being considered by QCA staff. PN also reserves its rights to provide its own perspective the issues, concerns and evidence being considered within this review process.

3.3 Given the information asymmetries that exist in the provision of monopoly infrastructure services, timing for the “submissions on submissions” phase should be extended

As in all matters relating to infrastructure access, there is a significant information asymmetry between the facility owners (QR, Aurizon and DBCT) on the one hand and end customers and stakeholders on the other. The facility owners hold information that is likely to be important to the application of the declaration criteria, such as operational and cost information. It is unclear whether these facility owners will be incentivised to release all information in an open, transparent and accountable manner. PN encourages the QCA to use its information gathering powers under the QCA Act to ensure facility owners are accountable for providing all information considered necessary or relevant to this review process.

In order to ensure procedural fairness, it is important the QCA provide all stakeholders with adequate timeframes within which to respond to the submissions being made to the QCA. It is likely that end-customers and stakeholders will only get to see key information

³ Electronically controlled pneumatic brakes which are a type of braking system offering operational advantages over traditional braking systems.

relevant to the declaration criteria for the first time in these submissions. PN also notes that, depending on the volume and complexity of submissions made by other stakeholders (particularly facility owners), four weeks may not be sufficient for these responsive submissions. Given this, PN encourages the QCA to re- consider the appropriate period for responsive submissions, once it has had an opportunity to review all of the first round submissions that are received.

4 The role of declaration under the QCA Act in supporting market entry by PN

Declaration of the CQCN, the QR network and DBCT has been critical to promoting effective competition and supporting efficient investment across key freight transport supply chains over the past twenty years⁴.

The experience of PN in Queensland over the last decade clearly demonstrates how declaration and regulation by the QCA has been effective in creating an environment in which the scope for rail freight competition can develop and grow. Put simply, PN's ability to grow its business in Queensland has been critically dependent on the stable operation of Queensland's regulatory framework under part 5 of the QCA Act.

Regulated access has supported strong investment by PN. PN has undertaken the following investment in Queensland over the last decade:

- Intermodal – approximately \$[redacted] of capital investment;
- Coal – approximately \$[redacted] of capital investment; and
- Other bulk – approximately \$[redacted] of capital investment.

PN's investment would not have been justified, absent a stable regulatory environment.

Examples of this expenditure include:

- introduction of innovation such as ECP braking (as outlined above);
- increased locomotive power;
- safer operation of over-length trains; and
- innovation in the design and configuration of train consists.

Regulated access has also enabled PN to compete effectively with road freight operators in Queensland, particularly on the North Coast corridor and Mt Isa corridor. This has delivered business success for PN as well as broader regional, economic and public benefit outcomes for the state of Queensland. These public benefits are discussed in section 8 below, and include reduced heavy vehicle road congestion, reduced number and severity of road fatalities and significantly lower carbon emissions associated with rail freight services, compared to road freight services.

PN considers the continued declaration of the CQCN, QR network and DBCT is critical to supporting competition and supply chain investment going forward. Declaration provides a degree of certainty to current and potential users in relation to the framework for access and the basis on which terms and conditions of access will be determined There is a real

⁴ Under the QCA Act, QR's rail infrastructure network was declared in 1997

risk that future investment and competition is at risk should declaration be removed from these essential facilities.

