

Queensland Competition Authority

Decision

Queensland Rail 2020 draft access undertaking

February 2020

We wish to acknowledge the contribution of the following staff to this report:

Pag Arao-Arao, Jennie Cooper, Thomas Gardiner, Ann Jones, Chris Peart, Stephen Wisenthal

© Queensland Competition Authority 2020

The Queensland Competition Authority supports and encourages the dissemination and exchange of information. However, copyright protects this document.

The Queensland Competition Authority has no objection to this material being reproduced, made available online or electronically but only if it is recognised as the owner of the copyright and this material remains unaltered.

Contents

DECISION AND SECONDARY UNDERTAKING NOTICE	III
DECISION SUMMARY	IV
1 THE QCA'S INVESTIGATION	1
1.1 Outline of assessment criteria	1
1.2 Declaration review	3
1.3 Queensland Rail undertakings—history and context	3
1.4 The regulatory process	5
1.5 Agreed positions	6
1.6 Significant changes from draft decision	6
1.7 Way forward	7
2 WEST MORETON REFERENCE TARIFF APPROACH (SCHEDULE D)	8
2.1 Queensland Rail's proposal—West Moreton system	10
2.2 Regulatory and economic context	10
2.3 West Moreton system reference tariff	13
2.4 Other reference tariff matters	23
3 RATE OF RETURN	29
3.1 WACC scope	32
3.2 Individual WACC parameters	33
3.3 Overall WACC	49
4 BUILDING BLOCKS AND TARIFF (SCHEDULES D AND E)	55
4.1 Building blocks approach to regulatory pricing	56
4.2 Volumes and available capacity	57
4.3 Forecast maintenance costs	59
4.4 Forecast operating costs	66
4.5 Opening asset base—West Moreton common network asset base	68
4.6 Forecast capital expenditure	69
4.7 Coal's share of the common network asset base	74
4.8 Inflation	75
4.9 Capital expenditure carryover account	78
4.10 Revenue requirement (building blocks) and reference tariffs	79
5 PREAMBLE; APPLICATION AND SCOPE (PART 1)	84
5.1 Preamble	85
5.2 Term of the undertaking (cl. 1.1)	85
5.3 Extensions and network connections (cl. 1.4 and other clauses)	87
5.4 Master planning provisions (cl. 1.5)	88
6 NEGOTIATION PROCESS (PART 2; SCHEDULES B AND C)	92
6.1 Access requests in different forms (cl. 2.1.1)	93

6.2	Information exchanged in preliminary stages of negotiations (cl. 2.1.2)	94
6.3	Permitted disclosures in confidentiality agreements (cl. 2.2.2)	95
6.4	Contract renewal provisions (cls. 2.7.2, 2.9.3, 3.3)	96
6.5	Other matters	103
7	PRICING RULES (PART 3)	104
7.1	Pricing rules (cls. 3.0 to 3.4)	104
7.2	QCA levy (cl. 3.7)	111
8	OPERATING REQUIREMENTS (PART 4 AND SCHEDULE F)	115
8.1	Operating requirements manual (cl. 4.3)	116
8.2	Network management principles (schedule F)	118
8.3	Productivity and operational improvements	129
9	REPORTING (PART 5)	132
9.1	Quarterly network performance report (cl. 5.1)	133
9.2	Annual network performance report (cl. 5.2)	137
10	ADMINISTRATIVE PROVISIONS (PART 6)	140
10.1	Parties that can access dispute resolution (cl. 6.1.2)	140
10.2	Disputes referred to the QCA for resolution (cl. 6.1.4)	141
10.3	Other matters	144
11	STANDARD ACCESS AGREEMENT (SCHEDULE H)	145
11.1	Variations for productivity and efficiency improvements (cl. 1.3)	146
11.2	Granting operational rights to train operators (cls. 3 and 4)	147
11.3	Liability in relation to performance levels (cls. 6.7 and 13.4)	149
11.4	Security deposits (cl. 17.1 and sch. 1)	150
11.5	Relinquishment fee (cl. 21.2(c))	152
11.6	Requirements to negotiate or consult in good faith (various clauses)	154
11.7	Dispute resolution (cl. 19)	155
11.8	Other terms of the proposed SAA	157
	GLOSSARY	164
	APPENDIX A : LIST OF SUBMISSIONS	166
	APPENDIX B: AMENDED 2020 DAU	168
	REFERENCES	169

DECISION AND SECONDARY UNDERTAKING NOTICE

On 14 September 2017, the QCA issued an initial undertaking notice requiring Queensland Rail to submit a replacement draft access undertaking to take effect 1 July 2020, for what will become the 2020 access undertaking (AU2) period. On 14 August 2018, Queensland Rail submitted its proposed replacement draft access undertaking (the 2020 DAU) to the QCA for assessment.

Decision

In accordance with s. 134(1) of the *Queensland Competition Authority Act 1997* (QCA Act), the QCA has considered Queensland Rail's 2020 DAU and has decided to refuse to approve it.

The QCA has assessed the appropriateness of all aspects of Queensland Rail's 2020 DAU in accordance with the relevant statutory requirements. The QCA's assessment has considered the appropriateness of Queensland Rail's 2020 DAU proposal overall, and its individual aspects, having regard to s. 138(2) of the QCA Act.

Secondary undertaking notice

This decision and its appendices constitute a secondary undertaking notice for the purposes of s. 134(2) of the QCA Act. It sets out the reasons for the QCA's decision to refuse to approve Queensland Rail's 2020 DAU and the way in which the QCA considers it appropriate for Queensland Rail's 2020 DAU to be amended.

In accordance with s. 134(2), the QCA asks Queensland Rail to:

- amend its 2020 DAU in the way described in this decision and as specified in Appendix B, being the way the QCA considers appropriate; and
- give the QCA a copy of the amended draft access undertaking within 60 days of receiving this notice.



.....

Professor Flavio Menezes
Chair
Queensland Competition Authority

Next steps

The QCA is not seeking submissions on this decision.

If Queensland Rail complies with the QCA's secondary undertaking notice, the QCA may approve the amended draft access undertaking pursuant to s. 134(3) of the QCA Act.

In the event Queensland Rail does not comply with the QCA's secondary undertaking notice, in accordance with s. 135 of the QCA Act, the QCA may prepare its own draft access undertaking for the declared service. The QCA will provide advice to stakeholders on the way forward for that process, should it become necessary.

DECISION SUMMARY

Our decision is to refuse to approve Queensland Rail's 2020 DAU, for the reasons detailed in this document.

This decision sets out our assessment of Queensland Rail's 2020 DAU against the relevant statutory criteria and the reasons why we do not consider it is appropriate to approve the 2020 DAU. We have also specified those amendments considered appropriate in order for us to approve a replacement access undertaking for Queensland Rail's declared service. Our goal is to have an appropriate undertaking ready to replace the 2016 access undertaking when it terminates on 30 June 2020.

Stakeholders endorsed Queensland Rail's approach of only proposing to change a limited number of matters from the 2016 undertaking, and its efforts to reach agreed positions during the collaborative process after our draft decision.

We also welcome Queensland Rail's desire to continue many of the policies we considered appropriate to approve in the final decision on the 2015 DAU in October 2016, and to find common ground with its customers. Our decision is to require a number of amendments to Queensland Rail's 2020 DAU, but there are many provisions we consider appropriate to approve. Key positions in this decision include:

- applying a reference tariff for West Moreton coal services of \$21.50/000 gtk (\$11.88/net tonne) that recovers Queensland Rail's incremental costs of providing coal services, and recording the shortfall from full cost recovery in a loss capitalisation account
- setting a post-tax nominal regulated rate of return (weighted average cost of capital, or WACC) for West Moreton coal services, of 5.46 per cent, compared to 7.47 per cent proposed by Queensland Rail
- adding provisions for supply chain groups, based on the terms that were largely agreed between Queensland Rail and customers during the collaborative submission process
- allowing ad hoc planned possessions outside the master train plan (MTP), while retaining strong requirements to notify and consult with access holders/seekers and operators
- including a mechanism in the undertaking for amending the operating requirements manual (ORM)
- extending the dispute mechanism to all parties that receive the benefit of an obligation in the undertaking
- approving most aspects of Queensland Rail's proposed price differentiation rule, which applies when access charges are set for non-reference-tariff services
- improving the bargaining position of access seekers to negotiate contract renewal terms with Queensland Rail, rather than prescribing renewal terms in the undertaking
- reducing the regulatory burden by appropriately limiting our role in certain processes, including the annual calculation of the QCA levy.

This summary should not be relied on as a substitute for the detailed analysis in the main body of this document.

The access regime

Queensland Rail provides access to a declared service for the purposes of Queensland's third party access regime established under Part 5 of the QCA Act.

The relevant service is 'the use of rail transport infrastructure for providing transportation by rail if the infrastructure is used for operating a railway for which Queensland Rail Limited, or a successor, assign or

subsidiary of Queensland Rail Limited, is the railway manager¹, and is referred to in this decision as the 'declared service'. The existing declaration of the service in s. 250(1)(b) of the QCA Act expires on 8 September 2020. We are about to complete our review of whether, with effect from the expiry date, the relevant service (or parts of the service) should be declared (see section 1.2 for more information).

Queensland Rail owns and operates a 6,600 kilometre rail network, including the commuter lines in south east Queensland, and the West Moreton, Mount Isa and North Coast systems.

Because of the declaration, Queensland Rail is subject to various obligations under the QCA Act, including an obligation to negotiate access to the service in good faith (s. 100) with access seekers who have various rights, including to information about the service, and to dispute resolution.

The access regime also provides for implementing a QCA-approved access undertaking, which is defined under the QCA Act as 'a written undertaking that sets out details of the terms on which an owner or operator of the service undertakes to provide access to the service whether or not it sets out other information about the provision of access to the service'.²

An undertaking approved by us is intended (amongst other matters) to establish binding provisions to guide negotiation of access terms. The QCA Act constrains us from making a determination in relation to an access dispute that is inconsistent with the approved undertaking (s. 119) and, to the extent permitted by an approved undertaking, provides the access provider with exemptions in certain circumstances from provisions of the QCA Act which otherwise prohibit preventing or hindering access (ss. 104 and 125).

Decision structure

This document provides our assessment of Queensland Rail's 2020 DAU and reasons for our decision to not approve it. The West Moreton reference tariff is considered in Chapters 2 to 4, and the non-tariff aspects of the DAU are considered in Chapters 5 to 11. The overall structure is as follows:³

- Background and context to our investigation (Chapter 1)
- Reference tariff (sch. D)—pricing for coal services accessing the West Moreton and Metropolitan systems, including:
 - overall approach and tariff structure (Chapter 2)
 - regulated rate of return (WACC) (Chapter 3)
 - building blocks and reference tariff (Chapter 4)
- Preamble and application and scope (Part 1)—includes provisions on the scope and duration of the undertaking, the non-discriminatory treatment of access seekers and access holders, and the negotiation of funding agreements when access seekers agree to pay for extensions (Chapter 5)
- Negotiation process (Part 2, sch. B and sch. C)—a framework for negotiating access rights, and providing information, between the negotiating parties (Chapter 6)
- Pricing rules (Part 3)—includes the pricing rules to apply when developing access charges for non-reference-tariff services (Chapter 7)

¹ The declaration of Queensland Rail's below-rail infrastructure is set out in s. 250(1)(b) of the QCA Act.

² Schedule 2 of the QCA Act.

³ References to 'Parts' and 'schedules' are to elements of the DAU, while references to 'Chapters' are to our decision.

- Operating requirements and network management principles (Part 4 and sch. F)—the rules for managing the network, amending technical operating requirements, and coordinating with supply chain groups (Chapter 8)
- Reporting (Part 5)—the proposed framework for reporting information and demonstrating compliance with the undertaking (Chapter 9)
- Administrative provisions (Part 6)—includes a dispute resolution mechanism, rules that apply to the QCA when it makes decisions under the undertaking and provisions to address the transition from one undertaking to another (Chapter 10)
- Standard Access Agreement (sch. H)—the proposed standard access agreement that reflects the standard terms and conditions for access to Queensland Rail's network (Chapter 11).

1 THE QCA'S INVESTIGATION

Our task is to either approve, or refuse to approve, Queensland Rail's 2020 DAU based on the evidence and information available, having regard to the statutory assessment criteria (s. 138(2)).

We have considered Queensland Rail's 2020 DAU in accordance with the criteria in s. 138(2) and other applicable requirements of the QCA Act. In some cases, the assessment of whether it is appropriate to approve Queensland Rail's 2020 DAU, having regard to the factors listed in s. 138(2), gives rise to competing considerations. In such cases, we weigh up the competing considerations as appropriate. Where appropriate, the balance between these considerations is addressed in the relevant chapters of this decision.

As part of our assessment, we have considered all submissions received within the stipulated time and the merits of the arguments put by stakeholders. Queensland Rail's 2020 DAU has been developed from, and shares similar drafting to, the 2016 access undertaking, which we approved in October 2016. Despite such similarities, we have considered Queensland Rail's 2020 DAU afresh in accordance with the requirements of the QCA Act.

1.1 Outline of assessment criteria

In accordance with s. 134 of the QCA Act, we must consider Queensland Rail's 2020 DAU and either approve it, or refuse to approve it. In doing so, we must publish Queensland Rail's 2020 DAU and consider comments on it (ss. 138(3)(c), (d)). If we refuse to approve Queensland Rail's 2020 DAU, we must provide a written notice stating the reasons for the refusal and the way in which we consider it is appropriate to amend the DAU (s. 134(2)). The factors affecting our consideration and approval of a DAU are set out in s. 138(2) of the QCA Act.

Approval criteria in the QCA Act

The QCA Act provides that the QCA may approve a draft access undertaking only if it considers it appropriate to do so having regard to the matters mentioned in s. 138(2), which are:

- (a) the object of Part 5 of the QCA Act, which 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 (s. 69E).
- (b) the legitimate business interests of the owner or operator of the service;
- (c) if the owner and operator of the service are different entities—the legitimate business interests of the operator of the service are protected;
- (d) the public interest, including the public interest in having competition in markets (whether or not in Australia);
- (e) the interests of persons who may seek access to the service, including whether adequate provision has been made for compensation if the rights of users of the service are adversely affected;
- (f) the effect of excluding existing assets for pricing purposes;
- (g) the pricing principles in s. 168A of the QCA Act, which in relation to the price of access to a service are that the price should:
 - (a) generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved; and
 - (b) allow for multi-part pricing and price discrimination where it aids efficiency; and
 - (c) not allow a related access provider to set terms and conditions that discriminate in favour of the downstream operations of the access provider or a related body corporate of the access provider, except to the extent the cost of providing access to other operators is higher; and
 - (d) provide incentives to reduce costs or otherwise improve productivity;
- (h) any other issues the QCA considers relevant.

Section 138(3) of the QCA Act provides, among other things, that the QCA may approve the draft access undertaking only if it is satisfied the proposed undertaking:

- (a) is consistent with any access code for the service; and
- (b) is not inconsistent with a ruling relating to the service that is in effect under division 7A of Part 5 of the QCA Act.

There are no applicable access codes or rulings in effect under division 7A.

1.2 Declaration review

The existing declaration of Queensland Rail's service in s. 250(1)(b) of the QCA Act expires on 8 September 2020. Pursuant to s. 87A of the QCA Act, we have been reviewing whether we should recommend to the Treasurer that the relevant service (or parts of the service) should continue to be declared beyond that date. We published a draft recommendation concerning the declaration review in December 2018, and must provide a final recommendation in March 2020.⁴

While there has been an overlap in timeframes between the investigation of the 2020 DAU and the declaration review, the reviews are separate processes and subject to separate assessment criteria (s. 76 and s. 138 respectively). Stakeholders should therefore be aware of the following:

- Each review process has been undertaken separately, on its merits and in accordance with the relevant assessment criteria.
- Any draft or final position in respect of one matter does not pre-suppose a conclusion in the other matter.
- Stakeholders' submissions on each process were invited separately.
- We may, nevertheless, inform ourselves on any matter relevant to the investigation of the 2020 DAU in any way we consider appropriate, pursuant to s. 173(1)(c) of the QCA Act.

Practical issues relating to the outcome of the declaration review process, including what will happen to the undertaking if all or part of Queensland Rail's network ceases to be declared, are discussed in section 5.2 of this decision.

1.3 Queensland Rail undertakings—history and context

Queensland Rail was created in 2010, when the Queensland Government separated it from the former QR Ltd, and subsequently privatised the remainder of the business as QR National Ltd (now Aurizon Holdings Ltd.). Queensland Rail operates the narrow-gauge below-rail network across Queensland, except for the central Queensland coal network (CQCN), which is owned and operated by Aurizon Holdings.⁵

For the first five years after Queensland Rail was created, access to its declared rail network was subject to the 2008 access undertaking that had been approved for QR Network, as amended in 2010 to include new tariffs for 2009–13.⁶ The termination date of the 2008 undertaking, as applied to Queensland Rail, was extended several times between 2011 and 2015.⁷ However, we

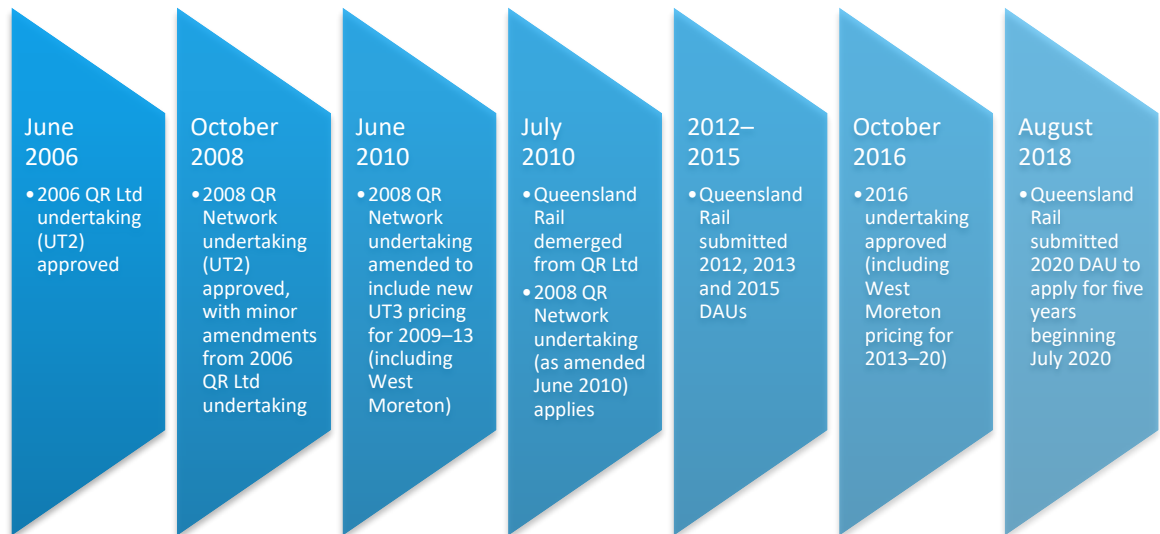
⁴ See QCA, *Declaration reviews: Aurizon Network, Queensland Rail and DBCT*, draft recommendations, December 2018.

⁵ The CQCN is operated by Aurizon Network Pty Ltd (formerly QR Network Pty Ltd), a subsidiary of Aurizon Holdings.

⁶ The Queensland Government made the 2008 undertaking apply to Queensland Rail limited via a transfer notice published in the Queensland Government Gazette on 29 June 2019, under s. 9(1)(j) of the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*.

⁷ See the variations to the [2008 access undertaking](https://www.qca.org.au/project/queensland-rail/previous-access-undertakings/2008-access-undertaking/extension-daaus/) (<https://www.qca.org.au/project/queensland-rail/previous-access-undertakings/2008-access-undertaking/extension-daaus/>). The [same 2008 undertaking](https://www.qca.org.au/project/queensland-rail/previous-access-undertakings/2008-access-undertaking/extension-daaus/), as amended in June 2010, also applied to QR Network for three months, until the 2010 QR Network undertaking (UT3) was approved in October 2010.

refused to approve an application by Queensland Rail to extend the 2008 undertaking beyond June 2015.⁸



Since the separation of QR Ltd, Queensland Rail has provided below-rail services to rail freight operators, but has not competed in the above-rail freight market. Queensland Rail submitted four DAUs between March 2012 and May 2015, as it sought to put in place a new access undertaking better suited to the nature of its business. The first three DAUs were voluntary, and Queensland Rail withdrew them respectively in February and June 2013, and December 2014.

In February 2015, we issued an initial undertaking notice under s. 133 of the QCA Act. Queensland Rail submitted a DAU in May 2015. We published a decision on the 2015 DAU in June 2016, and in October 2016 approved a complying undertaking submitted by Queensland Rail. The 2016 access undertaking terminates on 30 June 2020.

Some of the history of West Moreton coal services, and the tariff approach, is discussed in section 2.2.1. The distinction between the access pricing approach for coal services on the West Moreton system and the pricing regime for the rest of Queensland Rail's services is discussed below in Box 1.

⁸ For more information on why the 2008 undertaking was not extended beyond June 2015, see [QCA, Queensland Rail's draft amending access undertaking - extension of termination date](#), final decision, June 2015.

Box 1: Queensland Rail access charging framework

Access charges for coal-carrying train services on the West Moreton and Metropolitan systems are determined in accordance with an approved reference tariff. Access charges for all other services are negotiated between Queensland Rail and access seekers according to the pricing rules in the undertaking.

Access charges for West Moreton and Metropolitan coal services

An approved reference tariff is for a reference train service, which is a notional train service with certain characteristics, including particular operational and technical characteristics, and contract terms and conditions.

If a coal-carrying train service differs from the reference train service, the reference tariff may be adjusted to account for differences in the cost or risk of providing the different service. Our analysis and decision on Queensland Rail's proposed West Moreton coal reference tariff for the 2020 DAU period is provided in Chapters 2 to 4.

Access charges for other services

For all other services, access charges are negotiated within the bounds of the pricing rules in the undertaking. If the parties fail to reach agreement on access charges and other terms, a dispute can be raised under the dispute resolution provisions in the undertaking and/or the QCA Act. If called on to resolve a dispute, we must not make a determination that is inconsistent with the undertaking, including the pricing rules. However, we are not required to accept any price that is consistent with the pricing rules; but rather must make a determination having regard to the matters in s. 120 of the QCA Act.

The pricing rules in the 2020 DAU are largely consistent with the rules in the 2016 undertaking, although Queensland Rail proposed some changes to the treatment of price differentiation and pricing limits. Our analysis and decision on Queensland Rail's proposed pricing rules is provided in Chapter 7.

Note: References to 'other services' are to non-coal-carrying train services on the West Moreton and Metropolitan systems, and all train services on the Mount Isa, North Coast, Western, South Western, Central Western and Tablelands systems.

Source: Part 3 and sch. D of the 2016 undertaking and 2020 DAU.

1.4 The regulatory process

On 14 September 2017, we issued an initial undertaking notice to Queensland Rail under s. 133 of the QCA Act, requiring Queensland Rail to submit a draft access undertaking by 30 April 2018.

We considered that initiating the process established by s. 133 of the QCA Act was the best way to maximise the chances that an appropriate replacement undertaking would be approved by the time the 2016 access undertaking expired.

The date for lodging the draft access undertaking was extended on two occasions, following requests from Queensland Rail. Queensland Rail submitted the 2020 DAU on 14 August 2018, in accordance with the extensions granted to the lodgement date. We published Queensland Rail's 2020 DAU for stakeholder comment on 16 August 2018 and received submissions from five parties: Aurizon Bulk, Aurizon Coal, New Hope, Pacific National and Yancoal. We received two further collaborative submissions, from Queensland Rail and Yancoal.

