

QRC

submission

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A large, stylized graphic of a leaf, split vertically. The left half is outlined in grey, and the right half is outlined in a light green color. The leaf is positioned behind the main title text.

Submission in response to QR Network's proposed Standard Connection Agreement

Queensland Competition Authority
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Introduction

The Queensland Resources Council (**QRC**) is a non-government organisation representing companies that have an interest in exploration, mining, minerals processing, gas and energy production. It is the resource industry's key policy-making body in Queensland, working with all levels of Government, interest groups and the community.

QRC's membership is comprised of all Queensland coal producer companies, and represents a number of emerging companies that are on the cusp of commencing production with advanced coal mine developments.

The QCA approved QR Network's 2010 Access Undertaking (the "2010 AU") on 1 October 2010. The 2010 AU contains provisions which provide for the development, consultation and approval of a standard rail connection agreement (clauses 8.3 and 8.4). This standard agreement is important as it is expected to provide a certain and efficient process through which developers of private infrastructure, such as mine spurs or private network extensions, can connect to QR Network's central Queensland rail network.

QRC provides this submission to identify industry's issues with QR Network's proposed framework and to outline a range of proposed amendments for the QCA's consideration. QRC intends to engage with QR Network following the lodgment of this submission with the QCA.

QRC's Position

→ The proposed agreement requires substantial amendment to be fair and workable

QRC has identified a number of amendments to QR Network's proposed agreement which are essential in order for coal producers, or private infrastructure owners ("Owners") to construct private infrastructure, connect with the existing network and facilitate the necessary interface requirements.

Industry Position:

QRC recommends that the QCA consider the range of amendments to the proposed standard rail connection agreement. These are presented within QRC's submission and in the attached a marked-up version of QR Network's proposed standard agreement.

QRC would welcome the opportunity to discuss with QR Network, and with the QCA, the rationale and benefits of the proposed amendments. Moreover, QRC considers engagement with QR Network on specific details will enable the timely resolution of this regulatory process.



Industry's key objectives

Industry's key objectives for the standard rail connection agreement are to:

- Provide greater certainty for coal producers or other private investors who choose to develop rail infrastructure which will connect into QR Network's existing network, in terms of the ability to connect and to do so on reasonable terms; and
- Decrease the time required to negotiate connection agreements; and
- Establish a framework for the parties to fulfil obligations under the *Rail (Transport Safety) 2010 Qld Act* which require interface agreements to be in place between managers of interconnected railways (including the exchange of safety and interface information required for the operation of the train services moving between Private Infrastructure, the connecting infrastructure, and QR Network's network); and
- Remove barriers to entry and ensure that developers of private infrastructure do not face a competitive disadvantage (compared to QR Network and related entities) in the development of private infrastructure arising from the need to negotiate a connection agreement.

While QR Network and an Access Seeker may agree to terms and conditions that differ from that of the approved standard rail connection agreement, the approved standard is important because in the event of a dispute, it will be the default agreement for the parties to execute.

It is important to note that QRC member companies and QR National are committed to safety and share the common goal of *People focused – zero harm*. Nothing is more important than safety to QR National and industry. QRC has proposed a number of safety related amendments within this submission, which will be further explored with QR Network following the lodgment of this submission.



Key Issues

This section identifies a number of specific matters that the QRC would like to bring to the particular attention of the QCA.

QRC notes that the Authority's September 2010 Final Decision specifically referred to the development of a set of principles to assist in drafting standard rail connection agreements (similar to the approach undertaken to the development of standard access agreements, Schedule E of the 2010 AU – *Principles for inclusion in Standard Access Agreement*). Given that these principles have not been developed, QRC has therefore been guided by QRC's 'key objectives' discussed on Page 3 when reviewing the proposed agreement. QRC's detailed suggested amendments are provided within *QRC's proposed Key Terms and Amendments* table and within QRC's marked-up standard rail connection agreement.

→ **Narrow proposed application of the standard connection agreement**

QR Network's submission proposes that the standard rail connection agreement is to be used only for Customer Specific Branch Lines. QRC does not support an approach which provides a standard rail connection agreement which applies only to a sub-set of expected connections. For example, under QR Network's proposed approach, projects which relate to more than one loading point (such as two loading points on a spur-line) would not have access to any standard agreement as Customer Specific Branch Lines only refer to those that which "*will solely connect an Access Holder or Customer's single loading facility to Rail Infrastructure*".