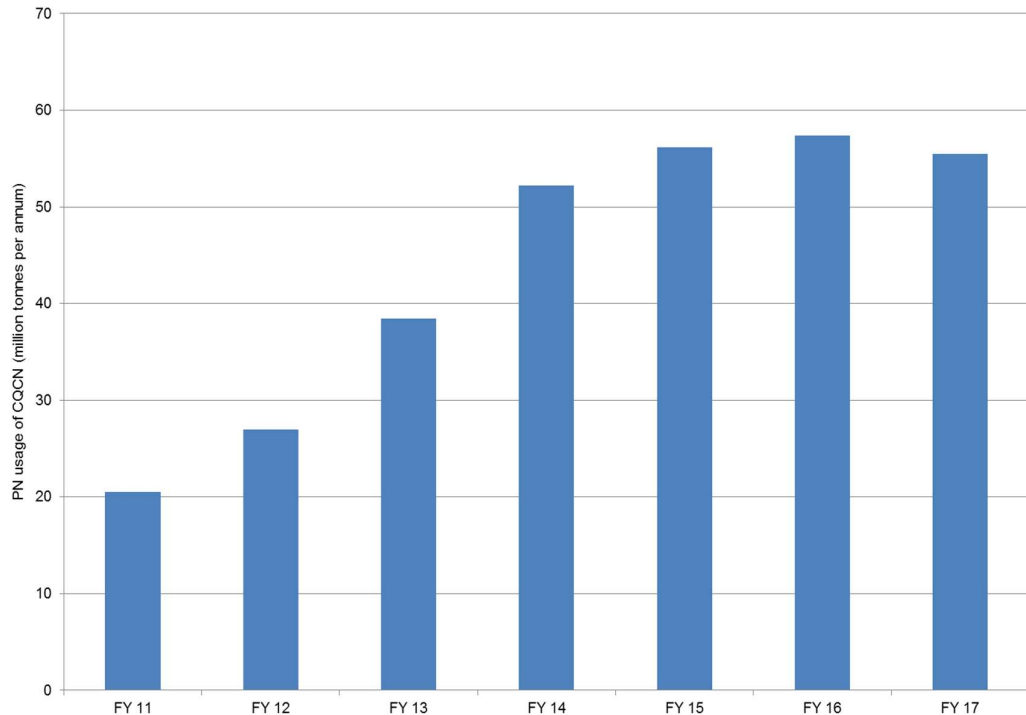
4.1 CQCN

PN is the second largest operator of coal freight services in the CQCN, after Aurizon (which also owns Aurizon Network and delivers access on the CQCN). PN also has to negotiate access to the CQCN (namely the sections between Parana and Rockland, and between Kaili and Durroburra) for its containerised freight services to operate between Brisbane and Cairns. Aurizon is therefore both a major competitor to PN and the monopoly supplier of the access rights that critically enable PN to compete with Aurizon in the Queensland freight market.

Between 2011 and 2017, PN has grown its share of coal freight volumes in central Queensland from approximately 10% to approximately 30% as shown in Figure 1 below. This growth has been underpinned by certainty in the pricing, terms and conditions underpinning the provision of access services on the CQCN.

Declaration and regulation of access to the CQCN has also been effective in supporting entry into the coal freight market. If declaration continues, PN considers that it will continue to provide a competitive platform for new market entrants. Following PN’s entry into the Queensland coal haulage market a decade ago, BMA Rail entered and commenced operations in January 2014. There is also a real prospect of further new entry, if appropriate conditions for such entry remain in place – potential new entrants include Genesee & Wyoming, which has recently acquired Glencore Rail.

Figure 1: Pacific National CQCN coal haulage volumes (million tonnes), FY11-FY17



4.2 Queensland Rail network

The QR network represents critical infrastructure for movement of freight including commodities.

PN currently uses the below rail assets of QR for a range of purposes including:

- providing rail haulage for non-bulk and bulk freight services on the North Coast Line;
- bulk freight (minerals and concentrate) services and non-bulk freight services on the Mt Isa to Townsville rail corridor;
- steel freight services within the Brisbane urban network; and
- minor coal haulage activities on an ad hoc basis, primarily on the north coast corridor.

Access to the monopoly below rail infrastructure supports a highly competitive environment for haulage along these freight corridors. In the haulage market, PN competes with other above-rail operators such as Aurizon, as well other modes of freight transport (e.g. road transport).

Continued declaration of QR's rail infrastructure is critical to supporting effective competition in the Queensland freight industry on these key corridors. Removal of declaration would create a significant business risk for rail operators and their end-customers regarding the transparency, certainty and competitiveness of rail freight services compared to road freight services.