We published a draft decision on Queensland Rail's 2020 DAU for stakeholder comment on 29 April 2019, and received submissions from six parties: Aurizon Bulk, Aurizon Coal, New Hope,

Pacific National, Queensland Rail and Yancoal. We received seven further collaborative submissions, from Aurizon Coal, Glencore, Incitec Pivot, New Hope, Pacific National, Queensland Rail and Yancoal.

We published a discussion paper on the West Moreton coal pricing approach on 24 October 2019, and a further submission from Queensland Rail on West Moreton coal reference tariffs on 25 November 2019. We received submissions on the discussion paper and further submission from four parties: Aurizon Coal, New Hope, Queensland Rail and Yancoal.

The submissions are listed in Appendix A, which also includes the submission numbers that are used for referencing in this decision.

1.5 Agreed positions

Throughout the 2020 DAU assessment process, we have encouraged open communication between stakeholders as a way to improve regulatory outcomes. We have strongly supported stakeholders collaborating and, where possible, providing joint submissions on agreed positions. We therefore welcome the common ground on several issues that Queensland Rail and a number of its stakeholders have found through the collaborative submission process.

Nevertheless, we must also consider the effect of proposed amendments on all stakeholders, including train operators, future access seekers and non-coal traffics, who are not necessarily represented by the parties that developed consensus positions. Moreover, our broader considerations also include the public interest. Accordingly, while the existence of stakeholder-consensus positions is persuasive, it is not decisive.

1.6 Significant changes from draft decision

This decision follows largely the same format and structure as the draft decision. However, it has been written as a standalone document, which does not require the reader to refer back to previous decisions and other documents in order to understand the adopted positions. For some matters, the analysis and conclusions are little changed from the draft decision. In other cases, the sections have been substantially rewritten to address new information and arguments. However, the draft decision is only referred to explicitly where that is necessary to explain any significant departure from or elaboration on previously adopted positions.

The changes in position in this decision compared with the draft decision reflect, among other things, the submissions on the draft decision and the further comments made through the collaborative submission process. Some of the more significant revised positions are:

- (a) setting a reference tariff at low volumes that recovers Queensland Rail's incremental costs, including a return on and of forward-looking capital expenditure, and recording the shortfall from full cost recovery in a loss capitalisation account (Chapters 2 and 4)
- (b) applying most of the changes to the standard access agreement that were proposed by Queensland Rail and stakeholders in collaborative submissions (Chapter 11)
- (c) implementing an amendment process for the ORM that reflects stakeholders' comments after the draft decision (section 8.1)
- (d) adding reporting on urgent and emergency possessions, as suggested by stakeholders (section 9.1.3)
- (e) improving the bargaining position of access seekers to negotiate contract renewal terms with Queensland Rail (section 6.4)

- (f) adding provisions for supply chain groups, based on the terms that were largely agreed between Queensland Rail and customers during the collaborative submission process (section 8.3).

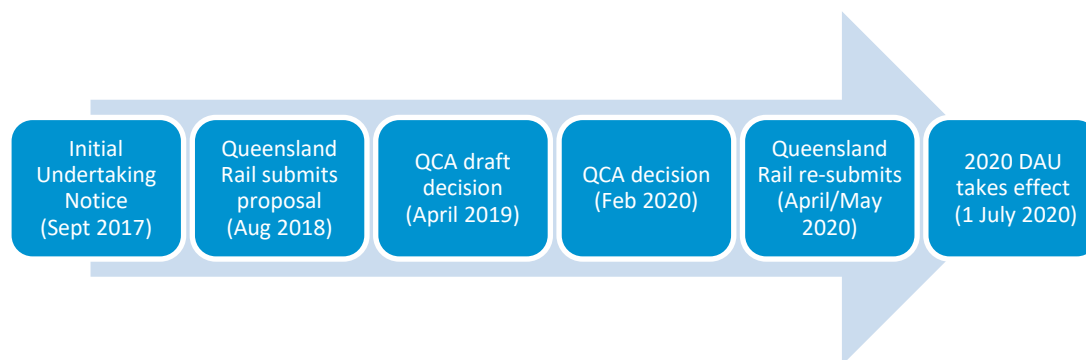
We have also identified a number of typographical and cross-referencing errors that should be corrected (see Appendix B). It is in the interests of all parties that the final documents are workable and free from errors (ss. 138(2)(b), (d), (e) and (h)).

1.7 Way forward

In releasing a decision at this time, we are aware of the importance of a timely and seamless transition between undertakings. It is almost two and a half years since we issued an initial undertaking notice to Queensland Rail, requiring that it submit the 2020 DAU. Since then, in every significant measure and communication regarding this matter, we have reiterated the goal of having an appropriate replacement undertaking ready to approve by the time the 2016 undertaking expires.

An on-time replacement undertaking has multiple benefits, including increased certainty for Queensland Rail and its customers, and reduced regulatory costs. It also creates opportunities for the parties to explore more fundamental changes to the regulatory approach, once the undertaking is in place, without jeopardising the timeliness of this or future DAU investigations.

The reason for issuing a mandatory notice so early was that the undertaking approval process takes a significant amount of time. Queensland Rail needs time to prepare its submission. Stakeholders need time to consider the DAU, respond to other stakeholders' submissions and, ideally, collaborate among themselves and with Queensland Rail. We need time to consider the DAU, stakeholder comments and other relevant considerations, having regard to the approval criteria in the QCA Act (s. 138(2)).



This secondary undertaking notice asks Queensland Rail to submit an amended draft access undertaking (DAU) by 27 April 2020⁹ (ss. 134(2)(b)(i), 134(2B)). We will either approve the amended DAU, or reject it. If Queensland Rail fails to submit an amended DAU or if we find it is not appropriate to approve the amended DAU, we may prepare our own DAU for the declared service (s. 135). In that case, we will provide advice on the process for assessing and approving a replacement undertaking, including timelines for submissions.

⁹ This date may be extended, if requested by Queensland Rail, to no later than 27 May 2020.

2 WEST MORETON REFERENCE TARIFF APPROACH (SCHEDULE D)

The 2020 DAU covers all of Queensland Rail's declared service, but only includes a proposed reference tariff for coal services on the West Moreton and Metropolitan systems (the West Moreton reference tariff). The two systems connect mines in southern Queensland with the export terminal at the Port of Brisbane.

In the 2020 DAU, Queensland Rail proposed a West Moreton system reference tariff at \$22.39 per thousand gross tonne kilometres ('000 gtk), using the building block approach based on forecast volumes of 9.1 million tonnes a year (mtpa). Queensland Rail subsequently proposed an alternative pricing approach that reflected significantly lower forecast volumes of 2.1 million tonnes. This included: a 'low volume' system reference tariff that would cover Queensland Rail's cash costs but be within access holders' willingness to pay; and a loss capitalisation approach.¹⁰

Queensland Rail proposed to set the Metropolitan system reference tariff at \$18.13/'000 gtk, by escalating the 2016 undertaking price by actual and forecast CPI.

Overview of the decision

While volumes remain low we require Queensland Rail to apply a West Moreton system reference tariff of \$21.50/'000 gtk, that recovers Queensland Rail's incremental costs of providing coal services, and record the shortfall from full cost recovery in a loss capitalisation account.

We also require that Queensland Rail review the approved pricing approach, including the reference tariff and loss capitalisation mechanism, when it reasonably expects contracted volumes will exceed 4.1 million tonnes a year during the undertaking period.

The economic issues and overall pricing approach, given the prospect of low volumes, at least in the near future, are discussed in this chapter. The regulated rate of return and detailed cost build-up and resultant reference tariffs are discussed in Chapters 3 and 4 respectively. Rules for setting prices for non-reference tariff services (Part 3 of the 2020 DAU) are discussed in Chapter 7.

Tariff approach—summary

<i>Queensland Rail DAU</i>	<i>Clause</i>	<i>QCA decision</i>
Volume forecast		
Volumes of 9.1 million mtpa, with a potential lower forecast of 2.1 mtpa.		Volumes of 2.1 mtpa, with the possibility volumes will return to higher levels during the undertaking period (see section 2.2.2).
Reference tariff approach		
Reference tariff calculated using the building block approach.	sch. D, cl. 3	Reference tariff calculated to recover Queensland Rail's expected incremental cost of providing coal services (see section 2.3.1).
Two-part tariff, split into train path and gtk components.	sch. D, cl. 3	The proposal is appropriate to be approved (see section 2.3.2).
Additional paths the same price as contracted paths.		The proposal is appropriate to be approved (see section 2.3.3).

¹⁰ Queensland Rail, 42: 2–3, 17–28, sub. 45: 3, 6, sub. 47, sub. 48: 38, 74, 126–131.

<i>Queensland Rail DAU</i>	<i>Clause</i>	<i>QCA decision</i>
100 per cent take or pay, subject to approved ceiling revenue limit.	sch. D, cl. 4	The proposal is appropriate to be approved (see section 2.3.4).
A loss capitalisation approach may be considered.	sch. D, cl. 8 (added)	It is appropriate for accumulated revenue shortfalls to be accounted for, and recovered, if and when system volumes increase sufficiently in future. Amendments are required to set out how the losses will be recorded and assessed by the QCA (see section 2.3.5), with the recovery approach to be settled later (see section 2.3.6).
Process to review tariff approach (reference tariff and loss capitalisation.)	sch. D, cl. 8.8 (added)	It is appropriate that Queensland Rail review the tariff approach when it reasonably expects contract volumes will exceed 4.1 mtpa and submit any proposed changes for approval (see section 2.3.6).
Other tariff matters		
Metropolitan tariff escalated from 2016 access undertaking prices by CPI.		The proposal is appropriate to be approved (see section 2.4.1).
Capital expenditure reviews to be annual.	sch. E, cl. 1.3(a)	The proposal is appropriate to be approved (see section 2.4.2).
Specified what must be addressed in a QCA statement of reasons for a capital expenditure determination.	sch. E, cl. 1.5	The proposal is not appropriate to be approved. Schedule E, cl. 1.5 should be removed (see section 2.4.2).
Expand what the QCA is required to consider when assessing prudence of capital expenditure.	sch. E, cls. 3.2(e), 4.2(c), 5.3(c)	The proposal is not appropriate to be approved. The provisions in the 2016 undertaking should be adopted (see section 2.4.2).
Adopt the process outlining the accounting treatment of the capital expenditure carryover account from the 2016 undertaking	sch. E, cl. 7	The proposal is not appropriate to be approved. Amendments are required so the process accurately reflects the appropriate accounting treatment (see section 2.4.2).
The QCA to review all adjustment charges.	sch. D, cl. 6	The proposal is appropriate to be approved (see section 2.4.3).
Remove adjustment amount process.	sch. D, cl. 7	The proposal is appropriate to be approved, subject to the new undertaking being ready to approve before the 2016 undertaking terminates. This issue is not discussed further in this decision. ¹¹
Added ability to 'impose' access charges that vary for cost or risk.	3.3(c)	The proposal is not appropriate to be approved. It must be clear that Queensland Rail will negotiate variations for cost or risk and any variations only reflect those differences (see section 2.4.4).
Reference train characteristics (number of wagons and maximum train length).	sch. D, cl. 2.1(c)	The reference train service should be amended to reflect the characteristics approved in the 2019 reference train service DAAU (see section 2.4.5).

¹¹ Yancoal, sub. 27: 6.

2.1 Queensland Rail's proposal—West Moreton system

The 2020 DAU proposed an approach to determining the West Moreton reference tariff for coal services that in many respects follows the approach used to assess tariffs in the 2016 undertaking. The established methodology included:

- a building blocks approach to determining the appropriate total revenue requirement, which provided for an average price based on:
 - recovery of efficient maintenance and operating costs
 - return on capital, based on a WACC applied to a regulated asset base, and a return of capital (depreciation)
 - forecast volumes over the term of the undertaking
- a common network asset base allocated between coal and non-coal services to reflect the shared nature of the system
- a two-part tariff structure, with weight/distance (gtk) and train path components (AT1 and AT2) each recovering half of the revenue requirement.

Queensland Rail proposed volumes of 9.1 million tonnes a year in its 2020 DAU submission.

It subsequently provided revised (lower) forecasts to reflect changing expectations on market conditions.¹² On its most recent information, Queensland Rail proposed a revised pricing approach, based on cost estimates for forecast annual coal volumes of 2.1 million tonnes.¹³ This included applying a 'low-volume' reference tariff of \$25.72/'000 gtk, which was less than a cost recovery price of \$47.10/'000 gtk. The approved reference tariff would apply until contracted volumes increased to 4.1 million tonnes. The foregone revenue during the low-volume period would be recorded and assessed by the QCA, and recovered when volumes increased (with the recovery approach settled once volume expectations were clearer).

2.2 Regulatory and economic context

2.2.1 Balancing competing interests

The appropriate price for coal services on the West Moreton system will reflect a range of factors particular to the circumstances of the network (see Box 2). It is a high-cost, low-volume system, compared with other coal networks, and it uses low-capacity trains that need to travel through the passenger-focused Metropolitan system to reach the Port of Brisbane. Moreover, at this time there is expected to be substantial spare capacity, particularly in the near term, and significant uncertainty around the mix of future customers.

The nature of the network means that Queensland Rail faces extra costs in providing for coal services on a system designed for lighter duty. Yet coal services have for more than a decade covered much of the substantial cost of sustaining the infrastructure, to the benefit of Queensland Rail and all rail users.

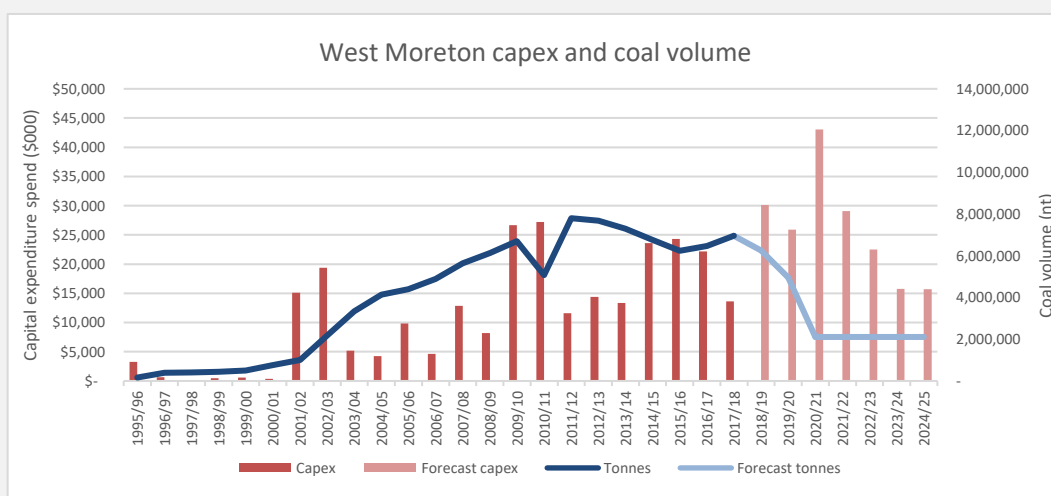
¹² Queensland Rail, sub. 26: 2.

¹³ Queensland Rail, sub. 42: 2–3, 17, 20–28, sub. 45: 3, 6, sub. 48: 126–130.

Box 2: West Moreton history

The West Moreton system was built more than 150 years ago for mixed freight and passenger services. It remains fundamentally the same as when it was constructed, but selectively upgraded to cope with the heavier coal and grain trains that it now supports.

Export coal rail services from the Darling Downs coalfields west of Toowoomba began in 1995, when the Wilkie Creek mine opened. Volumes were low at the start, and coal services were accommodated with almost no capital expenditure until the early 2000s, when mining started at New Acland. Capital investment remained low even as New Acland expanded in 2007. Spending accelerated in 2009, as Queensland Rail began renewing the infrastructure to cope with the wear and tear of higher volumes, and prepare for the opening of Cameby Downs in 2011.



The West Moreton capacity available to coal services was fully contracted from 2011 until the end of 2013, when Wilkie Creek shut. Even though volumes have fallen since then, capital spending has remained high, as bridges have been replaced, formation and drains rebuilt, and track and sleepers renewed. Actual and forecast investment for the 10 years to 2025 totals \$242.1 million, compared with \$49.2 million in the first 10 years of coal services from the Darling Downs (all figures are in 2020–21 dollars).

For miners, the standard of service they receive is limited by the configuration and condition of the West Moreton system¹⁴, given the network was not originally constructed, designed or optimised for coal services.¹⁵ Yet it is unlikely that miners would have any rail access at all if the old network had not been available when West Moreton coal services resumed in the 1990s.¹⁶

These challenges and mutual benefits have been reflected in the established tariff approach, and should be reflected in future. Achieving an appropriate balance becomes more complex where the majority of available capacity available to coal is expected to be unused—even if this is only transitory—and there is significant uncertainty around the mix of customers. In particular,

¹⁴ New Hope, sub. 24: 6.

¹⁵ Yancoal, sub. 27: 4.

¹⁶ West Moreton annual coal volumes peaked at 7.8 million tonnes in 2011–12, and were forecast to be 6.25 million tonnes for the 2016 undertaking period (see section 8.10 of QCA, *Queensland Rail's Draft Access Undertaking*, decision, June 2016: 184–189). New coal systems are typically built for 20 million tonnes or more.

meeting Queensland Rail's revenue requirement becomes more complicated at low volumes, because the price required to cover Queensland Rail's costs increases to levels that are well beyond customers' apparent willingness and ability to pay.

Affordability

Stakeholders have highlighted the issue of affordability, in response to both the 2020 DAU and Queensland Rail's most recent reference tariff review event.¹⁷ Stakeholders said the prevailing tariffs are at the upper limit of an affordable range—and any increase beyond this will have significant consequences for access holders, access seekers and the network. This is because an 'unaffordable' tariff puts pressure on the economic viability of existing operations and discourages investment in the West Moreton coal industry, hindering any prospect of volumes recovering. This in turn will result in a significant loss of economic activity, employment and royalties, and, unless the state funds the continued operation of the network, will possibly strand investments of all stakeholders.^{18, 19}

Queensland Rail has also acknowledged that affordability is a concern at low volumes, and said it had regard to affordability in setting its proposed low-volume reference tariff.²⁰ However, stakeholders said that Queensland Rail's proposal was based on 'outdated and flawed analysis' resulting in a 'material gap' between what Queensland Rail and existing miners would consider affordable.²¹

Our approach

We have considered Queensland Rail's 2020 DAU and subsequent submissions, comments from other stakeholders, and the criteria in s. 138(2) of the QCA Act, in forming our views on the appropriate approach to access pricing for West Moreton coal services. In doing so we have sought to balance the objectives of, among other things:

- promoting the efficient operation of, use of and investment in network assets, including encouraging more access holders to contract on the West Moreton system (s. 138(2)(a))
- generating sufficient expected revenue to meet efficient costs and give Queensland Rail the opportunity to make a return on investments commensurate with the regulatory and commercial risks of providing access (ss. 138(2)(b), (g); 168A(a))
- setting a price that has regard to the interests of access seekers and holders, and competition in downstream markets (ss. 138(2)(a), (d), (e), (h)).

2.2.2 Volume uncertainty

The 2020 DAU calculated the reference tariff using a forecast volume of 9.1 million tonnes a year. However, there is continuing uncertainty about the future of New Hope's New Acland mine, which accounts for about two-thirds of the coal hauled on West Moreton.

¹⁷ In December 2019, we approved Queensland Rail's proposed review event application to increase the West Moreton reference tariffs to reflect, among other things, fewer contracted train paths from New Hope's New Acland mine. See [Volume and reference train review event](#) on our website.

¹⁸ Yancoal, sub. 27: 12–13, sub. 41: 2–3, sub. 46: 9, 21–23; New Hope, sub. 33: 5, 1, sub. 44: 4–5; Aurizon Coal, sub. 43: 1.

¹⁹ Yancoal, *Submission in response to QR 2016 Access Undertaking review event*, October 2019: 5–9; New Hope, *Submission in response to QR 2016 Access Undertaking review event*, October 2019: 4–7.

²⁰ Queensland Rail, sub. 42: 20–22, sub. 45: 3.

²¹ Yancoal, sub. 46: 11–12; New Hope, sub. 33: 15, sub. 44: 5.

Queensland Rail said it had based its 2020 DAU approach on an expectation that, even if the New Acland mine shut down, other demand would emerge, and the West Moreton system would return to full utilisation.²² While Queensland Rail proposed that revised pricing arrangements be developed at 2.1 million tonnes (reflecting Yancoal's forecast 21 train paths)²³, it maintained its view that any low-volume period would be transitory and that the system would, in time, operate up to the available capacity.²⁴

Stakeholders agreed that achieving a high-volume outcome was increasingly unlikely in the short term.²⁵ New Hope said that it was continuing to seek the required approvals, but that the delays experienced to date were now certain to result in a period of lower volumes.²⁶ Even so, volumes might still increase over the longer term. Yancoal noted a full-scale New Acland project (of up to 7.5 million tonnes) and an incrementally expanded Cameby Downs (of up to 2.8 million tonnes) would result in volumes higher than Queensland Rail's original forecast.²⁷

Our approach is based on a (low-volume) forecast of 2.1 million tonnes a year, with the possibility that volumes will increase during the undertaking period. This reflects the actions and comments of the key stakeholders: New Hope has continued to pursue the approvals required to extend the life of New Acland, Yancoal could increase volumes in line with recent approvals, and Queensland Rail has said it expects demand to recover.

Summary 2.1

The QCA's decision is based on a forecast volume of 2.1 million tonnes a year, with the possibility this could increase over the 2020 undertaking period.

2.3 West Moreton system reference tariff

Our pricing approach adopts several aspects of the 2020 DAU approach, most of which are carried over from previous undertaking periods. These include:

- (a) using a building blocks approach to determine an appropriate total revenue requirement (see Chapters 3, 4)
- (b) applying a two-part tariff (section 2.3.2)
- (c) pricing additional paths the same price as contracted paths (section 2.3.3)
- (d) applying 100 per cent take or pay, with an approved ceiling revenue limit (section 2.3.4).

However, there are aspects of the 2020 DAU approach that are not appropriate to approve and should be amended to appropriately balance the incentives and risks between Queensland Rail and access holders and seekers. These include:

- (a) using the total revenue requirement for the purpose of loss capitalisation (see section 2.3.5 and Chapters 3, 4) but not the reference tariff that applies while volumes remain low

²² Queensland Rail, sub. 18: 9.

²³ Queensland Rail, sub. 42: 5.

²⁴ Queensland Rail, sub. 36: 10, sub. 42: 18.

²⁵ New Hope, sub. 33: 5; Yancoal, sub. 41: 2.

²⁶ New Hope, sub. 33: 5, sub. 44: 9.

²⁷ Yancoal, sub. 27: 5.

- (b) calculating the reference tariff, while volumes remain low, to recover Queensland Rail's expected incremental cost of providing coal services (section 2.3.1)
- (c) accounting for revenue shortfalls, to be recovered over time, if and when system volumes increase sufficiently (section 2.3.5)
- (d) requiring a review of the tariff approach (including the loss capitalisation mechanism) when Queensland Rail expects contracted volumes will exceed 4.1 million tonnes a year during the undertaking period (section 2.3.6).

2.3.1 An alternative pricing approach

During our assessment, the outlook for coal volumes has changed significantly. It is now clear that a 'high-volume' scenario (9.1 mtpa) will not eventuate in the near term, so the focus should shift to a pricing approach that is suitable at low volumes (2.1 mtpa).