This approach does not achieve the industry's key objectives.

QRC understands the complexity involved in preparing standard agreements to cover all possible future scenarios, however, we consider that the proposed agreement is too narrow in its applications and we would welcome further discussions with QR Network and QCA around the principles and specific requirements to be addressed for the connection of private infrastructure involving more than one customer or load point.

→ **Operating and maintenance costs to be included within Reference Tariffs**

Given that QR Network will always own the Connecting Infrastructure, we expect that operating and maintenance costs will be given consideration within the assessment of QR Network's Reference Tariff cost build-up, as is currently the case. Clause 8.3(f) of the 2010 AU requires that Reference Tariffs build in operating and maintenance changes and these amounts not be subject to separate agreements. QRC therefore considers that the Annual Service Charge only needs to be determined and paid under the Connection Agreement in the (unlikely) case that such costs were not considered in the development of Reference Tariffs under a future undertaking.

QRC suggest that the standard Connection Agreement should provide that, in the unlikely event that the QCA excludes the connecting infrastructure when developing the efficient operating and maintenance costs permitted to be recovered by QR Network, then the direct and proper costs, reasonably and actually incurred by QR Network relating to the Connecting Infrastructure should be entitled to be recovered. This avoids the need to negotiate an Annual Service Charge and agree clauses relating to review and escalation mechanisms at the time of establishing the contract.



→ **Specific terms required for QR Network's construction agreement**

QRC considers that in the event that QR Network elects to design, construct and commission the Connecting Infrastructure, it is important that the terms on which QR Network undertakes to construct the connection works should be a key part of the Connection Agreement. In the absence of such terms there is the scope for unnecessary dispute and delay.

It is proposed that the terms on which QR Network is to design, project manage, construct and commission the Connecting Infrastructure be set out in a schedule to the Connection Agreement. QRC considers the key terms should include:

- QR Network should complete the works expeditiously and within a reasonable timeframe;
- That the standard of construction meets, but does not exceed clause 8.3(a) of the 2010 AU.
 - Meets the technical specifications reasonably required for the connection;
 - Is constructed to a standard appropriate to the nature of the traffic and the current service standards of the adjoining part of the Network, and there is no adverse impact on safety; and
 - Will not, by virtue of its existence, reduce capacity or supply chain capacity.
- QR Network should only recover its reasonable and proper costs, subject to the same limitations as proposed in QRC's proposed standard connection agreement (for example, no recovery of corporate profit/overhead without prior agreement from the Owner) and also subject to a prohibition on QR Network recovering costs arising as a result of QR Network's unreasonable delay (for example, delay costs payable to a QR Network contractor);
- The Owner having the ability to require an audit of the costs incurred by QR Network and be provided with regular information on the development of the Connecting Infrastructure; and
- The Owner being consulted on all design, construction and project management decisions consistent with clause 8.3(c) of the 2010 AU.

QRC's marked-up standard rail connection agreement includes a schedule which outlines these proposals in greater detail.

→ **Access to land provisions to be included in the Connection Agreement**

QR Network's proposal specifically excludes land issues from the standard rail connection agreement. QRC considers it is critical that access to land owned or controlled by QR Network or a QR Party is included in the agreement, otherwise there is the scope for unnecessary delay. Moreover, the detailed terms should be set out in a schedule to the agreement.

The standard rail connection agreement should require QR Network (or a QR Party) to provide the Owner access to land to enable the Owner to construct Private Infrastructure and/or Connection Infrastructure. If QR Network does not have the right to grant the Owner with access to land for the purpose of constructing Private Infrastructure and/or Connection Infrastructure, then QR Network must, if required by the Owner, use reasonable endeavours to procure access to the land for the benefit of the Owner.

QRC also proposes that QR Network (or its representatives and contractors) must comply with all site and safety rules applicable to the relevant private land and any direction given by the nominated Senior



Site Executive. This is particularly important as Queensland has specific mining safety legislation requirements and obligations.