Supporting effective competition and increased transparency between rail and road freight services will deliver significant economic benefits (including regional economic benefits) as well as promote the public interest more broadly. As discussed in section 8, the public benefits of rail over road for freight movements are well documented, and include reduced carbon emissions reduced road congestion on Queensland's road networks and lowers the number and severity of road fatalities.

4.3 DBCT

PN has a strong interest in ensuring there is transparency and accountability with non-discriminatory pricing, terms and conditions underpinning access to the facility. PN delivers the majority of the coal being delivered to DBCT. PN's key customers are the majority users of the terminal. PN is reliant on its customers having open and transparent access to terminal services on reasonable and non-discriminatory terms. Declaration of DBCT provides the necessary pre-condition for PN to compete seamlessly in the provision of coal haulage services. As DBCT is the only multi-user coal terminal in the Goonyella system, it is essential to ensure that Aurizon and DBCT continue to align their access terms and conditions, with the common aim of maximising coal throughput at DBCT. As a rapid cargo assembly coal terminal, the seamless integration of the two regulatory frameworks is an essential pre-condition to maximising the number of coal freight services that can be operated in the Goonyella system. Any decline in future coal volumes through DBCT will have a more adverse impact on PN's operations, compared to its competitors.

PN currently transports approximately 40 million tonnes of coal a year through DBCT. (This has risen from approximately 20 million tonnes a year in 2012). This equates to over 70 per cent of the total PN CQCN coal haulage task.

5 The declaration criteria

In light of the background to the development of the new access criteria under section 76 of the QCA Act, the QCA will need to approach its task carefully. PN agrees with the emphasis in the Issues Paper on correctly applying each criterion, in light of how they

were developed following the Harper Review and with reference to relevant jurisprudence.

In this section, PN provides its comments on the preliminary views of QCA staff on the declaration criteria, as set out in the Issues Paper. In section 6, the criteria are applied to each of the CQCN, the QR rail infrastructure and DBCT.

5.1 Criterion (a)

PN broadly agrees with the approach to criterion (a) that is set out in the Issues Paper.

PN agrees that a key question under criterion (a) is whether the *competitive environment* would be enhanced by access being available on reasonable terms.⁵ This is consistent with the approach taken by the Australian Competition Tribunal in the *Sydney Airport* case.⁶ PN considers the *Sydney Airport* approach is appropriate and applicable in this context.

PN also agrees that, given the recent amendments to criterion (a), the proper approach to the counterfactual is different to that adopted by the Tribunal and Full Federal Court in *Port of Newcastle*.⁷ The test is no longer a simple 'access or no access' test. The question in this context is whether the removal of *declaration* (as opposed to the absence of access altogether) would adversely affect the competitive environment.

In the context of a *re-declaration* inquiry, an important question under criterion (a) becomes whether the *removal* of declaration will adversely affect the competitive environment, compared to a world where declaration continued. This raises important considerations on the relevant 'counterfactual', including:

- the extent to which key structural protections – such as vertical separation, ring fencing arrangements, transparent and non-discriminatory pricing principles – are likely to remain in place if declaration was removed;
- the extent to which existing coal supply chain logistic improvements have been facilitated by regulation and whether such supply chain improvements will continue if declaration was removed;
- the extent to which existing commercial pricing arrangements have been facilitated by regulation and whether they are would be likely to continue if declaration was to be removed;
- the extent to which existing structural arrangements (e.g. DBCT PL, the Integrated Logistics Company) has been facilitated by regulation and whether this is likely to continue if declaration was removed; and
- the likely impact of pricing in a non-regulated environment on competition in related markets.

In each case, the QCA will need to consider the *ability* and *incentive* of the infrastructure owner, absent declaration, to act in a way that is potentially damaging to competition in related markets. This may include actions in related markets in which they already

⁵ Issues Paper, p 18.

⁶ *Re Sydney International Airport* [2000] ACompT 1.

⁷ *Port of Newcastle Operations Pty Ltd v Australian Competition Tribunal* [2017] FCAFC 124.

operate, and/or expansion into markets that they are currently constrained from operating in due structural and behavioural constraints imposed by regulation.