Queensland Rail and stakeholders agreed that the appropriate way to set charges is through an approved reference tariff—but that a reference tariff based on the building blocks is not affordable for (existing or future) access holders at low volumes.²⁸

Queensland Rail and stakeholders did not agree on an alternative pricing approach. Queensland Rail suggested an 'opening' low volume reference tariff of \$25.72/'000 gtk, to cover the floor price of providing services for coal trains and make a small contribution to the capital costs of providing the service.²⁹ It said:

Queensland Rail's intention is that in addition to being affordable, the reference tariff should be fair to current and future access seekers and provide incentive for future expansion.³⁰

However, stakeholders said this price was also not affordable, and that a lower tariff, that was more in line with prevailing tariff levels (of \$16.63/'000 gtk) or no greater than 5–10 per cent above our draft decision (\$17.79–\$18.63/'000 gtk) was required.³¹

In assessing Queensland Rail's proposed tariffs in the 2020 DAU (and its subsequent revised proposal) we have had regard to affordability and market conditions—but also note there are competing considerations. These include whether the pricing arrangements generate sufficient revenue, and the benefits from providing predictability and certainty in the regulatory process and its outcomes. Our alternative pricing approach seeks to provide support for Queensland Rail's revenue within the broader pricing framework of the access undertaking, having regard to the impact of the arrangements on customers.

We require that the low volume reference tariff be set at \$21.50/'000 gtk, so that the expected revenue at 2.1 million tonnes a year recovers the expected incremental cost of providing coal services (akin to the floor revenue limit that applies for non-coal services³²). This includes coal's share of approved cash operating and maintenance costs as well as a return on and of forward-looking capital expenditure.

While this price is higher than customers' stated upper limits of affordability, it is in line with current prices (which would apply under access agreements for existing users in the event that no reference tariff is set) and reasonable historical expectation about price increases (see section

²⁸ Queensland Rail, sub. 42: 6, 21, sub. 45: 3; New Hope, sub. 44: 4–5, 10–12; Yancoal, sub. 46: 7, 9.

²⁹ Queensland Rail, sub. 42: 20–22.

³⁰ Queensland Rail, sub. 42: 19.

³¹ Yancoal, sub. 46: 11–12, 19; New Hope, sub. 44: 3, 4.

³² The pricing rules for non-coal services are discussed in Chapter 7.

4.10). This price is not expected to provide full revenue adequacy, with any revenue shortfall in recovering remaining efficient costs to be dealt with through the loss capitalisation model (see section 2.3.5).

While we consider that these arrangements (having a reference tariff plus loss capitalisation) are appropriate while volumes are low, they should be reviewed, if volumes increase sufficiently (see section 2.3.6).

In assessing these arrangements, we sought to balance competing concerns, including stakeholders' concerns regarding affordability. The tariff, combined with loss capitalisation and required review, maximises the opportunity for Queensland Rail to recover the efficient costs of providing access, which promotes efficient investment in rail infrastructure (ss. 138(2)(a), (b), (g), 168A(a)). It provides certainty to access holders and access seekers over the maximum price required to be paid when volumes remain low (ss. 138(2)(e), (h)) and allows appropriate changes be made to arrangements if it becomes clear that volumes are recovering to more sustainable levels (ss. 138(2)(b), (e), (h)).

An opportunity for negotiation to reach an affordable price

As part of our consultation process, we sought stakeholders' comments on the possibility of providing additional price flexibility, including for parties to negotiate access charges away from the reference tariff. This included setting the reference tariff to recover all efficient costs, then providing for Queensland Rail and its customers to negotiate lower access charges (having regard to affordability), with recourse to arbitration should negotiations fail.³³

Stakeholders did not support using negotiation/arbitration to reach an affordable price. While Queensland Rail welcomed the possibility to shift to a negotiate–arbitrate approach, it said that it was not appropriate to do so at this time. It said, given parties were unable to agree an affordable price as part of this assessment process, a negotiate–arbitrate approach would simply delay this decision, creating considerable and unnecessary uncertainty and costs. It was also concerned about providing for negotiation/arbitration for only one, and not all, conditions of access.³⁴

Yancoal and New Hope did not consider that negotiation–arbitration could be relied on to produce an affordable price. They said history showed Queensland Rail was unlikely to be incentivised or able to negotiate a tariff to attract, retain or grow volumes (even where clear threats to future volumes had become evident) and that arbitration was likely to be ineffective, inefficient, expensive and cause extensive delays.³⁵

New Hope supported the possibility to negotiate tariffs below (an already affordable) reference tariff, but noted that negotiations were unlikely to result in material price differences and present a range of complications (given the possible impacts on other access holders and seekers) that were better dealt through a draft amending access undertaking.³⁶ Yancoal said if negotiations from the reference tariff were allowed, appropriate protections would also be required to deal with the treatment of capitalised losses and preserve equity for existing access holders paying reference tariff based charges.³⁷

³³ QCA, *West Moreton coal pricing approach*, discussion paper, October 2019.

³⁴ Queensland Rail, sub. 45: 3–4.

³⁵ Yancoal, sub. 46: 4, New Hope, sub. 44: 5, 10–13.

³⁶ New Hope, sub. 44: 12–13.

³⁷ Yancoal, sub. 46: 8.

Given the comments by Queensland Rail and other stakeholders, and in the interests of consistency and timeliness, we have not pursued this approach.³⁸ However, we might revisit options to provide for greater flexibility for Queensland Rail and its customers to negotiate prices in future undertaking periods, particularly if volumes remain low, and there is significant unused capacity and possibly a single customer.

Summary 2.2

Our decision is that the appropriate way for Queensland Rail to amend the 2020 DAU is to set the West Moreton system reference tariff to recover Queensland Rail's expected incremental cost of providing coal services.

Drafting: sch. D, cl. 3.

2.3.2 Two-part tariff

The 2020 DAU provides for a two-part tariff that recovers the annual revenue requirement on a train path basis, and on a weight and distance basis (i.e. per gtk) (sch. D, cl. 3.1).

The two-part tariff was introduced in 2010 to address the potential for above-rail investments to increase volumes, and therefore below-rail revenues. The tariff structure splits the gains from any increase in capacity per train—Queensland Rail increases its revenue, while customers benefit from lower unit costs.³⁹

The tariff structure also has the effect of creating a 'distance taper'—a tariff outcome that lessens the disincentive for developing mines further from ports.⁴⁰

The distance taper aims to strike a balance between the user pays principle, revenue adequacy and fostering development along the West Moreton system.⁴¹ It recognises that mines closer to the Port of Brisbane (e.g. New Hope's New Acland mine) do not use infrastructure west of their haulage point—but consume capacity so that fewer paths are available to access seekers further west (e.g. Yancoal's Cameby Downs mine). This means supplying a train path with an origin closer to the port carries an inherent opportunity cost to Queensland Rail (which requires sufficient revenue to cover access to the entire system) and the distance taper provides for users closer to the port to pay a portion of that cost.

Yancoal strongly supported the two-part tariff and distance taper, because it was 'more important than ever to continue to incentivise and facilitate investment in development or expansion of mines further west.'⁴² Yancoal said:

[G]iven that all stakeholders now appear to be preparing for the potential that Cameby Downs will, for at least a period, be the only coal user of the West Moreton network—it is critical that nothing is done to increase the costs of Cameby Downs as doing so will sabotage the potential ability to preventing the economic stranding of QR's West Moreton network and the West Moreton coal mines.⁴³

³⁸ We note parties can depart from the reference tariff to reflect differences in the cost or risk compared to the reference train service (cl. 3.3(c); sch. D, cl. 2.1).

³⁹ QCA, *QR Network 2009 Draft Access Undertaking*, draft decision, December 2009: 93.

⁴⁰ The distance taper has been a feature of the central Queensland coal network tariffs since the first QCA-approved access undertaking in 2001.

⁴¹ QCA, *Queensland Rail's Draft Access Undertaking*, decision, June 2016: 202.

⁴² Yancoal, sub. 27: 4.

⁴³ Yancoal, sub. 41: 11.

While New Hope preferred a fully user-pays tariff (i.e. one where all of the tariff was distance-based),⁴⁴ it accepted that the two-part tariff structure was a way to balance competing considerations.⁴⁵ It was, however, concerned that under the proposed (high volume) arrangements the Cameby Downs mine was not expected to contribute sufficient revenue to cover the full incremental cost of the service.⁴⁶

Our decision is that, while there is still an expectation that New Acland or another mine may contract for access on West Moreton during the term of the 2020 undertaking, it is appropriate to retain the distance taper approach in the pricing structure. When volumes are high, the distance taper helps balance the competing objectives of cost reflectivity and revenue adequacy by:

- having miners closer to the port pay less for access than those further away, which is consistent with the user pays principle (ss. 138(2)(a), (e), (h))
- encouraging economic development by mitigating some of the cost disadvantage faced by mines further from the port (ss. 138(2)(d), (h))
- addressing in part the opportunity cost to Queensland Rail of selling a shorter path, which it might otherwise have been able to use for a more distant mine that provided more revenue (s. 138(2)(b)).

Summary 2.3

The QCA's decision is that it is appropriate to approve the two-part tariff structure for the West Moreton coal tariffs in the 2020 DAU.

Drafting: sch. D, cl. 3.1.

2.3.3 Additional (ad hoc) path pricing

We have considered the West Moreton tariff in an environment where forecast volumes are below capacity and there is a risk that volumes could remain low, including having only one mine raiing.

In our draft decision, we were considering pricing additional (ad hoc) paths at a 5 per cent premium to contracted paths to encourage miners to contract more paths, encourage Queensland Rail to make capacity available, and enable Queensland Rail to achieve revenue adequacy sooner, if access holders choose not to contract.⁴⁷ Queensland Rail supported our proposed approach.⁴⁸

New Hope and Yancoal did not support applying a premium for ad hoc services, saying it would achieve little in terms of additional incentives for miners (who already had an incentive to enter into and retain contracts that reflected expected production) but would add complexity and might produce a number of counter-productive incentives and outcomes.⁴⁹ Yancoal said this included discouraging the use of ad hoc paths for marginal production and marketing opportunities where there was material spare capacity and 'punishing' users for not contracting

⁴⁴ New Hope, sub. 14: 29–30.

⁴⁵ New Hope, sub. 24: 8.

⁴⁶ New Hope, sub. 24: 8, sub. 33: 17.

⁴⁷ QCA, *Queensland Rail's Draft Access Undertaking*, draft decision, April 2019: 14–16, 65.

⁴⁸ Queensland Rail, sub. 26: 13.

⁴⁹ New Hope, sub. 24: 9–10; Yancoal, sub. 27: 4–5, 14, sub. 41: 10.

their entire volume (at 100 per cent take or pay) where there was still considerable uncertainty around future tariffs, especially at low volumes.⁵⁰

We no longer consider that a premium price for ad hoc services is necessary, given the revised volume forecasts and pricing approach (see sections 2.2.1, 2.2.2, 2.3.5 and 2.3.6). With these arrangements in place, a price premium is unlikely to provide any further incentive for miners to contract or assist Queensland Rail to achieve revenue adequacy in the face of low volumes. Rather, we consider that pricing additional paths the same price as contracted paths is in the interests of Queensland Rail, access seekers and access holders (ss. 138(2)(b), (e), (h)).

Summary 2.4

The QCA's decision is that pricing additional (ad hoc) paths the same price as contracted paths is appropriate.

2.3.4 Take or pay arrangements

The 2020 DAU requires 100 per cent take or pay for West Moreton coal services, but provides for Queensland Rail to only collect take or pay when total revenue is below the 'approved ceiling revenue limit' (sch. D, cls. 4(c), (d)). This is consistent with the approach that applies in the 2016 undertaking. The 'approved ceiling revenue limit' reflects the total revenue requirement that is calculated on the basis that all 97 paths are contracted (see section 4.2.2).

New Hope and Yancoal accepted continuing existing arrangements of 100 per cent take or pay for the West Moreton reference tariff, and the approved ceiling revenue limit.⁵¹

We consider the take or pay arrangements support revenue certainty for Queensland Rail, provide access seekers an incentive to sign agreements for capacity they expect to use (and access holders to make unused paths available to others⁵²) and provide Queensland Rail an incentive to offer additional (ad hoc) paths if there is demand. This promotes the efficient operation of, use of and investment in, network assets, having regard to Queensland Rail's interests and access seekers' and access holders' interests (ss. 138(2)(a), (b), (e), (g), (h); 168A(a)).

Summary 2.5

The QCA's decision is that it is appropriate to approve that 100 per cent take or pay apply for the West Moreton reference tariff, subject to an approved ceiling revenue limit.

Drafting: sch. D, cl. 4.

⁵⁰ Yancoal, sub. 27: 4–5, sub. 41: 10.

⁵¹ New Hope, sub. 24: 10; Yancoal, sub. 27: 2.

⁵² Queensland Rail's 2020 DAU does not include a capacity trading mechanism, like that included in Aurizon Network's access undertaking and system rules. Nevertheless, Queensland Rail's proposed 'approved ceiling revenue limit' approach provides some of the same benefits. See [Aurizon Network's 2017 access undertaking](#).

2.3.5 Loss capitalisation

Queensland Rail proposed to use a loss capitalisation mechanism to give it an opportunity to recover efficient costs when volumes rise. Loss capitalisation is the deferred recovery of regulated costs in circumstances where volumes are low but expected to grow.⁵³

Queensland Rail set out its loss capitalisation proposal in its November 2019 submission, including measures to track the accumulated gap between the total revenue requirement for West Moreton coal services and revenue actually earned during the 2020 DAU period.⁵⁴ Key aspects include:

- total revenue requirement calculated using the established building blocks approach based on efficient costs
- actual revenue calculated including contracted and ad hoc (additional) coal-carrying train services and take-or-pay revenue
- capitalised amounts to be approved each year by the QCA
- once new tonnages come on the system, the capitalised losses to be recouped by applying a 'repayment premium' on top of a building-blocks-based access charge, approved by the QCA
- the details on exactly how the losses are recouped to be determined after volumes have increased.

Yancoal and New Hope said they were open, in principle, to applying loss capitalisation. However, they said:

- the capitalised amounts should have a 'limited life'
- there should be a limit on the 'repayment premium' that can be charged while the capitalised losses are being recovered.⁵⁵

Queensland Rail and its customers shared a concern that a large accumulated capitalised loss could reduce demand for access. Queensland Rail said:

Any loss capitalisation approach must provide pricing certainty for access seekers and access holders at the time of approval by the QCA and should not act as a disincentive to future access seekers.⁵⁶

Yancoal was concerned that if loss capitalisation was not implemented well, it could discourage the volume recovery required for a return to a building-blocks-calculated tariff that worked for all parties. It said:

A large capitalised loss built up through a delay in volumes returning, or the risk of accelerated future recovery of such losses, has the potential to create a significant chilling effect on investment in West Moreton coal projects.⁵⁷

Loss capitalisation is typically used for lumpy assets such as dams, where there is a reasonable expectation that demand will build over time to a level where the capitalised losses can be

⁵³ See ARTC, *Hunter Valley Coal Network access undertaking development*, stakeholder consultation paper, March 2015: 4.

⁵⁴ Queensland Rail, sub. 42: 18–28, sub. 45: 6–7, sub. 48. Queensland Rail previously said in its explanatory submission accompanying the DAU that it might propose loss capitalisation at low volumes (sub. 18: 4).

⁵⁵ New Hope, sub. 24: 15, sub. 33: 14, 16, sub. 44: 9–10; Yancoal, sub. 27: 13, sub. 41: 6, sub. 46: 13–14.

⁵⁶ Queensland Rail, sub. 42: 19.

⁵⁷ Yancoal, sub. 46: 14.

recouped. The 2020 DAU West Moreton tariff is an unusual application of loss capitalisation, in that forecasts of future demand depend on assumptions about a small number of discrete events, rather than a demographic or statistical assessment.

One of the most similar situations to West Moreton is Pricing Zone 3 in the Hunter Valley, where demand was low when a new rail line opened for hauling coal, but was expected to grow as more mines were developed. Zone 3 losses accumulated for five years from 2011 to 2015, before the unrecovered balance started declining in 2016.⁵⁸

An appropriate loss capitalisation approach for West Moreton coal services will reflect the shared interests of Queensland Rail and its customers, each of which have sunk costs that are unlikely to be recovered without the other. Queensland Rail is entitled to the opportunity to recover its efficient costs of providing access. At the same time, consistent with stakeholders' concern about discouraging efficient use of the rail network, existing and future customers may not be willing or able to pay access charges sufficient to justify the continuation of the service. An imbalanced approach would be likely to encourage inefficient investment, either by Queensland Rail or its customers.

Our decision reflects much of the approach proposed by Queensland Rail, in that we require that the total revenue requirement be assessed using a building blocks methodology, and that actual revenue will include payments for ad hoc services and take-or-pay. The treatment of actual revenue is symmetrical, as it provides for all relevant payments to Queensland Rail to be reflected when calculating capitalised losses.

We also consider it appropriate that the undertaking set out how the losses will be recorded and how they will be assessed by the QCA, but leave the recovery approach to be settled later once volume expectations are clearer. While prescribing the method for recouping losses now would provide certainty, we consider that it is not appropriate to do so, given key facts are not known.

Should volumes rise in the way Queensland Rail and its customers predict, the details of the tariff approach, including recovery of capitalised losses, can be settled with the benefit of a clearer profile of demand growth, for example. It is also reasonable to assume that the existing or new customers will only have signed for increased or extended access if Queensland Rail has provided some sort of contractual commitment to prices no higher than required to make their planned investment viable. We are likely to take that negotiated outcome into account when considering any DAAU submitted by Queensland Rail (under s. 142 of the QCA Act) that includes an approach for recouping the capitalised losses.

Our view, subject to further consultation and consideration when the matter comes up, is that the capitalised losses should have a limited life, to prevent the accumulated amount in the under-recovery account from ballooning to a level at which there is no reasonable prospect of recovery. This is to address our concern—shared by Queensland Rail and its stakeholders—about the effect on future demand of a large overhang of capitalised losses.

Under such an approach, each year's under- or over-recovery would remain at full value in the under-recovery account for five years, after which it would be fully depreciated over the next five years. This 10-year life—five years of accumulation, then five years of 'depreciation'—would help mitigate the accumulation of losses while giving Queensland Rail a reasonable amount of time to find new customers to recover its forgone revenue. The 10-year life would reduce any

⁵⁸ The ACCC approved the 2015–16 loss capitalisation amount for Pricing Zone 3 in December 2019. See ACCC, *2016 Australian Rail Track Corporation's compliance with the Hunter Valley Coal Access Undertaking*, final determination, December 2019, particularly pp. 3 and 32–34.

distortionary inter-temporal effects where past costs are borne by future users, by placing a natural limit on the amount that can be rolled forward to future periods. Should volumes rise to a level where it became feasible for Queensland Rail to start recouping the capitalised losses, the oldest losses would be recovered first, to minimise the amount of depreciation of unrecovered amounts that took place after volumes rose.

The mechanism for implementing the above approach includes establishing a loss capitalisation account, updated within six months of the end of each financial year. The amounts in the account will accrue interest at the bank bill swap rate. The annual adjustments to the loss capitalisation account will be subject to approval by the QCA.

We consider that the loss capitalisation regime, including limited life, encourages efficient investment by Queensland Rail, while also having regard to its legitimate business interests, and providing an avenue for it to recoup returns commensurate with the regulatory and commercial risks of providing access (ss. 138(2)(a), (b), (g), 168A(a)). It also reflects the interests of access seekers and holders (ss. 138(2)(e), (h)). Overall, the capitalisation approach appropriately balances the interests of all parties in a low-volume situation where achieving prices that customers are willing to pay while providing revenue to recover all of Queensland Rail's efficient costs immediately has become impossible.

Modelled maintenance costs

Queensland Rail proposed in its November 2019 submission that maintenance costs for annual volumes between 2.1 million and 4.1 million tonnes be derived from a financial model approved by the QCA.⁵⁹ It submitted a proposed financial model on 10 December 2019.

We are not opposed in principle to using a financial model to provide transparency and certainty to Queensland Rail and its customers about maintenance costs for annual volumes below 4.1 million tonnes. However, Queensland Rail submitted the model when it was too late to consult appropriately, while still publishing a decision in time for a new undertaking to be in place on 1 July 2020.

We consider that the harm that would come from delay in getting an appropriate undertaking in place on time outweighs the potential benefits of assessing and approving a maintenance cost model as part of this decision. Queensland Rail may opt to circulate the maintenance cost model to its customers after this decision, and submit a DAAU to implement the modelled maintenance costs approach in the new undertaking period.

In the meantime, we have provided for Queensland Rail to seek approval to revise its maintenance costs for the purpose of loss capitalisation for annual volumes between 2.1 million and 4.1 million tonnes.

Summary 2.6

The QCA's decision is that the appropriate way for Queensland Rail to amend the 2020 DAU is to include provisions for loss capitalisation where the reference tariff is not expected to recover an efficient total revenue requirement.

Drafting: cl. 3.5.2; sch. D, cl. 8; various consequential amendments in definitions (cl. 7.1).

⁵⁹ Queensland Rail, sub. 42: 23.

2.3.6 Responding to changing volumes

Future West Moreton system coal volumes remain uncertain (see section 2.2.2). While we have based our analysis of the West Moreton reference tariff on a 'low-volume' scenario, it may be that volumes will ultimately increase and any impacts on tariffs will be accounted for.

We consider that it will be appropriate for Queensland Rail to vary (reduce) the approved reference tariff at some point, if and when volumes recover. At a minimum, this would require volumes such that forecast revenue from the approved reference tariffs exceeds total efficient costs (at the higher volume).⁶⁰ While it is difficult to predict when this is likely to occur, it is clear that it will require significant new volumes beyond current known demand.

The 2020 DAU provides for Queensland Rail to submit variations to the reference tariffs in response to review events and requires that it do so for endorsed variation events, reflecting the 2016 undertaking approach (sch. D, cl. 5). The 'Review Event' provides for a material change in circumstances, which has been used by Queensland Rail under the 2016 undertaking where contracted volumes have fallen below forecast.⁶¹ However, the 2020 DAU does not directly deal with increases in volumes.⁶²

Queensland Rail subsequently proposed a volume trigger to review the low-volume reference tariff as part of its revised, low-volume price proposal.⁶³ Under this proposal, Queensland Rail will:

- 'fix' the reference tariff for annual volumes between 2.1 million tonnes and 4.1 million tonnes
- review the reference tariff (and loss capitalisation account) when volumes exceed 4.1 million tonnes a year and submit proposed variations for approval through a DAAU.⁶⁴

Queensland Rail said this approach reduced the costs of recalculating reference tariffs while volumes were low (and tariffs were well below the level required to recover efficient costs), and provided access holders with a safety net to ensure they were not paying a higher reference tariff than required as volumes increased.⁶⁵

New Hope was concerned that the proposed volume trigger review could become an 'excuse' to completely re-set the approach to West Moreton tariffs.⁶⁶ New Hope said that in that event it would be required to make investment decisions without any certainty as to how the reference tariff might vary due to the project being developed (as the project will, at some point during its ramp up, cause the West Moreton network to pass the 4.1 million tonnes a year volume trigger). Accordingly, New Hope said the proposed 4.1 million tonnes review should be confined to an update of the total revenue requirement—and that a full review of pricing (that resulted in changes to the reference tariff) would only be appropriate once any capitalised losses had been repaid.

⁶⁰ At this point any accumulated capital losses would begin to be recovered (see section 2.3.5).

⁶¹ Queensland Rail has used the review event provisions of the 2016 access undertaking to increase reference tariffs in response to reductions in contracted volumes from New Hope's New Acland mine.

⁶² These had previously been dealt with in the 2016 access undertaking by definition through the 'Endorsed Variation Event'.

⁶³ Queensland Rail, sub. 42: 24–25, sub. 45: 6, sub. 48: 130–131.

⁶⁴ The requirement will be specific to the reference tariff and will not open up other areas in the approved access undertaking.

⁶⁵ Queensland Rail, sub. 42: 25.

⁶⁶ New Hope, sub. 44: 8.