→ **Development of interface agreements between railway infrastructure managers**

The *Transport (Rail Safety) 2010 Act* (Qld) requires interface agreements to be in place between interconnected rail infrastructure managers. QRC supports QR Network's position that the standard rail connection agreement should ensure that any infrastructure connections are done safely and operated in a manner that will ensure the ongoing safety associated with train movements between the different networks. Interconnected rail infrastructure managers should be able to develop interface agreements for managing risks, which should allow for:

- Implementing and maintaining measures for managing risks;
- The evaluation, testing and, if necessary, revision of those measures;
- The role roles and responsibilities of each part to the agreement;
- How each party will monitor compliance with their obligations under the agreement; and
- A process for keeping the agreement under review and how any review will be conducted and implemented.

QRC has provided, within QRC's marked-up standard rail connection agreement, various suggestions as to how these matters can be addressed. In particular, matters relating to the exchange of safety and interface information, including co-operative engagement on:

- Safety related matters – associated with protecting the integrity and safety of the coal Network given interconnection with private infrastructure and multiple rail infrastructure managers (including compliance arrangements relating to legislated safety requirements).
- Interface of railway operations – including appropriateness of system assumptions for proposed train service specifications, access to current versions of drawings/standards, notification of changes to QR Network's rail infrastructure standards, administration and coordination of possessions, relevant timetabling and scheduling information/procedures and identification of issues related to coordination with other rail infrastructure.

→ **Defining Connecting Infrastructure – issues when scope is not agreed**

There are material issues which require further detailed consideration by the QCA in this process associated with defining what is Connection Infrastructure when parties are not in agreement about the actual scope. Currently, the standard rail connection agreement defines "Connection Infrastructure" as the "infrastructure ...as shown on the Plan detailed in Schedule 2". The intention being that the parties would consider this matter before finalising the agreement.

However, in the event that the parties do not agree with the proposed scope of the Connection Infrastructure the current standard connection agreement is not particularly useful in assisting the parties finalise the negotiation nor resolve a Dispute on this matter. QRC is interested in the views of the QCA around event that QR Network sought to argue that the Connection Infrastructure was anything more than that necessary to for the connection. The current definitions do not assist in resolving this matter (in terms of the negotiation process or in the event of a Dispute). QRC looks forward to further discussions with QR Network and the QCA in relation to the best approach to address this matter, as QRC considers it essential for this to be resolved in this QCA process.



→ **Matters not relevant to the standard connection agreement**

QRC considers that the standard rail connection agreement should specifically address matters associated with the connection of private rail infrastructure to the declared facility – both during design, connection and operation. However, the following matters will need to be addressed in other agreements:

– **Coal loss management provisions**

At this time, QRC considers that matters relating to obligations on the party seeking connection in relation to coal loss management provisions, which extend beyond the declared facility, should be addressed within other agreements (such as Access Agreements).

QRC considers further discussions with QR Network are required around the appropriateness of extending these provisions within standard connection agreements.

– **Train control services**

QRC considers that the QCA should take into consideration the most efficient arrangements by which an owner of private infrastructure can ensure QR Network offers train control and planning services for the private infrastructure on an integrated basis with QR Network's network.

Moreover, QRC considers that reasonable access to QR Network's train control management system for connecting infrastructure, including the ability to enable the blending of services in the day of operations environment is absolutely essential to the safe operation of connecting rail infrastructure. This is consistent with QR Network's current obligations in the 2010 AU:

- facilitate the movement of trains between the Connecting Infrastructure and the Rail Infrastructure; and
- offer to provide train control and planning services for the Connecting Infrastructure in a manner consistent with the QR Network operated network (subject to agreement or, in the event of a dispute determined by the QCA).

Given the critical importance of safety in the day of operations environment (and therefore the planning process), these obligations are critical and must not be subjected to any arrangements (regulatory or commercial) which do not promote our common position on safety.

QRC's proposed Key Terms and Amendments QRC's proposed – Key Terms and Amendments

This section provides an overview of QRC's proposed amendments to QR Network's standard rail connection agreement.

Context

The agreement provides for:

- The physical connection between main line rail infrastructure and privately owned infrastructure (Private Infrastructure) by way of infrastructure owned by QR Network but funded by the Owner (Connecting Infrastructure),
- Operation and maintenance of the Connecting Infrastructure by QR Network; and
- Upgrades to or replacement of the Connecting Infrastructure by, and when determined by, QR Network.