5.2 Criterion (b)

Criterion (b) has been significantly amended such that previous debates in relation to its old formulation are likely to be of limited (if any) relevance.

Criterion (b) is now a straight forward natural monopoly test. It is focused on determining the lowest cost of production to satisfy foreseeable demand.

Key issues in applying this test are likely to include:

- the period over which the test is to be applied;
- determining the economic cost of production for the service;
- determining foreseeable demand; and
- the extent to which scope to expand the existing facility may be taken into account – and the options/costs to be considered in an expansion.

On the first of these issues, the Issues Paper is somewhat unclear. Where the Issues Paper refers to the test being applied over the period of declaration (Issues Paper, pp 8-9), the Issues Paper documents that a legal opinion from Minter Ellison suggests that a “long run” time horizon may be more appropriate, at least in identifying potential substitute facilities. PN considers that, in this context, the relevant period for application of the “natural monopoly” test must be the period of declaration. If facilities are not available as substitutes during the period of declaration, then they cannot be considered part of the market for this purpose.

In the current context, the period of declaration is a matter for the QCA to consider and make a recommendation on. Criterion (b) will be satisfied if there is any period for which the natural monopoly test will be met, and it would be appropriate for the QCA to recommend a declaration period which reflects the period over which the relevant facility will bear natural monopoly and essential facility characteristics. Given the economic benefits of declaration and the broader public interest, PN submits that declarations should be extended for the *longest* period for which the QCA can be satisfied that criterion (b) (and each of the other access criteria) will be satisfied.

As to the last point above, and as the QCA notes, the legislation makes it clear that for the purposes of this criterion, if the facility for the service is currently at capacity, and it is reasonably possible to expand that capacity, the QCA and the Minister may have regard to the facility as if it had that expanded capacity – this is particularly relevant in the context of DBCT.

5.3 Criterion (c)

PN notes that criterion (c) has not changed as part of the recent suite of amendments to the QCA Act.

5.4 Criterion (d)

As noted by the QCA, criterion (d) now requires the Minister (and the QCA in making any recommendation) to be positively satisfied that declaration would promote the public interest.

However, the range of matters that the Minister and QCA may take into account in reaching this level of satisfaction is very broad. Importantly, section 76 of the QCA Act

expressly provides that the Minister and QCA may have regard to any matter that they consider to be relevant. As the High Court observed in the *Pilbara* decision, a wide range of matters may be relevant to the “public interest”,⁸ meaning that the QCA and the Minister have a broad discretion in applying this criterion.

PN submits that, in this context, the public interest would at least extend to ensuring the promotion and facilitation of effective competition where this is feasible, and efficient investment in, and efficient operation and use of, critical transport infrastructure. This may be expected to deliver a range of economic benefits, including growth in economic output, employment and tax revenues.

Additionally, where rail operators compete with other modes of transport (as is the case on key freight corridors owned by the QR), it will be relevant to consider the public interest in supporting the competitiveness of rail freight services – including economic, environmental, transport, regional and social benefits.

6 Removing regulatory oversight will harm the environment and opportunities for competition in rail markets (criterion (a))

6.1 CQCN

Declaration and effective regulation of access to the CQCN is critical to supporting the competitive environment in several related markets. Of direct relevance to PN, declaration supports effective competition in the above-rail haulage market. Declaration also supports effective competition in the upstream market for the development of coal tenements, and in the downstream seaborne coal market. Each of these markets is functionally distinct from the market in which rail access services are provided.

As discussed above, declaration supported PN's entry into, and competition with Aurizon in, the supply of bulk haulage services market. In particular, declaration has provided:

- effective regulation of the terms and conditions of access to the CQCN; and
- imposition of important structural and behavioural measures in the form of ring fencing and non-discrimination obligations, confidentiality rules, scheduling and master planning requirements.⁹

The experience of PN over the past two decades demonstrates:

- the value of regulation in creating an environment in which competitive entry and expansion is feasible – as outlined above, effective regulation of access to the CQCN has laid the platform for PN's entry into Queensland coal haulage markets and growth of PN's business; and
- the risks to the competitive environment if declaration were to be removed.