Yancoal said that as volumes rose it was legitimate for any 'building blocks based' tariff to decrease, but noted that at low volumes (where the reference tariff did not fully recover efficient costs) this would have effect through the loss capitalisation calculation, rather than directly altering the reference tariff.⁶⁷ It proposed that the reference tariff remain unchanged until volumes had recovered to the point where the price that recovered efficient costs fell below the affordability based reference tariff (and then only after some or all of that difference was used to recover previously capitalised losses).

We note that Queensland Rail could seek to vary the reference tariff through a DAAU (under s. 142 of the QCA Act) or through a review event under the undertaking (sch. D, cl. 5), should it wish to do so. We would consider any such proposal on its merits at that time.

In addition, we require Queensland Rail to review its pricing arrangements when it reasonably expects annual contracted volumes will exceed 4.1 million tonnes during the undertaking period, and submit any changes, including proposed variations to reference tariffs, for approval.

This will provide an opportunity to put in place new, or revised, arrangements that better suit changing conditions and associated incentives, risks and costs. This could include revised reference tariffs. Linking the review to expected volumes is simple and easy to implement and provides some certainty over possible timing. While we have not sought to limit the scope of the review, we expect it will include updating volume forecasts, revising efficient costs, considering the size of any accumulated capitalised losses and the intended recovery approach, and assessing the expected impact on existing and future users. Any subsequent changes (including variations to the reference tariff) will be proposed and assessed through a DAAU—so they will only be approved, if appropriate, having regard to the QCA Act, including the assessment criteria (s. 138(2)). This strikes an appropriate balance between Queensland Rail's interests and access seekers' and holders' interests (ss. 138(2) (b), (e), (h)).

Summary 2.7

The QCA's decision is that it is appropriate for Queensland Rail to amend the 2020 DAU so that Queensland Rail is required to review its pricing arrangements when it reasonably expects annual contracted volumes will exceed 4.1 million tonnes during the undertaking period, and submit any changes for approval.

Drafting: sch. D, cl. 8.8.

2.4 Other reference tariff matters

2.4.1 Metropolitan tariff

The Metropolitan tariff has been developed for the past decade using a proxy approach that relies on prices derived for the coal services that use the West Moreton system. This approach avoided the complicated task of seeking to allocate costs for the Metropolitan system to coal services, which use only a small portion of what is predominantly a commuter network.

⁶⁷ Yancoal, sub. 41: 6–8, 20.

Queensland Rail proposed to continue this Metropolitan proxy pricing approach, and escalate the 2016 undertaking price by actual and forecast CPI.⁶⁸ New Hope and Yancoal supported this approach.⁶⁹

We consider that the proxy approach remains an appropriate way of determining a price that sits between:

- the incremental cost—which would be at or near zero, and
- the standalone cost—which could be expected to be at least as high as the price that is being charged.

We note this leaves the way open for Queensland Rail to apply in the future to implement a Metropolitan-specific asset base, including by potentially seeking ex post approval for capital expenditure completed during the 2020 DAU period that has not been included in its forecasts.

Accordingly, our decision is that it is appropriate to approve continuing the 2016 undertaking approach and price for the Metropolitan system tariff. This simple, transparent approach is in the interests of Queensland Rail, access seekers and access holders (ss. 138(2)(b), (e), (h)).

As with the 2016 undertaking, this decision would not predetermine the QCA's consideration of any future DAU.

Summary 2.8

The QCA's decision is that it is appropriate to approve the Metropolitan system tariff, which escalates the prices from the 2016 undertaking by actual and forecast CPI.

Drafting: sch. D, cl. 3.

2.4.2 Capital expenditure approval process (schedule E)

Timing and frequency of submissions (cl. 1.3(a))

The 2020 DAU requires Queensland Rail to submit an annual capital expenditure report to the QCA for review within six months after the end of each financial year (sch. E, cl. 1.3(a)). Queensland Rail said an annual assessment continued to be a reasonable approach that provided it with an opportunity to address its processes should the QCA determine that expenditure was not prudent—and our suggestion that there be less frequent reviews placed an unnecessary level of stranding risk upon Queensland Rail.⁷⁰

Stakeholders also supported an annual review to provide more timely insight and assessment of the prudence and efficiency of capital expenditure decisions, given:

- the varying views of the outlook for demand⁷¹
- questions had been identified regarding the prudence and efficiency of capital and operating costs and potential trade-offs between capital investment and maintenance expenditure⁷²

⁶⁸ Queensland Rail, sub. 2: 45.

⁶⁹ New Hope, sub. 14: 30, sub. 24: 10; Yancoal, sub. 27: 3.

⁷⁰ Queensland Rail, sub. 26: 13.

⁷¹ Yancoal, sub. 41: 10.

⁷² Yancoal, sub. 27: 5.

- this would provide more timely consideration and feedback on the adequacy of consultation undertaken and of any trade-offs made—with a less frequent process resulting in a slower process of improvement⁷³
- existing information asymmetries required the regulator to rely on its information-gathering powers.⁷⁴

We maintain there are potential benefits from moving to less frequent capital expenditure reviews, including reducing the regulatory and administrative burden in preparing, responding to, and assessing annual submissions. The recent review of the 2013–17 capital expenditure, completed early in 2019, shows that multiple years of projects can be assessed at once.⁷⁵ We also note that Queensland Rail can seek pre-approval if it desires more certainty before starting work on large projects (and has done so for its Toowoomba Range slope stabilisation project).⁷⁶

However, we have not required that the 2020 DAU provide for less frequent review at this time, given the strong support for maintaining the existing arrangements. This may be better dealt with in the future, when the West Moreton volume outlook is more certain and stakeholders become more confident in Queensland Rail's capital expenditure processes and practices.

Accordingly, our decision is that it is appropriate to approve Queensland Rail's proposal for an annual capital expenditure review (ss. 138(2)(a), (b), (e), (h)).

Summary 2.9

The QCA's decision is that it is appropriate to approve an annual capital expenditure review process, as proposed in the 2020 DAU.

Drafting: sch. E, cl. 1.3.

Statement of reasons (cl. 1.5)

The 2020 DAU includes a prescriptive list of factors that must be addressed in a statement of reasons produced by the QCA for decisions made under the capital expenditure approval process (sch. E, cl. 1.5).⁷⁷ New Hope and Yancoal opposed Queensland Rail's proposal, saying that it was appropriate to give the QCA some flexibility in providing its reasons.⁷⁸

We do not consider that the proposed list of factors that must be addressed in the statement of reasons is appropriate—it is likely to lead to further costs being incurred and delays in statements being produced. Further, we do not consider that Queensland Rail has adequately demonstrated that it receives insufficient reasons in relation to decisions made under sch. E that would support the amendment being accepted.

Therefore, our decision is that it is not in the interests of stakeholders to adopt the proposed drafting (ss. 138(2)(e), (h)). Instead, our decision is that the capital expenditure approval process

⁷³ New Hope, sub. 24: 10, sub. 33: 17.

⁷⁴ Pacific National, sub. 25: 11.

⁷⁵ See QCA, *Queensland Rail's 2013–17 capital expenditure claim*, decision notice, attachment to the QCA's letter to Queensland Rail, 21 March 2019.

⁷⁶ See QCA, *Queensland Rail's Toowoomba Range Slope Stabilisation prudency preapproval*, decision notice, attachment to the QCA's letter to Queensland Rail, 18 March 2019.

⁷⁷ Queensland Rail, sub. 2: 64.

⁷⁸ New Hope, sub. 15: 5, sub. 33: 17; Yancoal, sub. 16: 21, sub. 27: 5.

in the 2016 undertaking should be adopted in the 2020 DAU. This requires us to provide reasons for decisions made under schedule E, and provides the necessary flexibility for the statement of reasons to reflect the circumstances at hand.

Summary 2.10

The QCA's decision is that it is not appropriate to approve the list of factors that must be addressed in a statement of reasons for a capital expenditure decision. Schedule E, cl. 1.5 should therefore be removed from the 2020 DAU.

Prudency criteria (cls. 3.2(e), 4.2(c), 5.3(c))

The 2020 DAU sets out what the QCA would be required to consider when assessing the prudency of capital expenditure, standard of works and costs, expanding on the 2016 undertaking requirements (sch. E, cls. 3.2(e), 4.2(c), 5.3(c)). New Hope and Yancoal opposed Queensland Rail's proposal.⁷⁹

We do not consider that the additional factors are appropriate. They add unnecessary complexity to the process by requiring us to also consider if additional material submitted by Queensland Rail, on which there is no limitation, is relevant. This may delay decisions and reduce certainty, which is not in the interests of Queensland Rail or stakeholders (ss. 138(2)(a), (b), (e), (h)).

We consider the factors listed in the 2016 undertaking adequately prescribe what we should consider when undertaking prudency assessments. This does not prevent Queensland Rail from submitting supplementary information for us to consider, as also noted by New Hope.⁸⁰

Summary 2.11

The QCA's decision is that it is not appropriate to approve the prudency assessment processes in the 2020 DAU. The existing clauses in the 2016 undertaking should be adopted.

Drafting: sch. E, cls. 3.2(e), 4.2(c), 5.3(c).

Carryover account (cl. 7(e))

The 2020 DAU includes the process for the accounting treatment of the capital expenditure carryover account from the 2016 undertaking (sch. E, cl. 7(e)).

We have considered the provision afresh, and do not consider it appropriate, as it does not accurately reflect the appropriate accounting treatment of the capital expenditure carryover account. New Hope and Yancoal agreed that the provisions should be revised to be consistent with the intent of the carryover account.⁸¹

For the purposes of clarifying the intention of cl. 7(e), we consider the clause should be amended to reflect that the capital component described in cl. 7(b) should be included in the asset base, and that the cashflow components described in cl. 7(c) should be taken into account in tariff pricing.

⁷⁹ New Hope, sub. 15: 5, sub. 24: 10, sub. 33: 17; Yancoal, sub. 16: 21, sub. 27: 5–6.

⁸⁰ New Hope, sub. 15: 5.

⁸¹ New Hope, sub. 24: 10–11; Yancoal, sub. 27: 6.

Clarifying the intention and process behind the accounting treatment of the capital expenditure carryover account is in the interests of Queensland Rail and stakeholders, as it provides certainty (ss. 138(2)(a), (b), (h)).

Summary 2.12

The QCA decision is that the appropriate way for Queensland Rail to amend the approach to the capital expenditure carryover account in the 2020 DAU is to make it more accurately reflect the appropriate accounting treatment.

Drafting: sch. E, cl. 7.

2.4.3 Adjustment charge approval process (sch. D, cl. 6)

The 2020 DAU includes the same adjustment charge approval process as the 2016 undertaking (sch. D, cl. 6 of the 2020 DAU). Adjustment charges are a true-up of access charges, which results from a variation to the reference tariff that is approved by the QCA after that variation is to take effect (sch. D, cl. 6.1).

The adjustment charge approval process requires Queensland Rail to submit the proposed adjustment charges for approval and may involve the QCA consulting with stakeholders before deciding whether to approve or refuse to approve the proposed charges (sch. D, cls. 6.2 to 6.4).

New Hope and Yancoal supported the adjustment charge approval process, noting that while it was notionally a mechanical process, verification might not be simple for users⁸², who might not have access to all of the information which was required to calculate (or verify) adjustment charges.⁸³

While we consider that that our role in approving adjustment charges is not strictly necessary, we note the general support for maintaining an approval role. In addition, to the extent the process imposes costs, these are likely to be limited by the mechanical nature of assessment and can be reduced further through good regulatory practice. On that basis, our decision is that providing for our approval of adjustment charges is appropriate (ss. 138(2)(a), (b), (h)).

Summary 2.13

The QCA's decision is that it is appropriate to approve the proposed adjustment charge approval process in the 2020 DAU.

Drafting: sch. D, cls. 6.2 to 6.5.

2.4.4 Price differentiation for reference tariffs

The 2020 DAU provides for Queensland Rail to 'impose access charges' that vary from the reference tariff, to reasonably reflect differences in cost or risk to Queensland Rail of providing access (cl. 3.3(c)). Apart from adding the ability to 'impose' the variation, the proposed clause has the same effect as that in the 2016 undertaking. This formed part of a broader amendment to the limits on price differentiation in Part 3 of the 2020 DAU, which mostly applied to non-reference tariff services (see Chapter 7 of this decision).

⁸² Yancoal, sub. 27: 6.

⁸³ New Hope, sub. 24: 11, sub. 33: 17.

New Hope and Yancoal said Queensland Rail should be required to negotiate (not impose) variations of the reference tariff.⁸⁴

New Hope said the drafting should make it clear that only cl. 3.3(c), and not the rest of cl. 3.3, applied to reference tariffs, and that the cost or risk should be 'efficient'.⁸⁵ Yancoal said it should be clearer that cost or risk was the only basis for variation.⁸⁶

While the price differentiation provision in the 2020 DAU for reference tariffs may be in the interest of Queensland Rail, it is not in the interest of access seekers/holders, as it provides for Queensland Rail to 'impose' variations that should be subject to negotiation. We therefore consider cl. 3.3(c) lacks balance and is not appropriate to approve (ss. 138(2)(b), (e), (h)).

A more balanced approach would provide for Queensland Rail to 'negotiate' variations for any differences that reasonably reflect the degree to which the cost or risk of providing access for the proposed service differs from that of the reference train service—and that any variations should be 'only as required' to reflect those differences. We consider that New Hope's concern about the cost or risk needing to be efficient is addressed by the requirement that the variation 'reasonably reflect differences'.

Summary 2.14

The QCA's decision is that the appropriate way for Queensland Rail to amend the price differentiation rule in the 2020 DAU is to specify that Queensland Rail will 'negotiate' any variation of the reference tariff to reasonably reflect the degree to which the cost or risk of providing access for the proposed service differs from that of the reference train service and that any variations be 'only as required' to reasonably reflect those differences.

Drafting: cl. 3.3(c).

2.4.5 Reference train characteristics

In December 2019 we approved Queensland Rail's DAAU seeking to amend the characteristics of its reference train service, increasing the number of wagons to 42 (from 41) and the maximum train length of the reference train service to 688 metres (from 675 m) (2019 reference train service DAAU).⁸⁷

We consider that the change to the reference train service also applies to future railings, and accordingly it is in all parties' interests for the 2020 DAU to be amended to reflect this (ss. 138(2)(b), (e), (h)).

Summary 2.15

The QCA's decision is that the reference train service should be amended to reflect the characteristics approved in the 2019 reference train service DAAU.

Drafting: sch. D, cl. 2.1(c).

⁸⁴ New Hope, sub. 15: 5–6, sub. 24: 11; Yancoal, sub. 16: 20, sub. 27: 5.

⁸⁵ New Hope, sub. 15: 5–6.

⁸⁶ Yancoal, sub. 16: 20.

⁸⁷ QCA, *Queensland Rail Reference train characteristics DAAU*, decision notice, December 2019.

3 RATE OF RETURN

The weighted average cost of capital (WACC), or rate of return, is an estimate of the rate of return on investment that is commensurate with the regulatory and commercial risks associated with providing access to the service. For the Queensland Rail 2020 DAU, the WACC is used in the building block methodology as an input to assess the total revenue requirement and reference tariffs for coal services operating on the West Moreton system of the Queensland Rail network.

In the 2020 DAU, Queensland Rail proposed a post-tax nominal WACC of 7.47 per cent, having regard to the risks that the entire Queensland Rail network faces.⁸⁸

Overview of the decision

Our decision is that a post-tax nominal WACC of 5.46 per cent is appropriate. In coming to this view, we have assessed only the regulatory and commercial risks that Queensland Rail faces in providing access for coal traffic on the West Moreton system, rather than the risks associated with the entire Queensland Rail network. We have also calculated individual WACC parameters in forming our bottom-up WACC estimate, and have assessed the appropriateness of the overall WACC generated from this analysis.

Rate of return (WACC)—summary

<i>Queensland Rail DAU</i>	<i>QCA decision</i>
WACC scope	
The WACC provides a return commensurate with the risks of providing services across the entire Queensland Rail network.	The proposal is not appropriate to be approved. The WACC should provide a return commensurate with the risks facing coal traffic on West Moreton only (see section 3.1).
Assessment of individual WACC parameters	
A bottom-up assessment of individual WACC parameters provides a post-tax nominal (vanilla) WACC of 7.47 per cent for a June 2017 placeholder averaging period.	The proposal is not appropriate to be approved. A bottom-up assessment of individual WACC parameters provides a post-tax nominal (vanilla) WACC of 5.46 per cent for an averaging period ending 15 November 2019 (see section 3.2).
Class 1 railroads, ports, airports and toll roads are relevant comparator industries for estimating the asset beta and capital structure.	The proposal is not appropriate to be approved. West Moreton coal's ⁸⁹ exposure to systematic risk is greater than that of regulated energy and water businesses, but less than that of toll roads (see sections 3.2.1 and 3.2.2).
An asset beta of 0.77 and an equity beta of 0.98 based on 28 per cent gearing are appropriate. West Moreton coal exhibits greater systematic risk than Aurizon Network.	The proposal is not appropriate to be approved. An asset beta of 0.5 and an equity beta of 0.71 based on 40 per cent gearing are appropriate. These values are consistent with the underlying West Moreton coal asset exhibiting greater systematic and financial risk than Aurizon Network (see sections 3.2.1 and 3.2.2).

⁸⁸ Queensland Rail, sub. 2: 17–20.

⁸⁹ West Moreton coal refers to Queensland Rail's operations that provide below-rail access to coal-carrying train services on the West Moreton system.

<i>Queensland Rail DAU</i>	<i>QCA decision</i>
The cost of debt is estimated for a BBB+ benchmark entity, in a manner consistent with the Aurizon Network UT5 draft decision.	The proposal is not appropriate to be approved. A cost of debt estimated for a BBB benchmark entity based on Bloomberg and RBA third-party estimates, with an uplift to reflect short-term volume uncertainty, is appropriate (see sections 3.2.2 and 3.2.4).
A term-matched risk-free rate and a market risk premium of 7.0 per cent are proposed, consistent with the approach in the Aurizon Network UT5 draft decision.	The proposal is not appropriate to be approved. A 10-year risk free rate and a market risk premium of 6.5 per cent are appropriate (see sections 3.2.3 and 3.2.5).
A gamma estimate of 0.46, consistent with the Aurizon Network UT5 draft decision.	The proposal is not appropriate to be approved. A gamma of 0.484 is appropriate, reflecting more recent values (see section 3.2.6).
Assessment of the bottom-up estimate	
Queensland Rail proposed a WACC of 7.47 per cent, in accordance with the WACC parameters assessed.	The proposal is not appropriate to be approved. Alongside an appropriate accelerated depreciation profile, a post-tax nominal WACC of 5.46 per cent for the averaging period ending 15 November 2019 provides a return on investment commensurate with the commercial and regulatory risks involved (see section 3.3).

Key issues

In reviewing Queensland Rail's WACC proposal, we have had regard to the pricing principles in s. 168A(a) of the QCA Act. They state that the price of access should generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service, and include a return on investment commensurate with the regulatory and commercial risks involved.

Queensland Rail proposed a post-tax nominal (vanilla) WACC of 7.47 per cent, comprising:

- cost of equity of 8.76 per cent
- cost of debt of 4.13 per cent
- a capital structure of 28 per cent debt.⁹⁰

Our decision is that it is not appropriate to approve Queensland Rail's 2020 DAU WACC proposal, having regard to the approval criteria in the QCA Act (s. 138(2)). For an averaging period ending on 15 November 2019, our decision is that an appropriate rate of return is 5.46 per cent, comprising:

- a return on equity of 5.82 per cent
- a return on debt of 4.92 per cent
- a capital structure of 40 per cent debt (60 per cent equity)
- gamma of 0.484.

⁹⁰ Queensland Rail, sub. 2: 20.

Queensland Rail said it sought to minimise debate over allowed returns by accepting our WACC methodology, as set out in our draft decision on Aurizon Network's 2017 DAU (UT5), except to update the beta and gearing ratio.⁹¹

The beta and gearing inputs that Queensland Rail used to estimate its WACC have contributed significantly to our decision to not approve Queensland Rail's proposal. Relevantly, Queensland Rail's proposed WACC (for which beta and gearing are inputs) is based on the risks of the entire Queensland Rail network. As a result, this is likely to provide a rate of return that does not represent the risks associated with coal traffic on the West Moreton system. Our view is that a WACC based on the risks faced by coal traffic on the West Moreton system is appropriate.

We assessed both a bottom-up assessment of individual WACC parameters and the overall reasonableness and appropriateness of the resulting WACC. While a bottom-up assessment provides a means for assessing an appropriate rate of return for Queensland Rail, an ultimate consideration is whether the overall WACC is appropriate, having regard to all of the relevant factors in s. 138(2) of the QCA Act.

At the time of this decision, the future of New Hope's New Acland mine remains uncertain.

Queensland Rail noted that the WACC consultant we engaged (Incenta) as part of the draft decision, assumed that this uncertainty had been resolved, and that New Acland Stage 3 had been approved. It said:

However, the reality is that it remains uncertain as to whether NAS3 will progress. In an accurate assessment this uncertainty would have had a fundamental effect on the outcome of Incenta's review. Even if NAS3 does progress, the true risk of this uncertainty should have been taken into account.⁹²

Queensland Rail also said the WACC for a low tonnage scenario should be increased to reflect the risk of New Acland Stage 3 not being approved.⁹³

New Hope said the risks regarding the future of the New Acland mine were well known at the time of our draft decision and, as the situation remained unchanged, there was no reason for altering WACC parameters because of a low-volume scenario.⁹⁴ Yancoal acknowledged that under an affordability-based tariff, West Moreton coal would be exposed to a greater level of volume risk than might have been envisaged at the time of the draft decision.⁹⁵

When we released our draft decision, we considered it likely the future of New Acland Stage 3 would be decided in the near term. In line with Queensland Rail's submission of a proposed reference tariff for high volumes, we assessed Queensland Rail's WACC on the basis that New Acland Stage 3 would be approved before the start of the 2020 undertaking.

This uncertainty has not been resolved, as New Hope has not yet received approval for its New Acland Stage 3 project. Volumes will therefore be reduced for at least some portion of the undertaking period. However, we note that Queensland Rail still anticipates that volumes will return to a high level, and that it has submitted costs that would enable higher volumes to begin immediately if any approvals were granted.⁹⁶

⁹¹ Queensland Rail, sub. 2: 17.

⁹² Queensland Rail, sub. 26: 12.

⁹³ Queensland Rail, sub. 45: 10.

⁹⁴ New Hope, sub. 44: 7.

⁹⁵ Yancoal, sub. 46: 18.

⁹⁶ Queensland Rail, sub. 42: 14, 25, 29.

By implementing a limited life loss capitalisation account, Queensland Rail may be able to recover the lost revenue associated with low volumes, assuming that volumes do return to a high level in the future. This mechanism helps to mitigate the risk faced by West Moreton coal in the face of volume uncertainty. So while revenue may be deferred, Incenta's analysis is relevant in the context of high volumes on the West Moreton system.

Although Queensland Rail expects volumes to return to high levels, we are aware that there is some possibility that this situation never occurs. Furthermore, this return may take many years. In either of these cases, the loss capitalisation account would not be a useful revenue recovery mechanism. Accordingly, we have had due regard to this uncertainty when evaluating an appropriate cost of debt for West Moreton coal.

3.1 WACC scope

A threshold issue in considering Queensland Rail's proposal is what risks to assess when evaluating an appropriate WACC—for instance whether the relevant scope is the entire Queensland Rail Network, or just the West Moreton system.