The agreement can apply in respect of either Connecting Infrastructure which:

- is to be, or has already been, constructed by or on behalf of the Owner; or
- is going to be constructed under a separate agreement (as the connection agreement does not make provision for the construction of the infrastructure).

The 'Owner' for the purposes of the agreement is the person who owns the Private Infrastructure.

Definitions

Capitalised terms used in this document have the meaning given in the Connection Agreement.

Clause	QRC Position
Term	
2	The pro forma agreement should acknowledge that the expiry date is to be populated with a date nominated by the Owner, provided that date is not longer than the term of QR Network's lease in respect of the land on which the Connecting Infrastructure is located.
Costs and payments	
3.1(a), Schedule 5 and clause 14	<p>The Annual Service Charge is defined by reference to Schedule 5. Schedule 5 provides for the Annual Service Charge to be a sum payable annually and which is fixed (other than for escalation). The Annual Service Charge is intended to cover the costs of operating and maintaining the Connecting Infrastructure.</p> <p>The document does not provide any guidance as to how the Annual Service Charge is to be calculated. The Annual Service Charge has been amended so that, where the Reference Tariff does not include an amount attributable to the operation and maintenance of Connection Infrastructure, Annual Service Charges will be the reasonable direct and proper costs incurred by QR Network in performing its operation and maintenance obligations in relation to Connection Infrastructure.</p>
3.1(b) and (c)	<p>The reimbursement of costs under clause 3.1(b) (costs of design, construction and commissioning of the Connecting Infrastructure and modifications to it) and (c) (costs of decommissioning and removing the Connecting Infrastructures) should be confined to "reasonable and proper costs". The Owner should also have the ability to require an audit of these costs, as well as of the operating and maintenance costs where the Annual Service Charge is on a reimbursable basis, with the costs payable by the Owner adjusted where the audit shows that costs have been improperly allocated to the Owner.</p>
3.1(d)	<p>Clause 3.1(d) obliges the Owner to reimburse QR Network the "costs of providing any other services to the Owner ...". It is not clear what other costs could be reimbursed after QR Network is reimbursed its costs of construction, project management, design, operation and maintenance. Further, the clause as drafted is so broad as to allow QR Network to be reimbursed the cost of responding to notices and the like.</p> <p>The clause should be deleted.</p>
3 and 1.2	<p>The costs which the Owner is required to pay under clause 3.1 should exclude corporate profit and overheads (unless expressly agreed) and costs which are incurred as a result of QR Network's breach or negligence.</p>

Clause	QRC Position
Construction and project management of the Connecting Infrastructure	
6.1	<p>Clause 8.3 of the Access Undertaking acknowledges that construction of the Connecting Infrastructure may be undertaken by either the Owner or QR Network (at QR Network’s election). If QR Network does elect to construct the Connecting Infrastructure itself, it must provide the Owner with a reasonable opportunity to comment on QR Network’s design, construction and project management of the Connecting Infrastructure.</p> <p>Clause 6.1 includes two alternative clauses. The first is a clause which is intended to be included where the Owner intends to or has constructed the Connecting Infrastructure. The second is a clause which is to apply where QR Network constructs the Connecting Infrastructure. The election as to which alternative applies should be agreed by the parties prior to entering into the agreement and, once agreed, the unused alternative should be removed from the agreement before execution by the parties.</p> <p><u>Alternative 1 - Where the Owner intends to or has already constructed</u></p> <p>This alternative provides that, where the Owner intends to construct the Connection Infrastructure, QR Network must:</p> <ul style="list-style-type: none"> → provide the Owner with such information and assistance that it reasonably requires to enable the Owner to plan, design and construct the Connection Infrastructure; and → review and approve the Design of the Connection Infrastructure submitted by the Owner. <p>Once the Connection Infrastructure has been built and prior to commencement of operations, QR Network may inspect the Connecting Infrastructure to determine whether it is suitable for the purpose of connecting the Owner’s rail infrastructure to QR Network’s infrastructure.</p> <p>The clause further provides that:</p> <ul style="list-style-type: none"> → QR Network can undertake at the Owner’s cost upgrade, modification or replacement works to the extent necessary to make the Connecting Infrastructure suitable. → the Owner may dispute the costs claimed from the Owner, but not the scope of work. <p>This alternative should be amended as follows:</p> <ul style="list-style-type: none"> → whether the Connecting Infrastructure is “suitable” should be subject to an objective test (and in particular, to objective standards); → QR Network should be obliged to consult with the Owner as to any upgrade, modification or replacement that it considers necessary; → the Owner should be able to dispute the scope of works which QR Network considers are required to be undertaken (this is consistent with clause 8.3(e)(i) of the Access Undertaking); → QR Network should only be entitled to recover reasonable and proper costs; and