In summary, if the CQCN declaration is removed there will be no access regime under which a third party can negotiate access. Over time as current access agreements expire, Aurizon could revert to being a vertically integrated rail infrastructure owner and haulage provider without regulatory oversight or competitive pressures.

⁸ *The Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal* [2012] HCA 36, [108]- [113].

⁹ In particular, Part 3 of the Aurizon Network Undertaking.

6.2 Queensland Rail network

Access to QR's monopoly below rail infrastructure supports a highly competitive market for freight services along key rail corridors, particularly the North Coast Line and Mt Isa to Townsville rail corridors. Access to below-rail infrastructure is crucial to supporting competition in the downstream freight haulage markets. In these haulage markets, PN competes with other rail operators (Aurizon), as well other modes of freight transport (e.g. road transport).

PN faces significant competition from road operators along all of its key freight corridors, particularly the North Coast Line corridor and the Mt Isa to Townsville corridor.

Continued declaration of QR's rail infrastructure is critical to maintaining and promoting an environment conducive to facilitating effective competition on these key freight corridors. Declaration provides for critical regulatory oversight of the terms and conditions of access, as well as access to dispute resolution mechanisms in the event of an access dispute with the service provider.

Removal of declaration would compromise the competitiveness of rail freight services as it would remove the regulatory certainty and transparency of access regulation which ensures rail operators remains competitive with road operators in providing non-bulk haulage services in Queensland.

In summary, if declaration was removed, Queensland Rail would be incentivised to remove any pricing transparency around the cost of access to the network, increase access charges and reduce network service performance standards in a way that would be damaging to competition in downstream markets. In addition, the removal of declaration will remove access dispute mechanisms as in Part 5 of the QCA Act and could result in QR using its monopoly position to negotiate pricing, terms and conditions.

6.3 DBCT

In relation to DBCT, the removal of declaration could impact haulage markets as well as the market for coal tenements in the Hay Point catchment and the market for transferring short term access rights to DBCT as well of DBCT Management's secondary capacity trading market.¹⁰

Declaration of DBCT has been important in maintaining a structure that promotes competition in the provision of coal haulage services. Declaration has provided certainty in relation to the access arrangements underpinning access to the terminal.

7 These are significant natural monopoly facilities (criteria (b) and (c))

Each of the three essential facilities under consideration are natural monopoly facilities, and are of state significance in light of their size and importance to the Queensland economy. The fact that they were considered as appropriate facilities to be declared under the QCA Act indicates their size and importance to the Queensland economy.

¹⁰ In relation to these markets, PN supports the submissions made by the DBCT User Group.

7.1 CQCN

The CQCN is a natural monopoly facility. There are no substitute facilities for supply of the relevant service, being 'the use of a coal system for providing transportation by rail'.¹¹

There is also no real prospect of a competing facility being built. Given the high fixed costs of building any such new facility, the current single facility will have large cost advantages over two or more facilities.

7.2 Queensland Rail network

The QR rail infrastructure network is also a natural monopoly facility. There are no substitute facilities for the supply of the relevant service, being 'the use of rail transport infrastructure for providing transportation by rail'.¹² There is also no real prospect of a competing facility being built.

In the context of criterion (b), the relevant 'market' is the market in which QR provides access to below-rail services. As has been recognised on numerous occasions, this is separate to the market in which PN and other freight businesses provide haulage services.¹³ In those markets there is modal substitution between road and rail, which constrains PN's pricing but absent declaration, PN has no mechanism of constraining the pricing it is charged by QR.

PN considers that it is clear that the QR infrastructure (either in its current form or as expanded) would be able to meet foreseeable demand in this market at lowest cost, compared to two or more facilities. The NCC has previously observed that railways typically exhibit natural monopoly properties due to high fixed costs and significant economies of scale.¹⁴ The QR rail infrastructure is no exception in this regard.