Queensland Rail proposed a WACC based on risks that the entire Queensland Rail network faces, noting:

In determining the WACC for rail entities, the QCA has consistently set a network wide WACC rate. That is, the WACC has been determined on the characteristics of, for example, Queensland Rail's entire below rail network, rather than having separate WACC calculations for each individual system based upon the system's characteristics.⁹⁷

New Hope and Yancoal disagreed with Queensland Rail's assessment that the relevant risk profile included risks to its activities outside of West Moreton coal. New Hope said:

NHG considers that, consistent with the QCA Act pricing principles, the rate of return that is allowed for in pricing of services for coal customers should reflect the degree of risk faced in supplying services to those customers. The pricing principles provide that the price of access to a service should generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved in providing the services. To the extent that QR faces a different degree of risk in the supply of other services, that should not be reflected in returns recovered from coal customers.⁹⁸

We had regard to the pricing principles in the QCA Act, amongst other considerations, when determining an appropriate rate of return for Queensland Rail.

Contrary to Queensland Rail's submission, we have not always had regard to network-wide characteristics when determining a WACC for Queensland Rail. While the definition of WACC in the 2016 access undertaking applied to the ceiling price for tariffs on all parts of Queensland Rail's network, the matters considered in determining the 2016 undertaking WACC related to the risks of providing access for coal traffic on the West Moreton system.

In the 2020 DAU, the purpose of the WACC is as an input to calculating the reference tariff for coal-carrying services that operate on the West Moreton system. As such, the WACC should reflect the risks that are pertinent to coal traffic that travels over this system. This is consistent with estimating a rate of return that is commensurate with the regulatory and commercial risks involved in providing the service for which the reference tariff is being set. To set a return on

⁹⁷ Queensland Rail, sub. 18: 5.

⁹⁸ New Hope, sub. 14: 13.

investment based on risks relevant to the whole network would be inefficient, as it would send incorrect investment signals. It would also not reflect a return commensurate with the risks involved in providing the reference service on the West Moreton system. Coal traffic on Queensland Rail's West Moreton system is likely to bear risks that are significantly different from risks to other parts of the network. A WACC that reflected an average of all disparate risks would incentivise capital expenditure above an efficient level in West Moreton, where that average WACC was higher than the system-specific WACC. Conversely, there would be under-investment in areas where the system-specific return on investment was higher than the network-wide average WACC. In other words, if a WACC for the entire Queensland Rail network was used, this would result in inefficient pricing, which would lead to inefficient use of the network.

For these reasons, it is appropriate to determine a WACC by having regard to only risks borne by Queensland Rail's coal operations on the West Moreton system.⁹⁹

3.2 Individual WACC parameters

Queensland Rail's proposed post-tax nominal (vanilla) WACC is based on a build-up of individual WACC parameters. Queensland Rail's WACC proposal was accompanied by advice it received from its consultant, Frontier Economics (Frontier).

We have undertaken a bottom-up WACC analysis to evaluate Queensland Rail's proposal.

Table 1 outlines Queensland Rail's proposed parameter build-up associated with its 2020 DAU WACC proposal, as well as our values for individual WACC parameters.

Importantly, this is not a like-for-like comparison, as Queensland Rail's WACC parameters are estimated with reference to a June 2017 placeholder averaging period, while our WACC parameters are estimated with reference to an October–November 2019 averaging period.

Our assessment of the individual parameters used to generate a bottom-up estimate is below.

Table 1 WACC parameters—Queensland Rail's proposal and the QCA's decision

<i>Parameter</i>	<i>Queensland Rail 2020 DAU submission</i>	<i>QCA decision</i>
Credit rating	BBB+	BBB
Risk-free rate	1.90%	1.18%
Market risk premium	7.00%	6.50%
Asset beta	0.77	0.50
Gearing	28%	40%
Corporate tax rate	30%	30%
Gamma	0.46	0.484
Equity beta	0.98	0.71
Debt beta	0.12	0.12
Cost of equity	8.76%	5.82%
Debt margin (incl. refinancing and uplift)	2.23%	3.74%
Cost of debt	4.13%	4.92%
WACC	7.47%	5.46%

Note: Most of the parameters in the table have been rounded to two decimal places for presentation. To preserve accuracy, we have not rounded any of the WACC inputs in estimating a final WACC figure.

⁹⁹ For the avoidance of doubt, the WACC within this chapter is applicable to reference tariff services.

3.2.1 Beta

The asset beta (or unlevered equity beta) of an entity is a relative measure of the underlying risk of the entity relative to the risk of the market as a whole—often referred to as systematic risk. The levered equity beta reflects not only this risk, but also the financial risk borne by equity holders from the use of debt as part of the funding for the business.

Appropriate comparator industries

Queensland Rail proposed an asset beta of 0.77, based on advice it received from Frontier. Frontier formed this view by conducting a first principles analysis of the risks facing the entire Queensland Rail network. Frontier noted that there were few, if any, comparators that embodied all of Queensland Rail's key risk characteristics. Consequently, Frontier considered:

Comparators should be selected and afforded weight on the extent to which their asset beta reflects conditions relevant to Queensland Rail in contrast to alternative comparators.¹⁰⁰

Frontier determined that Class 1 railroads and ports were the most relevant comparators, and provided weightings of 40 per cent to Class 1 railroads and 30 per cent to ports. It considered airports to be the next most relevant comparator and assigned it a weighting of 15 per cent. Frontier stated that toll roads and pipelines were less relevant, and applied weightings of 15 per cent and 0 per cent respectively. According to Frontier, energy and water businesses were not relevant at all, sharing no key, risk-based features with Queensland Rail.¹⁰¹

Yancoal and New Hope did not agree with Queensland Rail's assessment of appropriate comparator industries. Yancoal considered from first principles that the best comparators would be Australian coal supply chain businesses with similar exposure to coal commodity prices and regulatory arrangements, and Australian water and electricity businesses with similar regulatory arrangements.¹⁰² New Hope considered that, due to the similarities between Queensland Rail and Aurizon Network, regulated energy and water businesses were the best comparators for Queensland Rail.^{103,104}

As outlined above, the beta should reflect the risks pertinent to coal traffic that travels over the West Moreton system. Consequently, the analysis that we undertook to determine appropriate comparator industries focused specifically on these risks, rather than the risks faced by the entire network.

First principles analysis in the draft decision

Our draft decision concluded that the comparators considered by Queensland Rail to have some relevance (Class 1 railroads, ports, airports, toll roads and North American pipelines), were all likely to have higher exposure to systematic risk than West Moreton coal. Class 1 railroads, North American pipelines, ports, toll roads, and airports business groups all operate in environments where the underlying demand for the provided service is responsive to the state of the economy, and they have limited mechanisms to buffer revenues in the event of an economic shock. In contrast, Queensland Rail is unlikely to have cyclical demand for its coal operations on West Moreton. Furthermore, Queensland Rail has a regulatory regime that is likely to provide a high level of revenue stability in the event that there is a temporary reduction in demand for West

¹⁰⁰ Queensland Rail, sub. 4: 3–4.

¹⁰¹ Queensland Rail, sub. 4, 18.

¹⁰² Yancoal, sub. 16: 9.

¹⁰³ The QCA has determined regulated energy and water businesses are an appropriate comparator industry for Aurizon Network.

¹⁰⁴ New Hope, sub. 14: 22.

Moreton coal services. Consequently, we considered that Class 1 railroads, North American pipelines, ports, toll roads and airports business groups are likely to exhibit greater systematic risk than West Moreton coal.

In the draft decision we said that West Moreton coal was likely to face a greater level of systematic risk than regulated energy and water businesses. West Moreton coal and regulated energy and water businesses share many similarities, including market power and regulatory frameworks that insulate their revenues. However, there are some differences between West Moreton coal and regulated energy and water businesses that are likely to contribute to different systematic risk profiles—in particular, Queensland Rail's potentially greater exposure to volume risk.

The conclusion from our draft decision was that the asset beta for West Moreton coal was likely to be less than the asset beta of toll roads but greater than the asset beta of regulated energy and water businesses.

Both New Hope and Yancoal supported our assessment that West Moreton coal was likely to face more systematic risk than a typical regulated energy and water business, but less systematic risk than a typical toll road business.¹⁰⁵

We engaged Incenta Economic Consulting (Incenta) to estimate raw asset betas for firms within these two comparator groups. Incenta considered that it was appropriate to use 10-year asset beta data, rather than 5-year asset beta data, as a 10-year estimation period is likely to contribute to greater stability of estimates, owing to an increased number of observations, and smaller standard errors.¹⁰⁶ By taking an average of weekly and monthly 10-year data, Incenta calculated an average asset beta of 0.38 for regulated energy and water businesses, and an average asset beta of 0.51 for toll road businesses.^{107,108}

Our draft decision also compared the level of systematic risk faced by West Moreton coal, Aurizon Network's Central Queensland Coal Network (CQCN) and ARTC's Hunter Valley Coal Network (HVCN), as well as other regulated Australian freight networks (ARTC interstate network, Arc Infrastructure, and The Pilbara Infrastructure (TPI)). The analysis indicated that Aurizon Network was likely to face less systematic risk compared to West Moreton coal, because of a stronger regulatory framework¹⁰⁹ and a more resilient customer base. Similarly, the HVCN has a stronger regulatory framework, which can better buffer cash flows, resulting in less exposure to systematic risk. We considered that ARTC interstate, Arc Infrastructure and TPI were likely to face greater exposure to systematic risk, largely because of negotiate–arbitrate regulatory regimes that provide less revenue certainty than the regulatory framework applicable to West Moreton coal.

¹⁰⁵ New Hope, sub. 24: 12; Yancoal, sub. 27: 7.

¹⁰⁶ Incenta, *Estimating Queensland Rail's WACC for the 2020 DAU—asset beta, benchmark gearing, and credit rating*, prepared for the QCA, 2019: 16.

¹⁰⁷ That is, the 10-year weekly figure is an average, and the 10-year monthly figure is an average. The final figure is an average of these two numbers.

¹⁰⁸ We note that within Incenta's toll road sample, ASTM SPA is a parent company for SIS IM. Since SIS IM runs and operates the toll roads within ASTM SPA, we consider that a potentially more accurate sample might involve removing ASTM SPA. However, doing so does not change the average asset beta estimate of 0.51 for toll roads.

¹⁰⁹ A 'stronger' regulatory framework refers to a suite of mechanisms or instruments within the regulatory regime that are able to more successfully buffer the revenue of the regulated entity.

Implications of a revised tariff approach

It is our view that changes to the pricing regime are unlikely to significantly alter the systematic risk West Moreton coal is exposed to.

In our draft decision—under the assumption of a high volume of coal railings—we proposed to set a reference tariff based on costs at a constant volume level of 8.5 million tonnes a year, regardless of actual railings. Under this approach, volume risk would potentially be borne by West Moreton coal in instances where volumes did not reach 8.5 million tonnes.

In this decision—under the assumption of low coal volumes—the reference tariff is set lower than a tariff based on efficient costs, with revenue shortfall accounted for, and potentially recouped, through loss capitalisation. We have required this, as a tariff high enough to recover efficient costs is likely to be beyond the ability and/or willingness to pay of any affected access holder or seeker. We consider that the presence of a loss capitalisation account provides West Moreton coal with the best opportunity to recover revenue.

While the current circumstances demonstrate the potential exposure to volume risk that West Moreton coal faces, we do not consider that the origin of this volume risk is systematic in nature. The uncertainty regarding volumes and the future of New Acland Stage 3 is due to legal and government approval processes rather than any economic reasons. As such, we do not consider that the low volumes and the necessary changes that we have made to the West Moreton coal tariff approach significantly alter the level of systematic risk West Moreton coal is exposed to.

Determining an appropriate beta

Our draft decision considered that Queensland Rail's proposed asset beta of 0.77 was likely to overstate the risks facing West Moreton coal—Frontier had estimated an asset beta by using a weighted average of comparator industries that all exhibited a greater level of systematic risk than West Moreton coal. Therefore, we were of the view that Queensland Rail's proposed asset beta was not appropriate.

We did not consider that any one specific business sample acted as a direct comparator for West Moreton coal at the time. Rather, an appropriate asset beta was likely to be:

- higher than the estimated asset beta for regulated energy and water businesses (0.38)
- lower than the estimated asset beta for toll road businesses (0.51).

In selecting an asset beta from within the range of 0.38 to 0.51, we also had regard to crosschecks performed against other regulated Australian rail networks.

Taking these factors into account, and noting the uncertainty in determining an asset beta that falls between two point estimates, our draft decision considered that there was merit in estimating an asset beta that is toward the upper bound of the range between regulated energy and water businesses and toll road businesses. As such, we considered that an asset beta estimate of 0.50 was appropriate.

Queensland Rail submitted that we should give further consideration to systemic risk arising from changes in international coal prices and cited low thermal coal prices as a determinative factor in Peabody's closure of the Wilkie Creek mine.¹¹⁰

¹¹⁰ Queensland Rail, sub. 26: 12–13.

We note that our first principles analysis within the draft decision considered this matter in detail and our estimate of an appropriate asset beta took this into account. This analysis concluded that:

- Queensland Rail's customers are heavily incentivised to maintain production in the face of a short-term reduction in thermal coal prices
- the economics of the Wilkie Creek mine do not necessarily reflect those at the New Acland and Cameby Downs mines. Both New Acland and Cameby Downs kept operating during this period, and also when prices were much lower than when Wilkie Creek closed
- in the event that volumes railed from a customer do decline, Queensland Rail has regulatory mechanisms (100 per cent take-or-pay on contracted volumes and relinquishment fees) to help it recover revenue.

Yancoal did not consider that an asset beta of 0.5 was appropriate for West Moreton coal. It submitted that:

an asset beta of 0.5 relative to Incenta's estimate of the average toll-road asset beta of 0.51, suggests commercial and regulatory risks that are nearly equivalent to those of toll roads. However, toll roads typically involve far more significant volume risks ...¹¹¹

Yancoal disputed our assessment that Aurizon Network and ARTC's HVCN had significantly stronger regulatory regimes than Queensland Rail. Yancoal said there might be differences in respect of the West Moreton service (such as greater volume risks arising from exposure to thermal coal instead of principally metallurgical coal, and a smaller number of customers), but it was important these differences were not overstated. Yancoal said the appropriate asset beta was marginally higher than the ARTC HVCN asset beta of 0.45, but less than our proposed asset beta of 0.5.¹¹²

We consider that the beta estimates for regulated energy and water businesses and toll road businesses form the bounds of our beta determination process. However, when selecting an asset beta from within this range, we have also had adequate regard to the crosschecks of other potentially comparable businesses.

We are of the view that by virtue of having a larger customer base, Aurizon Network and ARTC HVCN are able to have stronger regulatory frameworks. For these networks, a reduction in volumes railed by a single customer, or even the loss of a customer, can be recovered by increasing the access charges to the remaining customers within the network, using unders and overs accounting. In contrast, West Moreton coal has only two customers; therefore, it is not feasible to implement this type of unders and overs accounting. Instead, West Moreton coal has a limited life loss capitalisation account, which defers this revenue to a time when volumes have returned to high levels. However, the presence of a limited life loss capitalisation account does not guarantee the recovery of revenue, nor does it assist in smoothing West Moreton coal's revenue profile over time. Consequently, we consider that Aurizon Network and ARTC HVCN have regulatory frameworks that better insulate allowable revenue from changing customer volumes.

New Hope was of the view that 'uncertainty' was not a sufficient reason for choosing an asset beta at the top of the range. In addition, New Hope considered that insufficient weight had been given to the crosschecks that we had performed, which suggested a beta closer to that of Aurizon Network and ARTC HVCN.¹¹³

¹¹¹ Yancoal, sub. 27: 9.

¹¹² Yancoal, sub. 27: 7–9.

¹¹³ New Hope, sub. 24: 12.

Our view is still that Queensland Rail's proposed asset beta of 0.77 is inappropriate and that a point estimate of 0.5 is likely to represent an appropriate asset beta for West Moreton coal. While our decision has taken into account the inherent uncertainty in selecting a point estimate, it was not the principal reason for our selection of 0.5. As explained previously, several factors suggest West Moreton coal (with an asset beta of 0.5) is riskier than both Aurizon Network and ARTC HVCN (asset betas of 0.42 and 0.45 respectively). Both West Moreton coal and ARTC HVCN differ from Aurizon Network in that their customers are predominantly thermal coal producers. Given the economics of thermal coal relative to metallurgical coal (i.e. relative margins), West Moreton coal's and ARTC HVCN's customers are likely to be more vulnerable to sustained economic shocks than Aurizon Network's customers, all else being equal. As a result, we would expect both West Moreton coal and ARTC HVCN to have higher asset betas than Aurizon Network.

We would further expect West Moreton coal to have a higher asset beta than ARTC HVCN. As indicated, an important consideration is that both Aurizon Network and ARTC HVCN have more resilient regulatory frameworks, as the number of customers on these networks support the implementation of a robust form of unders and overs accounting to provide relatively constant revenue—this is not the case with Queensland Rail. Accordingly, at this time we consider the relativities of the asset betas of Aurizon Network (0.42), ARTC HVCN (0.45), and West Moreton coal (0.5) to be appropriate.¹¹⁴

We used the Conine de-levering/re-levering formula to convert the asset betas to equity betas, and vice versa, using a debt beta of 0.12. In conjunction with a gearing level of 40 per cent (see below), we estimated an equity beta of 0.71 for Queensland Rail.

3.2.2 Capital structure and credit rating

The capital structure and credit rating of a firm are two WACC inputs that are inherently linked. The benchmark capital structure determines the relative weights to attach to the debt and equity components of the firm's funding. The benchmark credit rating is informed by the capital structure. Companies that face less risk in their operating environment can, in general, sustain higher levels of debt for a given rating category.

Capital structure

Queensland Rail's consultant, Frontier, estimated the capital structure by applying weightings to the midpoint of 5-year and 10-year observed gearing levels in comparator industries.¹¹⁵ Frontier applied the same weights to the (same) comparators used in its asset beta analysis.¹¹⁶ In doing so, Frontier estimated a gearing level for Queensland Rail of 28 per cent. In relation to the difference in gearing level from the 2016 undertaking, Frontier submitted:

We note that a 28% gearing figure is materially below the 55% figure that the QCA has adopted in recent decisions for Queensland Rail and Aurizon. However, a lower level of gearing is consistent with a higher degree of systematic risk—other things being equal, riskier assets are able to support relatively less debt.¹¹⁷

¹¹⁴ While we did not set the 0.45 asset beta for ARTC HVCN, we do not consider its relative risk to be inconsistent with the analysis here.

¹¹⁵ Queensland Rail, sub. 4: 19.

¹¹⁶ That is, a weight of 40% to Class 1 railroads, 30% to ports, 15% to airports and 15% to toll roads.

¹¹⁷ Queensland Rail, sub. 4: 20.

Yancoal and New Hope disagreed with Queensland Rail's proposed approach to gearing. They considered that Queensland Rail's proposed gearing level was inappropriate, as it was not based on the relevant risk profile.¹¹⁸

We do not consider the capital structure proposed by Queensland Rail to be appropriate. As outlined above, the appropriate gearing level should be set with reference to West Moreton coal—rather than the entire Queensland Rail network.

We engaged Incenta to provide advice on an appropriate level of gearing for West Moreton coal under the assumption that New Acland Stage 3 would proceed and that New Hope would have a long-term contract in place for the duration of the undertaking. Incenta evaluated the business risk¹¹⁹ of a number of different industries and determined that regulated energy and water businesses and toll roads were likely to be the best comparators for West Moreton coal. Incenta calculated the average and median level of gearing for regulated energy and water businesses in the sample to be 38 and 39 per cent respectively, while for toll road businesses it calculated the average and median level of gearing to be 39 and 42 per cent respectively. As such, Incenta considered that a point estimate of 40 per cent for West Moreton coal was reasonable.¹²⁰

Having regard to Incenta's analysis, our draft decision considered that a gearing level of 40 per cent was appropriate.

Credit rating

Queensland Rail proposed a benchmark credit rating of BBB+, based on the precedent set by our draft decision on Aurizon Network's UT5.¹²¹

As a firm's credit rating and capital structure are inherently linked, we also engaged Incenta to provide advice on an appropriate benchmark credit rating for West Moreton coal.¹²² Incenta considered that the best way to establish a benchmark credit rating for West Moreton coal was to take the benchmark gearing level (40 per cent) and apply Standard & Poor's credit rating methodology.¹²³ That methodology involves establishing a business risk profile and a financial risk profile for the firm, before determining an anchor credit rating.

Figure 1 Anchor credit rating matrix

		Financial risk profile					
		1	2	3	4	5	6
		Minimal	Modest	Intermediate	Significant	Aggressive	Highly leveraged
Business risk profile	1 Excellent	AAA/AA+	AA	A+ / A	A-	BBB	BBB- / BB+
	2 Strong	AA/AA-	A+ / A	A / BBB+	BBB	BB+	BB
	3 Satisfactory	A / A-	BBB+	BBB / BBB-	BBB- / BB+	BB	B+

Source: Incenta, *Estimating Queensland Rail's WACC for the 2020 DAU—asset beta, benchmark gearing, and credit rating*, April 2019.

¹¹⁸ New Hope, sub. 14: 19–22; Yancoal, sub. 16: 11.

¹¹⁹ Business risk in this context is not to be confused with systematic risk, which is relevant to beta. Rather, in this instance, 'business risk' is related to the absolute volatility of earnings.

¹²⁰ Incenta, *Estimating Queensland Rail's WACC for the 2020 DAU—asset beta, benchmark gearing, and credit rating*, prepared for the QCA, 2019: 25–36.

¹²¹ Queensland Rail, sub. 2: 20.

¹²² Similar to its assessment of an appropriate level of gearing, Incenta estimated a credit rating for West Moreton coal on the basis that New Acland Stage 3 would proceed and that New Hope would have a long-term contract in place for the term of the undertaking.

¹²³ Incenta, *Estimating Queensland Rail's WACC for the 2020 DAU—asset beta, benchmark gearing, and credit rating*, prepared for the QCA, 2019: 38.

As Standard & Poor's has not evaluated the business risk associated with West Moreton coal, Incenta has benchmarked West Moreton coal against assessments made for Aurizon Network and Arc Infrastructure.¹²⁴ Incenta analysed a number of factors, including market power, EBITDA volatility, regulation, level and trend of industry margins, counterparty risks and take-or-pay contracts. It concluded that West Moreton coal's business risk was more similar to Aurizon Network's (which was rated strong by Standard & Poor's), than to Arc Infrastructure's (rated satisfactory by Standard & Poor's).¹²⁵ Consequently, Incenta determined that a business risk profile rated strong was appropriate for West Moreton coal.

To assess West Moreton coal's financial risk profile, Incenta tested two key credit metrics based on funds from operations (FFO)—FFO/debt and FFO/interest cover. Incenta considered that, under an assumed asset beta of 0.51 (the estimated asset beta for toll roads), the credit metrics would suggest financial risk that was significant, which would imply a BBB credit rating.¹²⁶ For an assumed asset beta of 0.38 (the estimated asset beta for regulated energy and water businesses), the credit metrics would suggest either significant or aggressive financial risk, implying a credit rating of either BBB or BB+.

Based on an estimated asset beta of 0.5 and Incenta's analysis, our draft decision considered that a credit rating of BBB was appropriate for West Moreton coal.

Implications of low volumes on capital structure and credit rating

Incenta's assessment of an appropriate credit rating and level of gearing was undertaken on the basis that New Acland Stage 3 would receive approval and that New Hope would sign a long-term contract before the start of the 2020 undertaking period. However, at the time of this decision, this uncertainty has not been resolved, and there will be low volumes for at least a portion of the 2020 undertaking period.

A limited life loss capitalisation account will enable West Moreton coal to capture revenue that it may not be able to receive if volumes are low. So while revenue may be deferred, this does not provide for dissimilar total revenue outcomes for West Moreton coal, assuming that volumes are able to return to high levels in a short enough period of time. As such, much of Incenta's analysis remains relevant for considering an appropriate credit rating and level of gearing.

However, we acknowledge New Acland Stage 3 may never be approved, so volumes on the West Moreton system do not return to high levels. In such a case, loss capitalisation would not be an effective tool, as capitalised losses would not be recoverable. Even if volumes do recover, but only at a point far in the future, all capitalised losses might not be recoverable. These possibilities create an increased level of short-term risk relative to our draft decision assessment.