Clause	QRC Position
	<p>→ QR Network should reimburse the Owner the costs incurred by it as a result of an unreasonable delay by QR Network (this is consistent with clause 8.3(d) of the Access Undertaking).</p> <p><u>Alternative 2 – Where QR Network constructs</u></p> <p>This alternative clause provides that QR Network will design, construct, and commission¹ the Connecting Infrastructure at the cost of the Owner and in accordance with a separate agreement agreed between the parties.</p> <p>The terms on which QR Network will undertake connection works should be a key part of the Connection Agreement. Without these terms dealt with there is the scope for dispute and delay.</p> <p>It is suggested that the terms on which QR Network is to design, project manage, construct and commission the Connecting Infrastructure should be set out in a schedule to the Connection Agreement. Those terms would include:</p> <ul style="list-style-type: none"> → the standard of construction which meets, but does not exceed clause 8.3(a) of the Access Undertaking; → that QR Network should only recover its reasonable and proper costs, subject to the same limitations as are in the Connection Agreement (for example, no recovery of corporate profit / overhead) and also subject to a prohibition on QR Network recovering costs arising as a result of QR Network’s unreasonable delay (for example, delay costs payable to a QR Network contractor); → the Owner may require an audit of the costs incurred by QR Network; → the Owner should be given regular information on the development of the Connecting Infrastructure; → the Owner should be consulted on all design, construction and project management decisions (see clause 8.3(c) of the Access Undertaking); → QR Network should complete the works expeditiously and within a reasonable timeframe; and → the Owner or QR Network may dispute in accordance with clause 10.1 of the Access Undertaking any ability to agree on any matter provided for above.
	<p>QR Network’s ability to require upgrades to the Connecting Infrastructure</p>
<p>6.5, 6.6. 6.7 and 6.8</p>	<p>QR Network may require upgrades, modifications or replacements to the Connecting Infrastructure in certain circumstances. Such works are to be undertaken at the Owner’s cost. The clause also provides that the Owner may not dispute the scope of the works undertaken by QR Network.</p> <p>The circumstances in which QR Network may undertake works under clause 6.5 should be limited to the circumstances outlined in clauses 8.3(a)(i), (ii) and (iii) of the Access Undertaking. Clause 6.5 should also include an acknowledgement in accordance with clause</p>

¹ Note that in the draft clause provided by QR Network “project manage” is omitted and should be included.