7.3 DBCT

PN supports the submission made by the DBCT User Group in relation to application of criterion (b) to DBCT. This submission demonstrates that DBCT could meet foreseeable demand in the relevant market (the Hay Point common user coal handling services market) at least cost compared to any 2 or more facilities. This conclusion is supported by detailed economic modelling undertaken by PwC, based on an assumed 15 year term for the declaration.¹⁵

8 Continued regulatory oversight is in the public interest (criterion (d))

8.1 Economic benefits

Maintaining declaration and effective regulatory oversight of the CQCN, the Queensland Rail network and DBCT will deliver a range of economic benefits, including:

¹¹ QCA Act, s 250.

¹² QCA Act, s 250.

¹³ *In the matter of Fortescue Metals Group Limited* [2010] ACompT 2, [1138].

¹⁴ National Competition Council, Draft Recommendation: Applications for declaration of four services comprising the Central Queensland Coal Network under s 44F (1) of the Trade Practices Act 1974 (Cth), 14 September 2010.

¹⁵ PwC, Dalrymple Bay Coal Terminal User Group: 2018 Access Declaration Review, May 2018.

- by providing certainty and predictability in relation to the terms and conditions for access to critical natural monopoly infrastructure;
- facilitating and promoting efficient investment in the provision of rail freight services, including in new rollingstock fleet, freight terminals and associated maintenance facilities;
- facilitating and promoting efficient investment in the coal supply chain by coal companies, export coal terminals, commodity exporters, domestic users of the products being transported, rail design, engineering and construction services, transport logistic services and the monopoly infrastructure providers themselves;
- facilitating and promoting efficient operation of the relevant supply chains will support ongoing growth in economic output and employment (including regional economic output and employment); and
- the state of Queensland and its taxpayers will benefit from increased tax and royalty revenue.

8.2 Broader social and environmental benefits

As explained above, declaration of the QR infrastructure has supported the competitiveness of rail haulage (as against heavy vehicle road transport) on key freight corridors. This has in turn delivered a number of environmental and social benefits.

The public benefits of rail over road for freight movements are well documented, most recently in a November 2017 report by Deloitte Access Economics.¹⁶ The key public benefits include:

- Road freight produces 14 times greater accident costs than rail freight per tonne kilometre. On this basis, Deloitte Access Economics calculates that every tonne kilometre of freight moved from road to rail results in a reduction in accident costs of around 0.67 cents;
- Road freight produces 16 times as much carbon pollution as rail freight per tonne kilometre. Based on this difference in carbon pollution intensity, Deloitte Access Economics calculates that every tonne kilometre of freight moved from road to rail results in a reduction in carbon pollution costs of around 0.78 cents; and
- Overall, moving freight by rail instead of road generates benefits for society of around 1.45 cents per tonne kilometre.

Based on these estimates, PN calculates the public benefit associated with its use of the North Coast Line, in terms of reduced carbon pollution and accident costs, to be approximately \$ 17 million in reduced carbon pollution¹⁷ per annum and \$15 million in accident costs¹⁸. These benefits are only for the PN container freight task on the Queensland North Coast Line and could be expected to be much greater if the bulk freight tasks were taken into account.

¹⁶ Deloitte Access Economics, *Value of Rail: The contribution of rail in Australia*, A report commissioned by the Australasian Railway Association (ARA), November 2017

¹⁷ Based on figures of approximately [redacted] TEU per annum at 10 tonnes each (this is conservative), approximately 1350 km from Brisbane to Townsville and a cost of 0.78 c per tonne kilometre in environmental cost savings

¹⁸ Based on figures of approximately [redacted] TEU per annum at 10 tonnes each (this is conservative), approximately 1350 km from Brisbane to Townsville and a cost of 0.67 c per tonne kilometre in accident cost savings.

9 Conclusion

The experience of PN in Queensland transport markets over the past decade demonstrates the tangible and lasting benefits of declaration and effective access regulation under the QCA Act.

PN considers that, for reasons outlined in this submission, each of the declaration criteria are met in respect of the CQCN, the QR rail infrastructure and DBCT.

PN looks forward to further constructive engagement with the QCA and other stakeholders throughout the Declarations Review.