This risk is non-systematic in nature, as it is directly tied to court and government approval processes. As such, we do not think that it is appropriate for us to alter our estimates of West Moreton coal's asset beta. However, as this risk has an impact on the broader level of business risk that West Moreton coal faces and the total volatility of its expected cash flows, this additional

¹²⁴ Arc Infrastructure operates a 5,500 km open access multi-user rail freight network spread across the southern part of Western Australia.

¹²⁵ Incenta considered that Aurizon Network and West Moreton coal shared characteristics such as market power, and comprehensive regulatory regimes, which differentiate them from Arc Infrastructure and its negotiated agreements framework.

¹²⁶ FFO refers to funds from operations.

risk should be taken into account when evaluating an appropriate capital structure and credit rating.

One way to account for a greater level of overall risk is to lower the credit rating of the business and let such changes flow on into the cost of debt estimate via the debt risk premium. Alternatively, a revision could be made to the assessed level of gearing that the entity would be able to maintain. However, for the purposes of this decision, we consider that it is more practical to make a discretionary adjustment to our estimate of the debt risk premium directly, rather than changing the regulatory credit rating or level of gearing for West Moreton coal.

We apply a discretionary adjustment for the following reasons:

- Comprehensive analysis has been performed that indicates that a BBB credit rating and gearing of 40 per cent are appropriate in a setting where New Acland Stage 3 has been granted approval (or equivalent volumes have been contracted). While we have assessed this undertaking under the expectation of low volumes, we note that a low level of contracted volumes may only be transitory in nature.
- Incenta recommended that once a benchmark gearing level has been established through careful analysis, it should be maintained unless there is compelling new evidence that a change is required. Given that Queensland Rail's expectation that contracted volumes will return to high levels over the medium to long term, and the possibility that New Acland Stage 3 could receive approval within the 2020 undertaking period, we consider that there is merit in leaving West Moreton coal's credit rating and gearing unchanged.
- Providing a discretionary uplift to the debt risk premium enables the same outcome—compensation for the short-term volume risk that West Moreton coal faces—without the complexity of requiring a comprehensive review of West Moreton coal's gearing and credit rating in the face of such uncertainty.
- While this approach might be viewed as unconventional, we consider that it is appropriate and pragmatic, given the unique circumstances facing West Moreton coal at this time.

In summary, we consider it appropriate to account for this short-term volume risk via a direct adjustment to the debt risk premium estimate (see section 3.2.4). Therefore, we continue to be of the view that a BBB credit rating and gearing of 40 per cent are appropriate for West Moreton coal.¹²⁷

3.2.3 Risk-free rate

The risk-free rate is the rate of return on an asset with zero default risk. It compensates the investor for the time value of money. Commonwealth Government bonds are commonly considered to be a reasonable proxy for the risk-free asset.

Queensland Rail initially proposed to maintain the methodology employed in the Aurizon Network UT5 draft decision, to estimate the risk-free rate.¹²⁸ New Hope and Yancoal supported that approach.¹²⁹ However, Queensland Rail indicated in its proposal that it might make further

¹²⁷ In coming to this position, we do not consider that it is appropriate to simply adopt the credit rating proposed by Queensland Rail, as Yancoal suggested (sub. 27: 9).

¹²⁸ Queensland Rail, sub. 2: 17.

¹²⁹ New Hope, sub. 14: 14; Yancoal, sub. 16: 5.

submissions if we made any changes to the WACC methodology applied in the UT5 draft decision.¹³⁰

We do not bind ourselves to previous market parameter decisions where we consider past decisions are no longer providing appropriate regulatory outcomes. As part of the UT5 final decision, we considered that there was merit in giving consideration to alternative approaches other Australian regulators adopted—specifically, adopting a 10-year bond term (and not a term-matched bond) to estimate the risk-free rate.¹³¹

Our draft decision therefore applied a 10-year bond term to estimate the risk-free rate. Other regulators have generally accepted the argument that the term of the bond should be a proxy for the life of the regulated asset. We considered that a longer-term bond may also better reflect the expectations of investors—given the long-term nature of infrastructure asset investment.

New Hope submitted that we did not explain why the principle of term-matching, which we previously supported based on extensive analysis over many years, was no longer considered appropriate.¹³²

We acknowledge that we have undertaken extensive analysis on term-matching. However, we are no longer convinced that term-matching provides for an overall return on investment that is commensurate with the commercial and regulatory risks involved for regulated entities. As such, we have decided to adopt a 10-year bond term to estimate the risk-free rate, as part of our bottom-up WACC assessment.

In order for us to estimate the risk-free rate and debt risk premium (see below) in our final decision, Queensland Rail supported the use of an averaging period of the 20 business days to 15 November 2019.¹³³ We consider that this is an appropriate averaging period, given that it was nominated in advance, and it occurred before the start of the upcoming regulatory period.

For the 20-day averaging period to 15 November 2019, we have estimated a 10-year risk-free rate of 1.18 per cent.

3.2.4 Debt risk premium

The debt risk premium is the amount above the risk-free rate a business has to pay to acquire debt funding from financial markets and is related to, among other factors, a firm's credit rating. The debt risk premium increases in line with the riskiness of the business and varies over time in line with market circumstances.

Queensland Rail proposed to maintain the methodology employed in the Aurizon Network UT5 draft decision for estimating the debt risk premium. This approach is based on applying an 'on-the-day' benchmark debt management strategy. New Hope and Yancoal also supported this approach.¹³⁴

In the draft decision on Aurizon Network's UT5, we used an econometric-based approach to estimate the debt risk premium for the benchmark credit rating. Under that approach, the econometric specification might change to make better use of the available data. In the past, we

¹³⁰ Queensland Rail, sub. 2: 17.

¹³¹ QCA, *Aurizon Network's 2017 draft access undertaking*, decision, December 2018: 78.

¹³² New Hope, sub. 24: 12–13.

¹³³ Queensland Rail, *DAU2 WACC Averaging Period*, September 2019.

¹³⁴ New Hope, sub. 14: 22; Yancoal, sub. 16: 5.

have also used third-party data from the Reserve Bank of Australia (RBA) and Bloomberg to act as a crosscheck on the estimate generated from the econometric approach.

In past regulatory decisions, the averaging period generally occurred before the release of the draft decision, giving stakeholders the opportunity to comment on both the bond sample as well as the methodology used to estimate the debt risk premium. However, the averaging period for the Queensland Rail 2020 DAU was not nominated for a date before the draft decision, which made it difficult to undertake adequate and timely consultation on the appropriate econometric approach to be adopted for Queensland Rail's 2020 DAU.

Given these circumstances, our draft decision considered that a viable alternative to the econometric approach was to use third-party data from the RBA and Bloomberg to estimate the debt risk premium. We were also satisfied that the estimates produced from Bloomberg and RBA data were not likely to introduce any bias to our debt risk premium estimate and noted that this data is widely used by other Australian regulators.

Our draft decision estimated a debt risk premium using a placeholder averaging period of the 20 business days to 31 January 2019. We have since updated this estimate to reflect the Queensland Rail supported averaging period of the 20 business days to 15 November 2019. Our estimates of the debt risk premium using both the RBA and Bloomberg BVAL data series over this period are:

- 2.04 per cent, using the RBA BBB-rated series, extrapolated to an effective 10-year term¹³⁵
- 2.02 per cent, using the Bloomberg BVAL 10-year BBB rated series
- 2.03 per cent, taking an average of the RBA and Bloomberg estimates.

Low volumes and cost of debt considerations

As stated before, we consider it appropriate to adjust our estimate of the debt risk premium to account for the potential short-term volume uncertainty faced by West Moreton coal.

One way to determine an uplift to the applicable debt risk premium for West Moreton coal is by looking at observed bond yields for corporate entities that are considered to bear a greater level of risk than a typical BBB-rated business (our assessment of West Moreton coal's credit rating under a high level of contracted tonnes yielded a BBB rating).

The corporate bond market in Australia is relatively young, and there is limited liquidity for corporate bonds with credit ratings lower than BBB—this is in part due to the fact that securities rated below BBB- are not considered investment grade. Indeed, the RBA and Bloomberg do not publish data for lower credit ratings as they do for BBB and A rated entities. As such, we turned to the more mature and liquid United States (US) corporate bond market to examine yields of corporate bonds that are rated lower than BBB to try and determine the risk premium that lower credit rating bonds might attract. Sub-investment-grade bonds in Australia would be likely to have credit margins that include a liquidity premium relative to bonds of an equivalent credit rating in the United States. Given there is limited data for Australia, that premium is difficult to determine. Nevertheless, we consider that corporate bond data from the United States is useful to establish a lower bound for the required uplift to the debt risk premium.

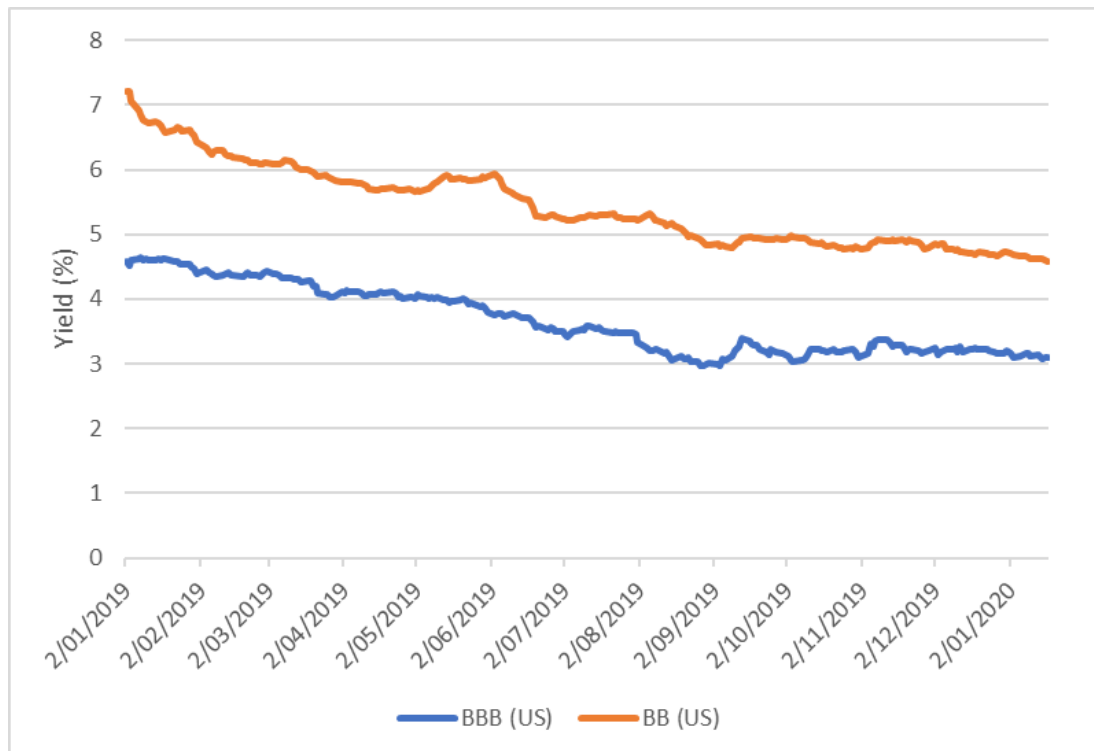
As a starting point, we looked at the yield differential between US corporate bonds rated BBB and BB. Bloomberg publishes its own 10-year US BB and BBB corporate bond indices that are created

¹³⁵ The QCA has extrapolated the RBA series to an effective 10-year term by applying same approach as specified in the [AER's rate of return instrument](#) (December 2018).

in much the same way as the Australian 10-year BBB corporate bond index that we have used to estimate the debt risk premium for a typical BBB rated entity.

The chart below shows the daily 10-year US BB and BBB corporate bond yields from the start of 2019. Over this period, the yield differential between BBB and BB rated US corporate bonds has also remained relatively consistent. Over the averaging period supported by Queensland Rail (21 October 2019 to 15 November 2019), the differential between BBB and BB rated US corporate bonds was 1.6 per cent.

Figure 2 Corporate bond yields



Source: Incenta, Bloomberg.

There is merit in using the yield differential between BBB and BB rated US corporate bonds for uplifting the debt risk premium for West Moreton coal given the lack of available data. Under Incenta's approach to establishing a credit rating, a BB credit rating would be consistent with a downgrade of both West Moreton coal's financial risk profile and its business risk profile by one notch (see Figure 3).¹³⁶ Given the current short-term uncertainty West Moreton coal faces, we consider such a downgrade would be warranted. Therefore, we consider that the risk premium associated with a BB rated corporate bond over a BBB-rated corporate bond is likely to provide a lower bound approximation for the increased risk to West Moreton coal.¹³⁷

¹³⁶ Incenta considered West Moreton coal to have a strong business risk profile and a significant financial risk profile.

¹³⁷ This is due to the liquidity premium that bonds in Australia of an equivalent rating would attract.

Figure 3 Anchor credit rating

		Financial risk profile					
		1	2	3	4	5	6
		Minimal	Modest	Intermediate	Significant	Aggressive	Highly leveraged
Business risk profile	1 Excellent	AAA/AA+	AA	A+ / A	A-	BBB	BBB- / BB+
	2 Strong	AA/AA-	A+ / A	A / BBB+	BBB	BB+	BB
	3 Satisfactory	A / A-	BBB+	BBB / BBB-	BBB- / BB+	BB	B+

Source: Incenta, *Estimating Queensland Rail's WACC for the 2020 DAU—asset beta, benchmark gearing, and credit rating*, April 2019.

It is appropriate for this uplift to apply for all of the undertaking period, regardless of whether New Acland Stage 3 receives approval during this time. While the approval of New Acland Stage 3 would result in a substantial lessening of the risk facing West Moreton coal, any announcement that indicated that New Hope would not be proceeding with its New Acland Stage 3 mine would increase the risk facing West Moreton coal. Consequently, our assessment of an uplift of 1.6 percentage points to West Moreton coal's debt risk premium reflects that there is some probability that contracted volumes could return to a high level, but also a probability they could remain at a low level for the entire undertaking period.

As such, an uplift of 1.6 percentage points is appropriate to capture the short-term increased risk profile facing West Moreton coal.

We consider that a debt refinancing transaction cost allowance of 0.108 per cent is an appropriate estimate of the cost to source new debt. Alongside a debt risk premium (uplift included) of 3.63 per cent and a 10-year risk-free rate of 1.18 per cent, we have estimated a cost of debt of 4.92 per cent for West Moreton coal.

For the 20-day averaging period to 15 November 2019, an overall cost of debt of 4.92 per cent is appropriate for Queensland Rail's 2020 DAU.

3.2.5 Market risk premium

The market risk premium (MRP) is the additional return that an equity investor requires to be compensated for the risk of investing in a market portfolio of risky assets, relative to purchasing a risk-free asset.

In its 2020 DAU submission, Queensland Rail proposed an MRP of 7 per cent, based on the MRP used to assess Aurizon Network's WACC in the UT5 draft decision.¹³⁸

Yancoal did not support an MRP of 7 per cent, noting that recent decisions by the ACCC and AER included MRPs of 6 per cent and 6.5 per cent respectively. Yancoal also noted that after those AER decisions, the AER proposed in its draft rate of return guidelines to adopt an MRP of 6 per cent.¹³⁹ Similarly, New Hope considered that our estimate of the MRP in the draft decision on Aurizon Network's UT5 was materially higher than the MRP proposed by the AER in its draft rate of return guidelines. New Hope said we had given too much weight to the Wright approach when estimating the MRP in the Aurizon Network UT5 draft decision, noting that it lacked empirical support.¹⁴⁰

As part of the collaborative submission process, Frontier, on behalf of Queensland Rail, responded to the issues raised by Yancoal and New Hope. Frontier considered that the MRP of 7 per cent in our Aurizon Network UT5 draft decision was consistent with our use of a four-year

¹³⁸ Queensland Rail, sub. 2: 20.

¹³⁹ Yancoal, sub. 16: 12.

¹⁴⁰ New Hope, sub. 14: 14.

risk-free rate. Frontier noted that if we adopted a 10-year risk-free rate, the equivalent MRP would be 6.5 per cent. In relation to the Wright approach, Frontier submitted that disregarding the Wright approach would be inconsistent with our empirical analysis, which shows that there was not a significant difference between the stability of the MRP (Ibbotson) and real market return (Wright). Frontier said the ACCC had always adopted an MRP of 6 per cent, regardless of market conditions, and the AER's decision for an MRP of 6 per cent in its recently released rate of return guidelines was inconsistent with its own empirical evidence and with the approach of other regulators.¹⁴¹

Frontier's assessment—that any evaluation of the MRP must also consider the risk-free rate—is reasonable. In the Aurizon Network UT5 draft decision, our estimate of the MRP was 7 per cent based on a four-year risk-free rate, while we have used a 10-year risk free rate as part of this decision.

The Wright and Ibbotson approaches represent two theoretical extremes regarding how the MRP behaves. The Wright approach assumes that the MRP has a perfect negative correlation with the risk-free rate, while the Ibbotson approach assumes that the MRP is constant over time. The empirical evidence indicates that neither approach is likely to perfectly characterise the MRP. Nonetheless, each method provides relevant information for estimating the MRP. Accordingly, our view is that weight should be afforded to both methods.

Our draft decision estimated the MRP with five different techniques—Ibbotson, Siegel, survey and independent expert data, Cornell DGM, and Wright. Taking a simple average of the five estimates produced an MRP estimate of 6.5 per cent, while the median was 6.2 per cent, and a weighted mean consistent with our assessment of the relative strengths and weaknesses of the methods produced an estimate of 6.35 per cent.¹⁴² Given these results, we considered that an MRP of 6.5 per cent was appropriate.

Yancoal considered it was a material increase to round our point estimate of 6.35 per cent to 6.5 per cent (i.e. rounding to the nearest half per cent), when there was no reason to suspect that our estimate contains any downward bias.¹⁴³ Similarly, New Hope questioned 'the basis on which our point estimate of 6.35% is increased to 6.5% by rounding'. New Hope considered that:

The MRP point estimate represents the QCA's best estimate of the MRP. While we understand that any such estimate is not precise and reflects the exercise of judgement, we do not understand how the application of rounding can improve the estimate.¹⁴⁴

Yancoal appreciated that the draft decision estimate of 6.5 per cent was consistent with recent QCA decisions, but considered it was out of step with the estimates of other regulators, for what should be a generally applicable market parameter. Yancoal was of the view that an MRP of 6.0–6.1 per cent—reflecting recent ACCC and AER decisions—would be more appropriate.¹⁴⁵

While our weighted average MRP estimate was 6.35 per cent, that estimate by itself was not determinative of our draft decision. Rather, it was one of three estimates that we considered before arriving at a view on an appropriate estimate. We also had due regard to estimates

¹⁴¹ Queensland Rail, sub. 20: 18–19.

¹⁴² We considered a statistically defensible set of weights to be Ibbotson (25%); Cornell DGM (25%); Siegel (15%); Wright (15%); and surveys (20%). This set of weights places relatively more emphasis on the two methods that are entirely independent of each other (the Ibbotson and Cornell DGM methods). Doing so maximises the use of the information available (and reduces the mean square error of the estimate).

¹⁴³ Yancoal, sub. 27: 10.

¹⁴⁴ New Hope, sub. 24: 13.

¹⁴⁵ Yancoal, sub. 27: 10.

produced by the simple average and the median. Taken together, the estimates produced by the simple average, median, and weighted average pointed to an MRP that was approximately 6.5 per cent.

Due to the use of three different estimates to inform our draft decision on an appropriate MRP, and the large standard errors associated with these estimates, we consider that it is reasonable to use an MRP estimate rounded to the nearest half per cent.

We note that the AER has lowered its estimate of the MRP to 6.1 per cent in its final rate of return guidelines.¹⁴⁶ However, recent decisions by other Australian regulators produce MRP estimates that range from 5.9 per cent to 7.45 per cent (see below).¹⁴⁷ While the MRP is a market parameter, there has been little consensus amongst Australian regulators as to how it should be estimated, as can be observed in the MRP outcomes in the chart below. Although our draft decision produces an estimate that is different (both higher and lower) from recent decisions by other Australian regulators, we do not consider that this makes it an inappropriate estimate.

Figure 4 Market risk premium estimates from other regulators' decisions

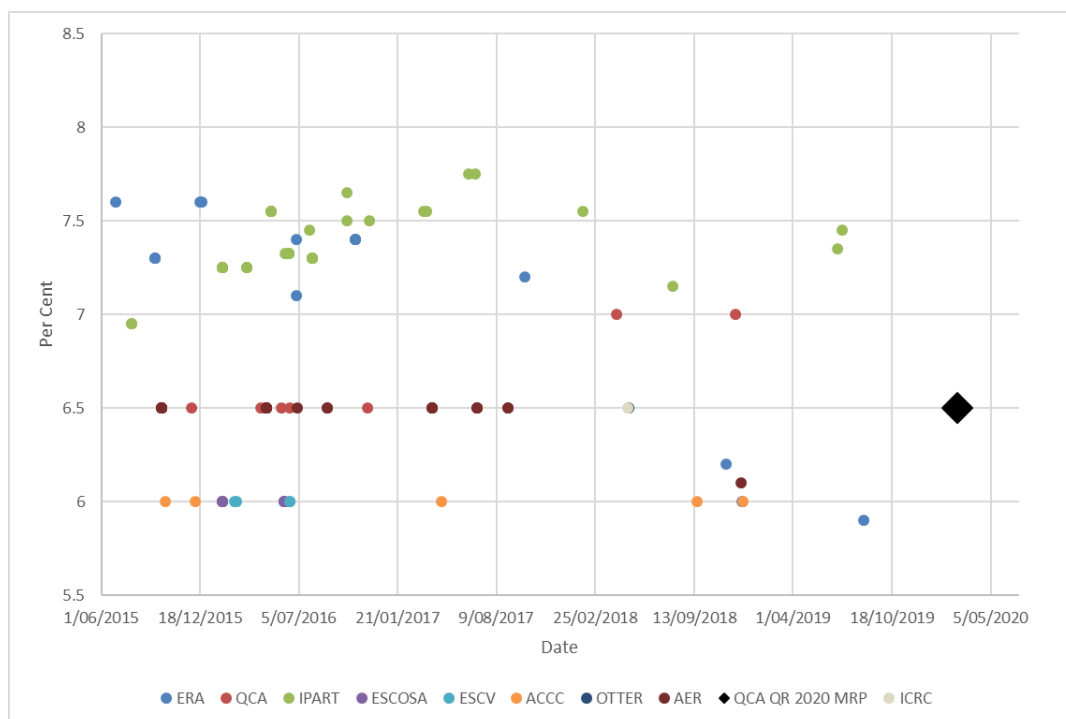


Table 2 MRP estimation techniques

<i>Method</i>	<i>MRP estimate</i>
Ibbotson	6.5%
Siegel	5.8%
Survey and independent expert	6.4%
Cornell DGM	4.7%
Wright	10.3%

These estimates of the MRP range from 4.7 per cent to 10.3 per cent. Notably, a simple average of the five updated estimates gives an MRP estimate of 6.8 per cent, while the median is 6.4 per cent. The weighted mean, consistent with our assessment of the relative strengths and weaknesses of the methods, is 6.5 per cent.¹⁴⁸ Having regard to these three estimates, we consider that an MRP of 6.5 per cent remains appropriate.

3.2.6 Gamma

The Australian tax system allows companies to provide their shareholders with credits (i.e. dividend imputation credits) to reflect company taxes paid on profits that are distributed as dividends. Shareholders then use dividend imputation credits to reduce their own tax liabilities. Therefore, imputation credits effectively reduce a company's cost of capital.