Clause	QRC Position
	<p>8.3(a) of the Access Undertaking which notes that the QR Network may not require the Connecting Infrastructure to meet standards which are greater than QR Network's own infrastructure.</p> <p>The prohibition on the Owner's ability to dispute the scope of works undertaken by QR Network is not justified and is not consistent with clause 8.3(e) of the Access Undertaking. It should therefore be deleted.</p> <p>Clause 6.7 notes that if QR Network intends undertaking works which will affect operations it will "endeavour" to give notice to the Owner (other than in the case of emergencies where no notice is required). While the requirement not to give a notice in the case of emergencies is reasonable, an 'endeavours' obligation is not. QR Network should have an absolute obligation to give notice where its upgrade works will affect the operation of the Connecting Infrastructure.</p>
<p>7.1, 7.2, 7.3, 7.4 and 7.5</p>	<p>Clause 7.1 empowers QR Network to require the Owner to undertake modifications or upgrades to Private Infrastructure in similar circumstances to those outlined in clause 6.5. Clause 7.4 sets the standards to which the Private Infrastructure must be kept by the Owner. Those standards are substantially narrower than that which is outlined in clause 7.1.</p> <p>Clause 8.3(a)(i) to (iv) of the Access Undertaking does not apply to Private Infrastructure.</p> <p>It does not seem reasonable that the same standards as are applied to the Connecting Infrastructure be applied to Private Infrastructure, as the standard of Private Infrastructure should only be of concern to QR Network where it adversely affects the Connecting Infrastructure or QR Network's infrastructure</p> <p>It is suggested that:</p> <ul style="list-style-type: none"> → clause 7.1 be confined to the circumstances in which the Owner fails to comply with clause 7.4; → clause 7.4 should be amended to provide that the standards set out in that clause are only required to be followed to the extent that a failure to do so would have an adverse affect on safety, or the operation of the Connecting Infrastructure or QR Network's infrastructure.
<p>Access to the Owner's infrastructure and information</p>	
<p>7.6, 7.7 and 7.8</p>	<p>The obligation to provide information under clause 7.6 (from a weighbridge and overload detector located on the Owner's infrastructure) and 12 (matters affecting the Owner's infrastructure) should be confined to that information required to operate QR Network's network.</p> <p>Requests for information and access by QR Network under clauses 7.6, 7.7 and 7.8 should be subject to an acting reasonably test.</p>

Title	
6.2	<p>Clause 6.2 notes that QR Network owns the Connecting Infrastructure.</p> <p>QR Network should:</p> <ul style="list-style-type: none"> → be prevented from encumbering, transferring or disposing of the Connecting Infrastructure; → be prevented removing the Connecting Infrastructure; and → if requested by the Owner, be obliged to transfer ownership and possession of the Connecting Infrastructure to the Owner upon expiry or termination (giving the Owner flexibility to, for example, make the Connecting Infrastructure part of its Private Infrastructure in order to be ensure continuity of operations).
Accreditation, exchange of safety and interface information and compliance with law	
9	QR Network should have a positive obligation to ensure that it or another person holds Accreditation for both the Connecting Infrastructure and the Network from the Commitment Date until end of the Agreement.
10	The Parties should be obliged to co-operate in the development of interface arrangements between the Parties and freely exchange information in connection with safety so far as it relates to the Connection Infrastructure and the Private Infrastructure.
25	The obligation to comply with law should be mutual, rather than solely being an obligation of the Owner (so that non-compliance with law by QR Network is capable of being a breach of contract).
Train control	
11	<p>Clause 11 notes that QR Network is responsible for Train Control. It notes that QR Network may reject trains in certain circumstances. The clause sits uncomfortably with the fact that the Owner and QR Network will need to separately enter into an access agreement which will deal with access rights and rejection of trains (if applicable). Clause 11 should therefore be deleted.</p> <p>QRC understands the complexity involved in preparing standard agreements to cover all possible future scenarios, however, we consider that the proposed agreement is too narrow in its applications and we would welcome further discussions with QR Network and QCA around the principles and specific requirements to be addressed for the connection of private infrastructure involving more than one customer or load point.</p>

Force majeure

- 1.1 and 15 Paragraphs (c) to (m) of the definition of Force Majeure should be subject to the requirement that they satisfy the test outlined in paragraphs (a) and (b) of the definition, so that an event listed in (c) to (m) is not capable of being a Force Majeure event unless it also meets the general requirements for Force Majeure in paragraphs (a) and (b).
- 18.6 If a Force Majeure Event damages or destroys the Connecting Infrastructure or the Network, QR Network should only have the ability to decide not to carry out repairs and to terminate the Agreement after consulting with the Owner about the potential repair. The Owner should have opportunity to agree to pay the costs of repair before QR Network takes further action.

Insurances

- 16 and Schedule 3 The insurances to be taken out by the Owner are not populated in Schedule 3.
- The insurances to be taken out by the Owner should be confined to:
- insurance required by law;
 - public liability for \$20M per event;
 - property insurance for the Owner's infrastructure.
- QR Network should be obliged to effect the same insurances.