The value of dividend imputation credits is captured by a parameter known as 'gamma', which is the product of:

- the distribution rate—the ratio of distributed imputation credits to company tax paid, and
- the utilisation rate—the rate at which distributed imputation credits are used by investors in the market.

Queensland Rail proposed a gamma of 0.46, maintaining the estimate employed in the Aurizon Network UT5 draft decision.¹⁴⁹ New Hope and Yancoal supported this estimate.¹⁵⁰

The gamma estimate we considered appropriate as part of the Aurizon Network UT5 draft decision was 0.46, based on a distribution rate of 0.83 and a utilisation rate of 0.55. The same methodology was used to estimate gamma for the UT5 final decision—updating the distribution rate and utilisation rate to reflect more recent data—which resulted in an estimated gamma of 0.484, the product of a distribution rate of 0.88 and a utilisation rate of 0.55.

We have considered these matters fully for the purposes of this decision.

As we have updated gamma to reflect more recent data, we do not consider it is appropriate to approve Queensland Rail's proposed gamma of 0.46. Instead, we consider a gamma of 0.484, based on a distribution rate of 0.88 and a utilisation rate of 0.55, is appropriate.

¹⁴⁸ We used the same set of weights from the draft decision.

¹⁴⁹ Queensland Rail, sub. 2: 20.

¹⁵⁰ New Hope, sub. 14: 14; Yancoal, sub. 16: 5.

3.3 Overall WACC

While our bottom-up WACC assessment is a means for considering all the components of Queensland Rail's WACC proposal separately, ultimately we must consider whether it is appropriate to approve the overall WACC, having regard to the factors in s. 138(2) of the QCA Act.

In assessing the overall WACC, we have had regard to the pricing principles in the QCA Act, which state that we should provide a return on investment commensurate with the regulatory and commercial risks involved (s. 168A(a)). We are of the view that our bottom-up estimate of the WACC does not fully account for some of the commercial risks faced by Queensland Rail in providing rail services for coal along the West Moreton system.

The ongoing uncertainty regarding New Hope's New Acland Stage 3 mine approval highlights the short-term volume risk that West Moreton coal is exposed to. If New Hope does not receive approval, there will be a significant short-term drop in coal volumes railed. While we have approved the use of limited-life loss capitalisation, and Queensland Rail has indicated that the medium- to long-term outlook remains positive, there is no guarantee that third-party investments will be made to restore the volume of coal railed to its recent higher levels. If higher volumes on the West Moreton system fail to materialise, a limited life loss capitalisation account is not an effective means of recovering revenue.

In response to short-term uncertainty West Moreton coal faces, we have provided West Moreton coal with an uplift to its estimated debt risk premium that in our view is sufficient; however we do not think that it accounts for West Moreton coal's longer-term stranding risk.

Even if New Acland Stage 3 does proceed, we consider that over the longer term, stranding risk still exists. New Acland Stage 3 has an expected mine life of at least 12 years.¹⁵¹ West Moreton coal could be put in the same position as it is now, requiring additional investment to avoid a decline in volumes, when the Stage 3 reserves are exhausted. Furthermore, as the contracted capacity on the network is limited to 97 train paths a week, there is limited opportunity for new investment that might replace New Acland Stage 3, such that a new project would be ready to start railing when New Acland Stage 3 shuts. Due to the large infrastructure costs and long lead times associated with developing a coal mine, there is a material possibility that rail volumes do not recover for an extended period of time even if additional customers or investment do eventuate.

Another source of longer-term uncertainty for Queensland Rail's West Moreton coal assets is the development of Inland Rail. It is hard to assess the impact that Inland Rail might have on the West Moreton system; however, it is possible Inland Rail will lead to some sections of the West Moreton system being bypassed and becoming obsolete.

We consider that this longer-term asset stranding risk West Moreton coal faces is potentially significant, but it is principally non-systematic in nature. As a consequence, we have not provided compensation within the return on equity for the longer-term stranding risk that West Moreton coal faces.

Stranding risk need not be compensated for within the WACC, provided that the underlying regulatory framework or adjustments to the firm's cash flows adequately account for this risk. Indeed, we note that within Queensland Rail's regulatory framework, users of the West Moreton system may be required to provide capital underwriting for new investments, are required to pay relinquishment fees if they terminate a contract, and typically have long-term take-or-pay

¹⁵¹ Ernst & Young, *New Acland Coal Mine Stage 3 Project: Financial Impact Study*, September 2017: 1.

contracts. These mechanisms will all work to lower the level of stranding risk West Moreton coal faces. However, on balance, we consider that West Moreton coal is still likely to be exposed to a material level of stranding risk, particularly where the remaining life of infrastructure is significantly greater than the term of contracting.

We note that the typical approach amongst regulators is to address stranding risk by adjusting a firm's cash flows, most commonly through some form of accelerated depreciation profile. With respect to other below-rail operators, we note that some form of accelerated depreciation was adopted by IPART for the RailCorp HVCN, by the ACCC for the ARTC HVCN, and by us in the case of Aurizon Network.¹⁵²

As a whole, over the long term, Queensland Rail faces a degree of uncertainty regarding the recovery of any investment that it undertakes.¹⁵³ Given Queensland Rail's particular circumstances, we are of the view that Queensland Rail should be compensated for its non-systematic stranding risk, as this risk ultimately contributes to the overall commercial risks associated with West Moreton coal. While our preferred way of dealing with this problem would be to introduce some form of accelerated depreciation of assets, we note that Queensland Rail did not propose that, and consider that stakeholders should be given the opportunity to comment on this matter, including an appropriate accelerated depreciation profile.

Our decision is to not implement accelerated depreciation as part of this DAU process; however, we would be amenable to accepting an appropriate accelerated depreciation profile, should Queensland Rail propose it as part of a DAAU. We consider that an appropriate accelerated depreciation profile would likely be sufficient to address the longer-term stranding risks that West Moreton coal faces. Alongside our adjustment to the debt risk premium to reflect short-term uncertainty, we consider that we have had appropriate regard to the risks West Moreton coal is exposed to.

Top-down analysis

Queensland Rail submitted that in the Aurizon Network UT5 final decision and the Queensland Rail 2020 DAU, we had demonstrated a willingness to consider alternative approaches to calculating the WACC. However, Queensland Rail considered that:

the QCA's treatment of other regulators' methodologies focused on component elements of the WACC rather than the overall rate of return. Queensland Rail believes that the QCA should undertake a 'top down' systematic examination of the rate of return methodologies adopted by other regulators and their assessment of the required compensation for the risk of investing in rail infrastructure, to further assist in the assessment of whether the overall DAU2 WACC is appropriate, having regard to all of the relevant factors in s. 138(2) of the QCA Act.¹⁵⁴

Queensland Rail provided a series of comparisons to regulatory decisions made for other Australian regulated rail networks. Queensland Rail said a 'top-down' review of alternative WACC methodologies from these decisions revealed that, in totality, our methodology resulted in a lower rate of return for Queensland Rail than for comparable networks. Queensland Rail was of the view that comparable networks included Arc Infrastructure and TPI (regulated by the ERA), Australian Rail Track Corporation's (ARTC) Interstate and HVCN (regulated by the ACCC), and

¹⁵² IPART, *Rate of Return and Remaining Mine Life 2019–2024*, final report, July 2019: 14; ACCC, *Australian Rail Track Corporation's 2017 Hunter Valley Access Undertaking*, draft decision, April 2017: ix; QCA, *Aurizon Network's 2017 draft access undertaking*, decision, December 2018: 26.

¹⁵³ New investment undertaken by Queensland Rail may involve technical asset lives of up to 50 or 100 years.

¹⁵⁴ Queensland Rail, sub. 26: 3.

RailCorp (regulated by IPART).¹⁵⁵ Of the networks regulated by the ERA, Queensland Rail's consultant Houston Kemp considered that TPI was most comparable to West Moreton coal.¹⁵⁶

New Hope supported our view that a WACC of 7.47 per cent was not appropriate. However, it considered that aspects of our bottom-up analysis provided an overall WACC that was too high.¹⁵⁷ Both Yancoal and New Hope said Queensland Rail's assertion that we had provided an overall WACC that was lower than for other comparable Australian regulated rail networks was unfounded. They considered that the firms Queensland Rail selected displayed a greater level of risk than West Moreton coal.¹⁵⁸ Furthermore, Yancoal and New Hope noted that Queensland Rail did not account for differences in time-variant parameters when making these comparisons.¹⁵⁹ New Hope provided its own top-down analysis of West Moreton coal's overall rate of return compared to other firms it considered to be relevant comparators, showing a WACC for West Moreton coal that sat toward the upper end of the range.¹⁶⁰

In relation to Queensland Rail's request for us to perform a top-down analysis of the overall WACC decisions for comparable regulated rail entities, we reiterate the difficulties in doing so, due to differences in timing, leveraging approaches and cost of debt estimation methods. We note that Queensland Rail's own comparisons fail to account for some of these differences.

Rather, we have performed our own top-down comparisons for the regulated rail entities that Queensland Rail has nominated, as well as some of the comparators proposed by New Hope¹⁶¹, attempting to control for timing differences, while still retaining the WACC methodology adopted by the relevant regulator.¹⁶² As the ERA uses an in-house method to estimate the cost of debt, we have normalised the overall WACC for each regulated entity using the averaging period used by the ERA (period to 30 June 2019) in its final determination on a WACC for 2019.¹⁶³ Figure 5 presents the normalised comparisons for West Moreton coal against other regulated entities.

¹⁵⁵ Queensland Rail, sub. 26: 3–6.

¹⁵⁶ Queensland Rail, sub. 39: 27.

¹⁵⁷ New Hope, sub. 24: 13.

¹⁵⁸ New Hope, sub. 33: 6–7; Yancoal, sub. 41: 4–5.

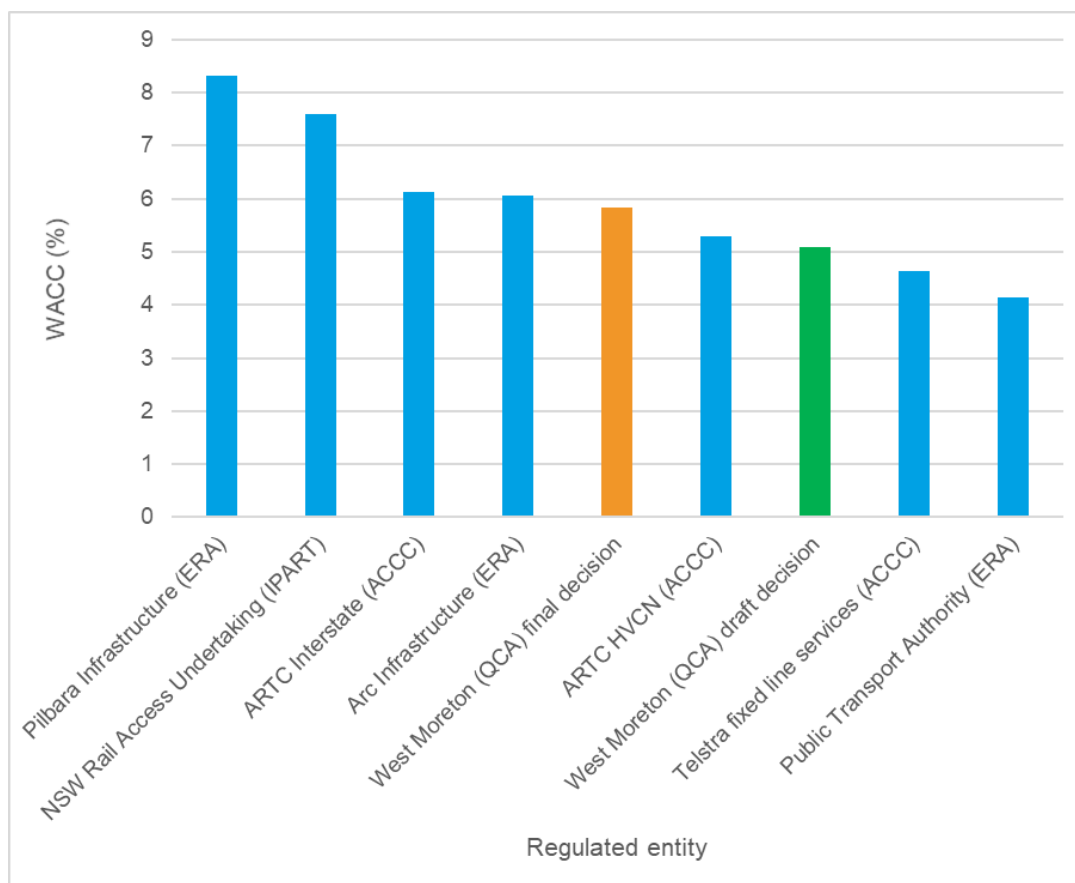
¹⁵⁹ That is, differences in WACCs could be attributable to differences in WACC parameters that change over time (e.g. risk-free rate, market risk premium, and cost of debt)—the decisions that were compared occurred at different points in time.

¹⁶⁰ New Hope, sub. 33: 7–12.

¹⁶¹ We have not included all of the comparators listed by New Hope, due to difficulties in estimating normalised WACCs for firms with differing cost of debt methodologies.

¹⁶² On this point, we note that some of New Hope's comparisons contain cost of debt estimates that are not consistent with the initial cost of debt methodology that the relevant Australian regulator uses.

¹⁶³ ERA, *2018 and 2019 Weighted Average Cost of Capital for the Freight and Urban Networks, and the Pilbara Railways*, final determination, August 2019.

Figure 5 Normalised WACC comparisons (30 June 2019)

Note: Due to the use of a different averaging period as part of the normalisation, the West Moreton coal WACC displayed here will differ from the WACC generated from our bottom-up analysis. We have used the yield differential between BB and BBB rated US corporate bonds for an equivalent averaging period (20 days to 30 June 2019) to calculate the Queensland Rail WACC.

The normalised WACC comparisons (Figure 5) show that our assessed overall WACC for West Moreton coal lies toward to the middle of the range of comparator firms presented by Queensland Rail and towards the upper range of firms presented by New Hope. We advise care when looking at the figures presented here, noting there are significant differences in the firms within the sample. For example, although TPI and West Moreton coal may share several physical characteristics, these similarities do not necessarily give them equivalent risk profiles.

Furthermore, while the WACC might provide a way to compensate for the commercial and regulatory risks faced by a business, there are a number of regulatory instruments that can compensate for, or mitigate, the risks faced by a business. Consequently, when comparing WACC figures amongst regulated businesses, the operations and full range of regulatory features relevant to each regulated business should be considered. In this case, West Moreton coal differs from a number of other regulated below-rail operators in Australia by having the following characteristics:

- a product mix for which demand is largely invariant to the state of the Australian economy. This differentiates it from other regulated rail infrastructure that carries intermodal traffic for which demand is likely to be more dependent on the state of the Australian economy

- 100 per cent take-or-pay arrangements, which provide West Moreton coal with protection in the event that its customers do not use their contracted volumes¹⁶⁴
- a limited life loss capitalisation mechanism, which gives West Moreton coal the opportunity to recover lost revenue. This will mitigate the extent to which West Moreton coal is exposed to the impact of a customer that temporarily stops raiiling.

Queensland Rail considered that our decision to provide a 25 basis point uplift to the bottom-up WACC in the Aurizon Network UT5 final decision was a signal that our bottom-up rate of return may not provide a sufficient rate of return.¹⁶⁵

The 25 basis point uplift to the bottom-up WACC in the Aurizon Network UT5 final decision was provided by having reference to both a 10-year bond term to calculate the risk free rate, and a cost of debt based on BBB-rated corporate bonds. As part of the Queensland Rail 2020 DAU final decision we have calculated our bottom-up estimate using a 10-year term for the risk free rate and a cost of debt based on BBB and BB-rated corporate bonds.¹⁶⁶ Consequently, we do not consider that this indicates that the rate of return that we have estimated as part of our bottom-up analysis is inappropriate.

Queensland Rail also noted that we were considering an agreement between Aurizon Network and its stakeholders that involved an increase to the UT5 WACC from 5.7 per cent to 5.9 per cent, with the opportunity to receive 6.3 per cent on completion of an initial capacity assessment report. Queensland Rail considered that if this was approved, it would result in the Aurizon Network WACC being materially higher than our proposed WACC for West Moreton coal in our draft decision.¹⁶⁷

It is not clear how Aurizon Network's proposed WACC figures were constructed, or if they were benchmarked to market parameters at a particular time. Therefore, it is difficult to make comparisons between the WACC proposed by Aurizon Network in its DAAU and the WACC we consider appropriate as part of the Queensland Rail 2020 access undertaking.¹⁶⁸

Furthermore, under Aurizon Network's proposal, it needs to meet certain performance targets to receive the higher WACC (6.3%). Queensland Rail has no such performance standards; as a result, we consider this difference limits the comparability between Aurizon Network's proposed WACC and the WACC for West Moreton coal.

As a whole, we consider that our bottom-up estimate of the WACC for West Moreton coal is not inconsistent with the outcomes of other regulatory decisions for entities that Queensland Rail and New Hope have nominated as being comparable.

Final consideration

Our view is that Queensland Rail's proposed WACC of 7.47 per cent does not reflect the risks associated with its coal operations on the West Moreton system. Consequently, we do not consider that this proposal promotes the interests of access seekers and holders or efficient

¹⁶⁴ Firms regulated under comparatively light handed regulatory frameworks, such as TPI and Arc Infrastructure, are unlikely to have the same level of revenue protection as West Moreton coal.

¹⁶⁵ Queensland Rail, sub. 45: 10.

¹⁶⁶ See sections 3.2.2 and 3.2.4 for an explanation on our approach to West Moreton coal's credit rating and cost of debt.

¹⁶⁷ Queensland Rail, sub. 26: 6.

¹⁶⁸ QCA, *Aurizon Network's Revised UT5 draft amending access undertaking*, December 2019.

investment in the network (ss. 138(2)(a), (e), (h)), nor is it consistent with the pricing principles in the QCA Act (ss. 168A, 138(2)(g)).

Having reviewed our bottom-up analysis of the West Moreton coal WACC, as well as having regard to regulatory decisions for other comparable entities, we consider that a WACC of 5.46 per cent will provide Queensland Rail with a return on investment commensurate with the commercial and regulatory risks involved in providing access to coal services on the West Moreton system (ss. 138(2)(a), (g), 168A(a)).¹⁶⁹ It also balances the interests of access holders and access seekers with the interests of Queensland Rail (ss. 138(2)(b), (e), (h)) and promotes efficient investment in the West Moreton system (s. 138(2)(a)). For these reasons, our decision is that an appropriate WACC is 5.46 per cent.

Summary 3.1

The QCA's decision is that the appropriate way for Queensland Rail to amend the 2020 DAU is to revise its total revenue requirement and reference tariffs, based on a post-tax nominal WACC of 5.46 per cent, comprising:

- (1) a return on equity of 5.82 per cent
- (2) a return on debt of 4.92 per cent
- (3) capital structure of 40 per cent debt (60 per cent equity)
- (4) gamma of 0.484.

Drafting: cl. 7.1 (definition of 'WACC').

¹⁶⁹ This is on the basis that Queensland Rail submits a DAAU proposing an appropriate accelerated depreciation profile that addresses the longer-term stranding risk that West Moreton coal faces.

4 BUILDING BLOCKS AND TARIFF (SCHEDULES D AND E)

The total revenue requirement for access to the West Moreton system by coal services is calculated based on building blocks including maintenance and operating costs, a regulated asset base, capital expenditure, forecast inflation, return on capital (WACC) and forecast volumes.

In the 2020 DAU, Queensland Rail proposed to recover that revenue requirement through a West Moreton reference tariff of \$22.39/'000 gtk for annual forecast volumes of 9.1 million tonnes. It proposed a \$18.13/'000 gtk reference tariff for the Metropolitan system.

Queensland Rail subsequently revised its forecast volume to 2.1 million tonnes, and proposed a reference tariff of \$25.72/'000 gtk, below a 'cost-recovery' tariff of \$47.10/'000 gtk.

Overview of decision

Our decision is that Queensland Rail's proposed reference tariff for the West Moreton system is not appropriate to be approved. Based on our assessment of efficient building blocks, a total revenue requirement of \$200.4 million is appropriate for providing access to the West Moreton system. A West Moreton reference tariff of \$21.50/'000 gtk, based on recovery of incremental costs, including a return on and of forward-looking capital expenditure, is appropriate. We consider Queensland Rail's proposed Metropolitan reference tariff is appropriate to approve.

Tariff building blocks—summary

<i>Queensland Rail DAU</i>	<i>Queensland Rail 2.1 million tonne proposal</i>	<i>QCA decision</i>
Volumes of 9.1 mtpa	Volumes of 2.1 mtpa	The DAU proposal is not appropriate to be approved. Volumes of 2.1 mtpa, as submitted in Queensland Rail's revised proposal, are appropriate (see section 4.2).
Maintenance costs of \$140.9 million (2020–21 dollars) over the 2020 undertaking period	Maintenance costs of \$102.4 million (2020–21 dollars) over the 2020 undertaking period	Neither proposal is appropriate to be approved. Maintenance costs of \$85.3 million (2020–21 dollars) are appropriate (see section 4.3).
Train control costs of \$19.2 million (2020–21 dollars) over the 2020 undertaking period	Train control costs of \$17.4 million (2020–21 dollars) over the 2020 undertaking period	The DAU proposal is not appropriate to be approved. Train control costs of \$17.4 million (2020–21 dollars), as submitted in the 2.1 million tonne proposal, are appropriate (see section 4.4.1).
Corporate overheads and other on-costs of \$29.6 million (2020–21 dollars) over the 2020 undertaking period	Corporate overheads and other on-costs of \$23.8 million (2020–21 dollars) over the 2020 undertaking period	Neither proposal is appropriate to be approved. Corporate overheads and other on-costs of \$18.8 million (2020–21 dollars) are appropriate (see section 4.4.2).
Opening common network asset base of \$419.8 million, including capital expenditure of \$175.6 million (2013–20)	Opening common network asset base of \$386.8 million, including capital expenditure of \$140.9 million (2013–20)	The proposal is not appropriate to be approved. An opening common network asset base of \$385.0 million is appropriate, with capital expenditure of \$141.9 million (2013–20) (see section 4.5).

<i>Queensland Rail DAU</i>	<i>Queensland Rail 2.1 million tonne proposal</i>	<i>QCA decision</i>
Forecast capital expenditure of \$159.4 million (2020–21 dollars) over the 2020 undertaking period	Forecast capital expenditure of \$137.7 million (2020–21 dollars) over the 2020 undertaking period	Neither proposal is appropriate to be approved. Forecast capital expenditure of \$122.7 million (2020–21 dollars) is appropriate (see section 4.6).
Coal reference tariff should underwrite unused capacity up to 97 train paths.	Coal reference tariff should underwrite unused capacity up to 97 train paths.	The proposal is appropriate to be approved (see section 4.2.2).
Inflation forecast of 2.5%	Inflation forecast of 1.64%	Neither proposal is appropriate to be approved. An inflation forecast of 2.38% is appropriate to be approved (see section 4.8).
Did not calculate a capital expenditure carryover account	Capital expenditure carryover account of \$6.6 million (2020–21 dollars)	Neither proposal is appropriate to approve. Applying a capital expenditure carryover account of \$6.0 million is appropriate to be approved (see section 4.9).
West Moreton total revenue requirement of \$310.0 million	West Moreton total revenue requirement of \$250.2 million	Neither proposal is appropriate to approve. A West Moreton total revenue requirement of \$200.4 million is appropriate to be approved (see section 4.10.1).
West Moreton reference tariff of \$22.39/'000gtk	West Moreton reference tariff of \$25.72/'000 gtk	Neither proposal is appropriate to be approved. A West Moreton reference tariff of \$21.50/'000 gtk is appropriate (see section 4.10.2).
Metropolitan reference tariff of \$18.13/'000 gtk	Metropolitan reference tariff of \$18.13/'000 gtk	The proposal is appropriate to be approved (see section 4.10.2).