Suspension and termination

- 18 The circumstances in which the agreement can be terminated include non-compliance with a notice to rectify a failure to comply with the Coal Loss Mitigation Provisions (Rectification Notice). This is both excessive and contradictory (as the schedule dealing with service of the Rectification Notice provides for a suspension and cure process if there is non-compliance, rather than an immediate entitlement to terminate). Termination should only be possible where the Owner has not cured the default or where numerous Rectification Notices have been served on the Owner.
- The timeframes available to the Owner to rectify relevant defaults (and therefore avoid termination) should be increased from 14 to 30 days.
- QR Network should also be unable to terminate where it does not strictly comply with the procedures for termination (including strict adherence to timeframes).

18	The agreement does not specify what effect termination or suspension would have on access rights and the relevant access agreement. If termination of the Connection Agreement would mean loss of access rights, QR Network's termination rights under the Connection Agreement should not be broader than those under the access agreement.
Assignment	
19	<p>Clause 19 restricts the Owner's right to assign, whilst preserving QR Network's right to assign. The clause also prohibits a change in control.</p> <p>The following changes should be made:</p> <ul style="list-style-type: none"> → clause 19.1 should apply to QR Network and the Owner equally; → the change in control provision in clause 19.2 should be deleted; and → clause 19.3 should be deleted.
Security	
20	<p>Security should only be required if the Owner (or a guarantor offered by it) does not have a BBB credit rating. The amount of security required should be standardised and specified in the agreement (rather than being on an agreement by agreement basis). The form of the security should also be attached to the agreement as a schedule.</p> <p>QR Network should also be required to give notice to the Owner before calling on the security, so that the Owner has an ability to remedy the breach and avoid the call on the security.</p>
20.2	This clause allows QR Network require an increase in the amount of the security each year, for any reason. This right is both unnecessary to ensure the Owner's proper performance and is unnecessarily discretionary. The clause should be deleted.
Liability and indemnities	
21.2, 24	<p>Clause 21.2 provides that neither party will have any claim against the other except as provided in the agreement. The effect of this is to exclude all liability except as stated in the indemnity clauses or termination clauses. It may operate to exclude a breach of confidence because the confidentiality clause does not expressly acknowledge that a party has a claim against the other for a breach of confidence. This part of clause 21.2 should be removed so that claims not contemplated by the Agreement are preserved (however, it should also be expressly acknowledged that a failure to comply with the confidentiality provisions can give rise to a breach of confidence claim).</p> <p>The clause further states that no party will have any liability to the other except if a claim is brought within 6 months of the event arising. Such a provision is unusual and not workable. For example, a party may not be aware of a personal injury claim until after the 6 month period expires. This part of the clause should be modified so that the time limitation commences on the later of the claim arising or the</p>

	claim becoming apparent to the relevant party.
21.3	Clause 21.3 limits QR Network's liability to a specific sum to be set out in a schedule. The agreement should provide guidance as to what this sum should be to avoid dispute or delay in agreeing the Connection Agreement.
21.5	QR Network requires the Owner to indemnify QR Network for the acts and omissions of the Owner's operator. This is a matter for the Access Agreement and should be deleted.
22	Mutual indemnities are included in clauses 22.1 and 22.2. The indemnities apply to "acts and omissions" of the other party. Both indemnities should only be triggered by the breach or negligence of a party. Additionally, the scope of the indemnity should be limited claims arising as a consequence of breach or negligence (rather than the broader "in connection with").
Access to Land	
26.1 and 26.2	<p>Clauses 26.1 has been amended such that:</p> <ul style="list-style-type: none"> → QR Network must grant the Owner access to land to enable the Owner to construct Private Infrastructure and/or Connection Infrastructure; → If QR Network does not have the right to grant the Owner with access to land for the purpose of constructing Private Infrastructure and/or Connection Infrastructure, QR Network must, if required by the Owner, use reasonable endeavours to procure access to the land for the benefit of the Owner. <p>Clause 26.2 deals with QR Network's access to private land and provides that QR Network must comply with all site and safety rules applicable to the relevant private land and any direction given by the nominated Senior Site Executive for the private land</p>
Coal Loss Mitigation Provisions	
7.4(e), 7.8(b), 12.2, 18.1(l) and Schedule 7	The specified clauses deal with the Owner's compliance with Coal Loss Mitigation Provisions and QR Network's right to monitor the Owner's compliance. This is a matter for the Access Agreement and should be deleted from the Connection Agreement.