4.1 Building blocks approach to regulatory pricing

We assessed the West Moreton coal pricing using the building blocks approach, which was used by Queensland Rail to develop its proposed total revenue requirement. The total revenue requirement is calculated to recover building blocks including:

- a return on assets (WACC) from a regulatory asset base (RAB)
- a return of assets from the RAB (depreciation)
- allowances for:
 - maintenance
 - operating expenses
 - taxation.

The building blocks are also the basis of an incremental West Moreton reference tariff, developed to address the low-volume forecast. This reference tariff is assessed as recovering Queensland Rail's incremental costs of providing access for West Moreton coal services, and is split into two parts:

- a weight and distance-based component (AT1), charged per gtk

- a fixed component (AT2), charged per train path.

The Metropolitan tariff is assessed using a proxy approach, and is also a two-part tariff.

4.2 Volumes and available capacity

4.2.1 Volumes

The West Moreton system is a mixed system, carrying coal and non-coal products such as livestock, grain and passengers. The total tonnage forecast for each of these traffics is used as an allocator of common costs, while the coal tonnage is used as a denominator for calculating the tariff.

The tariff proposed in Queensland Rail's 2020 DAU was based on forecast annual volumes of 9.1 million tonnes and ██████ tonnes respectively for coal and non-coal traffics. As addressed in section 2.2.2, approvals for New Hope's New Acland Stage 3 mine have now been delayed to the point that it is almost certain there will be at least a period of low volumes, even if the mine's life is ultimately extended. Considering this, Queensland Rail submitted a revised coal volume forecast of 2.1 million tonnes, originating solely from Yancoal's Cameby Downs mine. We consider it appropriate to use the volumes set out in Table 3 to assess Queensland Rail's proposed West Moreton coal total revenue requirement.

Table 3 West Moreton system volumes

	<i>Annual forecast (2020–21 to 2024–2025)</i>
Coal (gtk)	1,165 million
Coal (nt)	2.1 million
Non-coal (gtk)	██████
Non-coal (nt)	██████

Source: Queensland Rail, sub. 42: 5.

2.1 million tonne building blocks submission

Queensland Rail's 2020 DAU submission proposed costs based on a volume forecast of 9.1 million tonnes a year. While we must consider the DAU initially submitted by Queensland Rail, and either approve it or refuse to approve it, many of the costs proposed in the DAU submission are now superseded by the 2.1 million tonne submission. This chapter analyses and responds to the costs Queensland Rail has submitted for annual volumes of 2.1 million tonnes.

Summary 4.1

The QCA's decision is that the appropriate way for Queensland Rail to amend the 2020 DAU is to assess the West Moreton coal access charges based on annual volumes of 2.1 million tonnes.

4.2.2 Allocating common network costs to coal services

The West Moreton system can carry 113 trains per week travelling through the Metropolitan system to the Port of Brisbane. While coal services are the dominant users,¹⁷⁰ the West Moreton

¹⁷⁰ Queensland Rail said that in 2017–18, coal trains accounted for 95 per cent of the paths used, 98 per cent of net tonnes and 98 per cent of gtk's transported in the West Moreton system (Queensland Rail, sub. 26: 12).

system is a shared system, with small but significant use by trains carrying grain, cattle, general freight and passengers.

The 2020 DAU allocates common network costs to the coal services to reflect the share of system capacity that is available for coal services, rather than the capacity forecast to be used. Queensland Rail said that this approach would mean it could recover a higher proportion of its total efficient costs, allocate a higher proportion of fixed costs to coal users (so was aligned with principles of cost allocation) and be aligned with the public interest (because it reduced the need for government subsidies).¹⁷¹

Allocating common network costs according to the paths available for coal services continues the approach in the 2016 undertaking, where access holders were, in effect, underwriting up to 27 per cent more capacity than they were forecast to use.¹⁷²

Stakeholders said they should not be required to underwrite unused paths.¹⁷³ Yancoal said:

[T]here is no legitimate rationale for allocating to coal further costs of a network in the current context where there are no paths preserved for coal services, the network is not designed or optimised for coal services and QR is both suggesting that coal volumes are at risk of reducing further and yet that it proposes continuing to incur costs as if that is not occurring.¹⁷⁴

New Hope said:

NHG does not accept that it is appropriate that coal services should immediately be required to pay for additional capacity, beyond the capacity which is required by those services, simply because the capacity is now (or becomes, in the future) theoretically available.¹⁷⁵

[T]he cost allocation based on 87 coal paths already allocates to coal services a higher proportion of infrastructure costs than the proportion of capacity currently utilised by coal services – with New Hope and Yancoal effectively paying for paths which previous coal access holders contracted and New Hope and Yancoal have never had the benefit of.¹⁷⁶

The 87 path allocation also already involved New Hope and Yancoal paying for capacity that is not currently utilised for coal, and that issue will only be further exacerbated as volumes decline towards the 2.1 mtpa forecast.¹⁷⁷

For the 2016 undertaking, the allocation approach was based on an 87 train-path limit, to reflect what was understood to be Queensland government policy at the time and Queensland Rail's contracting practices and outcomes.¹⁷⁸

The 2020 DAU based the allocation on 97 train paths. Queensland Rail said there had not been an 87 train-path constraint since (at least) 2015, and that 97 paths were available for contracting by coal services.¹⁷⁹ It also said that it had been receiving an increased number of access requests that could translate to well in excess of the current availability.¹⁸⁰

¹⁷¹ Queensland Rail, sub. 36: 13, sub. 38.

¹⁷² QCA, *Queensland Rail's Draft Access Undertaking*, decision, June 2016: 130–146.

¹⁷³ New Hope, sub. 14: 11, sub. 24: 6, sub. 33: 6; Yancoal, sub. 16: 13, sub. 27: 12, sub. 41: 3.

¹⁷⁴ Yancoal, sub. 41: 3.

¹⁷⁵ New Hope, sub. 14: 11.

¹⁷⁶ New Hope, sub. 33: 6.

¹⁷⁷ New Hope, sub. 44: 7.

¹⁷⁸ QCA, *Queensland Rail's Draft Access Undertaking*, decision, June 2016: 121–126.

¹⁷⁹ Queensland Rail, sub. 2: 11, 16 and sub. 26: 2, 11–12. The 97 paths is the 113-path total capacity, less 14 paths preserved for primary industry rail traffic (mainly used for grain services), and two for passenger services.

¹⁸⁰ Queensland Rail, sub. 26: 12.

Queensland Rail continued to allocate costs according to a limit of 97 contracted train paths in its revised, low-volume price proposal.

Yancoal and New Hope said that increasing the train-path allocation was not appropriate, because the 87 train path constraint had long-lasting effects on coal exploration and investment. Further, it might still be applied in practice.¹⁸¹

On that basis, New Hope and Yancoal said allocation should not be increased (above 87 train paths) until Queensland Rail signed contracts that exceeded the limit¹⁸²—and should be reduced (below 87 train paths) in the face of low forecast volumes.¹⁸³

We consider that allocating fixed common costs according to capacity available to coal services to contract is appropriate, because it provides Queensland Rail with the best chance to generate adequate revenue to meet its efficient costs over time (ss. 138(2)(b), (g), 168A(a)). It is also in the interest of access seekers and holders, to the extent that the share of fixed common costs that coal services are expected to underwrite reflects the share of capacity they are able to contract (and no more) (ss. 138(2)(e), (h)). In balancing the interests of all parties, this approach promotes the economically efficient use of, operation of, and investment in the network (s. 138(2)(a)).

We have received clarifying advice from the Queensland Department of Transport and Main Roads that the 87 train path constraint no longer applies, and there is no expectation of further constraints in the future.¹⁸⁴ While Queensland Rail is yet to contract at that level (and is unlikely to in the near future, given current volume forecasts), we consider that it is able and willing to contract more paths if needed (providing an option for existing or future miners to access the asset should they require). And, while it was appropriate to reflect the long-lasting effects of the constraint when assessing tariffs for the 2016 undertaking period, we consider that it is appropriate for the 2020 DAU approach to reflect the current approach by the transport department.

On that basis, we have allocated costs on the basis of 97 train paths, reflecting the capacity available for coal train services, which includes spare capacity available for coal services to contract (see sections 4.3.6, 4.4.3 and 4.7).

Summary 4.2

The QCA's decision is that it is appropriate to approve Queensland Rail's proposal in the 2020 DAU that West Moreton system efficient costs be allocated on the basis that 97 train paths are available for contracting by coal services.

4.3 Forecast maintenance costs

Queensland Rail proposed maintenance costs of \$102.4 million for coal volumes of 2.1 million tonnes a year (see Table 4). In real terms this is 6.4 per cent less than the maintenance cost allowance used to determine the reference tariffs for the 2016 undertaking period, when forecast volumes were three times as high.

¹⁸¹ New Hope, sub. 14: 11, sub. 24: 6, sub. 33: 5–6; Yancoal, sub. 16: 13, sub. 21: 2, sub. 27: 3, sub. 41: 3.

¹⁸² New Hope, sub. 14: 11, sub. 24: 6, sub. 33: 6; Yancoal, sub. 27: 3–4, sub. 41: 3.

¹⁸³ New Hope, sub. 44: 7; Yancoal, sub. 45: 18.

¹⁸⁴ Department of Transport and Main Roads, correspondence, 24 April 2019.

Table 4 West Moreton maintenance costs proposed by Queensland Rail (\$m)

	2020–21	2021–22	2022–23	2023–24	2024–25	Total
Track	16.2	16.2	16.3	16.3	16.3	81.3
Resurfacing	■	■	■	■	■	■
Lowering	■	■	■	■	■	■
Rail grinding	■	■	■	■	■	■
Structures	3.1	2.9	2.7	2.4	2.2	13.3
Trackside system	1.5	1.5	1.5	1.5	1.5	7.3
Facilities/other	0.1	0.1	0.1	0.1	0.1	0.4
Total	20.9	20.7	20.5	20.3	20.1	102.4

Note: Values are in 2020–21 dollars.

Source: Queensland Rail, sub. 42: 14–15, 40–48.

As part of our assessment, we engaged Systra Scott Lister (Systra) to review Queensland Rail's proposed maintenance costs independently. Systra provided a report, published with our draft decision, that assessed Queensland Rail's 9.1 million tonnes a year proposal and provided preliminary recommendations for 2.1 million tonnes. We subsequently engaged Systra to assess the 2.1 million tonne proposal Queensland Rail provided in November 2019. Systra's updated report is published with this decision.¹⁸⁵

Timing and certainty

The uncertainty over future West Moreton volumes presents a challenge for Queensland Rail's maintenance planning, and for our assessment of costs. We recognise that many maintenance activities need to be planned well in advance, and efficiencies will not be achieved immediately. So, while this decision has focused on achieving cost savings through deferring maintenance and capital expenditure at low volumes, some of the biggest required reductions are forecast to take effect in the later years of the undertaking period (see Table 5 at end of this section 4.3). This will give Queensland Rail time to plan the most effective way to achieve cost reductions. It also means that it will be able to propose changed cost forecasts if a substantial increase in volumes is confirmed. We note that, should higher volumes be confirmed, it will probably be desirable to complete some capital and maintenance work while there is spare capacity, before tonnages ramp up.

Queensland Rail's 2.1 million tonne submission accepted many of the recommendations Systra made in its initial assessment of efficient maintenance costs under the 2.1 million tonne scenario, including the recommended approaches to resurfacing, structures maintenance and rail grinding. Systra's analysis of Queensland Rail's revised 2.1 million tonne costs found that Queensland Rail should take greater advantage of the maintenance savings available from the underutilisation of the track, and recommended reducing the budgets for track repair and track lowering.

4.3.1 Track repair

Track repair is the largest item in Queensland Rail's proposed maintenance budget. Track repair encompasses the repair of all small-scale defects in the track, such as rail breaks, defective welds

¹⁸⁵ Systra, *Update to West Moreton System Costs and Investment Forecasts*, prepared for the QCA, February 2020.

and wheel burns. Queensland Rail's 2.1 million tonne submission proposed a track repair budget of [REDACTED] over the term of the 2020 DAU. This represented a 26.7 per cent decrease from the [REDACTED] track repair budget proposed for the 9.1 million tonne scenario. Queensland Rail said the budget was appropriate as it was based on a linear model of maintenance costs for Queensland Rail's medium tonnage systems developed by Synergies Economic Consulting.¹⁸⁶ The model's estimate of Rosewood to Jondaryan maintenance costs required for 2.1 million tonnes was within 5 per cent of the actual costs of maintaining the Jondaryan to Columboola section. Queensland Rail said this was appropriate, as the two sections were of similar length.¹⁸⁷

We do not consider Queensland Rail's proposed track repair budget to be efficient. While Queensland Rail's medium tonnage linear maintenance cost model is based on a number of data points from its different medium tonnage systems, the calculated budget is excessive. Queensland Rail's proposed track repair budget implies that 57 per cent of this activity is unaffected by changes in tonnage. Queensland Rail's overall maintenance forecasts are similar to other systems carrying much higher tonnages, even after some West Moreton-specific costs are excluded.¹⁸⁸ We consider that the track repair costs proposed by Queensland Rail are not appropriate to approve. We consider [REDACTED] over the 2020 undertaking period an appropriate amount to approve.

4.3.2 Ballast resurfacing and track lowering

Ballast resurfacing and track lowering represent 19 per cent of Queensland Rail's proposed maintenance spending at 2.1 million tonnes a year for the 2020 DAU period. Resurfacing restores the alignment of the track, but also increases the depth of the ballast each time it is done. On substantial parts of the West Moreton system, resurfacing is done so frequently—as often as six times a year—that it becomes necessary to lower the track by removing excessive ballast. This is an inefficient and unusual means of maintaining alignment—track lowering is not commonly observed on other rail networks.

In its initial assessment of efficient costs for 2.1 million tonnes, Systra advised that Queensland Rail's proposed ballast resurfacing program was inefficient. Systra said it would be more efficient to rebuild the formation, as that would fix the underlying problem that led to the excessive resurfacing. It recommended that the necessary rebuilding (funded in the capital allowance) be completed in the first two years of the undertaking period with the goal of fixing areas that required more than two resurfacings a year.¹⁸⁹ This approach was adopted in our draft decision, which:

- halved the resurfacing allowance to [REDACTED] over the 2020 DAU period
- removed the allowance for track lowering.¹⁹⁰

¹⁸⁶ Queensland Rail sub. 42: 40–42, 45.

¹⁸⁷ Queensland Rail sub. 42: 43.

¹⁸⁸ Systra, *Update to West Moreton System Costs and Investment Forecasts*, February 2020: 21.

¹⁸⁹ Systra, *Queensland Rail West Moreton System: Review of proposed maintenance, capital & operations expenditure (Expenditure review)*, April 2019: 104.

¹⁹⁰ Systra, *Expenditure review*, April 2019: 104.

Stakeholders supported our proposed formation rebuild/resurfacing approach, as the increased capital expenditure costs were likely to be more than offset by reductions to operating expenditure. They said:

New Hope supports the consideration of trade-offs between capital and maintenance costs, and analysis of prudence on a "total cost" basis.¹⁹¹

Yancoal notes ... [Systra's recommendation that] it would be more efficient to reduce resurfacing and track lowering works, with part of Queensland Rail's proposed budget for those works reallocated instead to building formation ... Yancoal is willing to support [Systra's approach] subject to that review being refreshed for the slightly lower volume forecast being relied on for the tariffs (of 87 paths rather than the 9.1 mtpa Systra's analysis assumed).¹⁹²

Queensland Rail also endorsed moving to a less reactive approach to maintaining track alignment.

Overall Queensland Rail is supportive of the Systra report and Queensland Rail accepts in principle Systra's recommendation that there be some trade-off between resurfacing and formation rebuild.¹⁹³

However, Queensland Rail questioned the amount of resurfacing that would be avoided by adopting the approach outlined in the draft decision. Queensland Rail proposed, in addition to receiving the proposed capital allowance for formation repairs, also having a resurfacing allowance almost as high as it had originally proposed, and being given its full proposed allowance for track lowering.¹⁹⁴

While the approach to ballast under 2.1 million tonnes of annual volumes will differ from that for 9.1 million tonnes, we have pursued this topic in this decision, given the expectations of Queensland Rail and its customers that volumes will rise. We consider that any updated tariff submission from Queensland Rail during the term of the 2020 undertaking will need to include an efficient approach to the use of ballast. It will need to take account of the total cost, in a way that efficiently balances capital and maintenance spending, having regard to the amount of spare capacity on the network.

Formation rebuilding under the 2.1 million tonnes scenario

In its revised cost forecast for 2.1 million tonnes, Queensland Rail proposed a ballast resurfacing and track lowering budget of [REDACTED].¹⁹⁵ While Queensland Rail adopted Systra's recommended [REDACTED] resurfacing allowance, it maintained the track lowering allowance of [REDACTED] proposed in the DAU, stating that Systra's proposal was not appropriate at the lower volume.

[Queensland Rail] is not convinced that [substituting ballast resurfacing and track lowering for formation rebuild] is the appropriate strategy for the 2.1 mtpa scenario, where other capital works are being proposed for deferral and Queensland Rail will be taking the longer-term risk that investment will not be recovered.¹⁹⁶

We consider that Queensland Rail's approach to the trade-off between formation rebuild and ballast resurfacing is inefficient. While we acknowledge that Queensland Rail has adopted Systra's recommended approach to ballast resurfacing, we consider that its proposed budget for track lowering activities under 2.1 million tonnes remains excessive. We consider that the formation

¹⁹¹ New Hope, sub. 24: 14.

¹⁹² Yancoal, sub. 27: 10–11.

¹⁹³ Queensland Rail, sub. 26: 7.

¹⁹⁴ Queensland Rail sub. 26: 7.

¹⁹⁵ Queensland Rail sub. 42: 45–47.

¹⁹⁶ Queensland Rail sub. 42: 47.

repair program proposed by Queensland Rail will greatly reduce the need to lower track.¹⁹⁷ However, as noted in Systra's updated analysis, some track lowering may be necessary to maintain track stability while the formation repair program is underway.¹⁹⁸ We consider [REDACTED] to be an appropriate budget for these works, bringing the appropriate ballast resurfacing and track lowering budget to [REDACTED] [REDACTED] for resurfacing, plus [REDACTED] for lowering).

4.3.3 Timber bridge maintenance

Queensland Rail's 2.1 million tonnes submission proposed a budget of [REDACTED] for maintaining timber bridges over the period of the 2020 DAU. This represents an increase from the [REDACTED] budget Queensland Rail proposed in the 2020 DAU for volumes of 9.1 million tonnes. Queensland Rail said the increase in maintenance costs for timber bridges was in line with a [REDACTED] reduction in capital expenditure on timber bridge replacement (see more detailed discussion in section 4.6.1 below).¹⁹⁹ Stakeholders generally supported a 'total expenditure' approach to assessing maintenance.²⁰⁰

We consider that Queensland Rail's proposed timber bridge maintenance budget is appropriate from a total cost approach, especially considering that sections of the line are underused and may remain so, or be closed completely, with the construction of Inland Rail.

4.3.4 Efficiencies gained from underutilisation of the track

The reduction in forecast annual volumes from 9.1 million tonnes to 2.1 million tonnes represents a significant shift in the way that the West Moreton system is required to run. With coal volumes of 2.1 million tonnes, the West Moreton system can service all forecast traffic (coal and non-coal) with three to five trains in each direction per day. Coal volume of 9.1 million tonnes would have required approximately 13 return trains per day just to service coal customers. However, Queensland Rail's maintenance cost submission contains no proposal to change the operation of the line from that used at higher volumes.

We consider that, given the underutilisation of the line, Queensland Rail should alter the operation of the line with the aim of reducing the load on the track and the associated maintenance costs. This can be achieved through slowing the speed of the trains, which reduces the dynamic load and associated damage to the track, and through mothballing duplicated sections of track between Rosewood and Helidon, which are not required to provide 2.1 million tonnes a year. Systra estimates that these measures would save \$2.6 million in maintenance costs per year.²⁰¹

As discussed above, we recognise that maintenance activity needs to be planned well in advance, and that significant operating changes take time to implement. Our decision is that Queensland Rail should implement a \$2.6 million reduction to its annual maintenance allowance for the last two years of the 2020 undertaking period.

¹⁹⁷ Queensland Rail's proposed capital expenditure includes a [REDACTED] formation rebuild program.

¹⁹⁸ Systra, *Update to West Moreton System Costs and Investment Forecasts*, February 2020: 22.

¹⁹⁹ Queensland Rail, sub. 42: 30.

²⁰⁰ New Hope sub. 24: 14; Yancoal, sub. 27: 12.

²⁰¹ Systra, *Update to West Moreton System Costs and Investment Forecasts*, February 2020: 23.

4.3.5 Other maintenance costs

Systra also made a number of other findings, including:

- The scope of works and proposed costs put forward by Queensland Rail for trackside systems, facilities, track inspections, planning and technical support and 'other track' are reasonable.
- On a per kilometre basis, West Moreton's maintenance costs, excluding track lowering, are significantly higher than those of comparators.²⁰²

QCA decision

We consider Queensland Rail's proposed total revenue requirement includes inefficient maintenance costs, which is inconsistent with the pricing principles in the QCA Act (s. 168A(a)). This would not be in the interests of access seekers and holders (ss. 138(2)(e), (h)). Therefore we consider that the proposed maintenance costs are not appropriate to be approved.

Our decision is total maintenance costs of \$85.3 million (2020–21 dollars) are appropriate for the 2020 DAU. In making this decision, we took into account:

- operational efficiencies that Queensland Rail can achieve, highlighted by stakeholders²⁰³
- Systra's benchmarking, which found Queensland Rail's proposed overall maintenance costs for 2.1 million tonnes are significantly higher than those of comparators²⁰⁴
- Systra's assessment that many aspects of Queensland Rail's maintenance cost proposal are appropriate to approve—for example, trackside systems, facilities, track inspections, planning and technical support.

We consider a total revenue requirement that includes efficient maintenance costs is in Queensland Rail's interest, and in the interests of access seekers and holders (ss. 138(2)(b), (e), (h)). It is also consistent with the pricing principles in the QCA Act (s. 168A(a)).

Table 5 West Moreton maintenance costs, QCA decision (\$m)

	2020–21	2021–22	2022–23	2023–24	2024–25	Total	Change ^a
Track	14.7	14.7	13.3	11.2	11.2	65.1	(16.2)
Track repair	■	■	■	■	■	■	■
Resurfacing	■	■	■	■	■	■	■
Lowering	■	■	■	■	■	■	■
Structures	3.1	2.9	2.7	2.2	2.0	12.9	(0.4)
Trackside system	1.5	1.5	1.5	1.2	1.2	6.8	(0.5)
Facilities/other	0.1	0.1	0.1	0.1	0.1	0.4	(0.0)
Total	19.4	19.2	17.5	14.7	14.5	85.3	(17.1)

^a 'Change' refers to the difference between the approved maintenance costs and those proposed in Queensland Rail's 2.1 million tonne submission.

Note: Values are in 2020–21 dollars. The \$2.6 million reduction in the final two years of the undertaking period has been applied to all maintenance categories proportionately.

²⁰² Systra, *Update to West Moreton System Costs and Investment Forecasts*, February 2020: 21.

²⁰³ New Hope, sub. 14: 26; Yancoal, sub. 46: 17.

²⁰⁴ Systra, *Update to West Moreton System Costs and Investment Forecasts*, February 2020: 20–21.

Summary 4.3

The QCA's decision is that the appropriate way for Queensland Rail to amend the 2020 DAU is to apply a maintenance allowance of \$85.3 million (2020–21 dollars) over the five-year term of the undertaking.

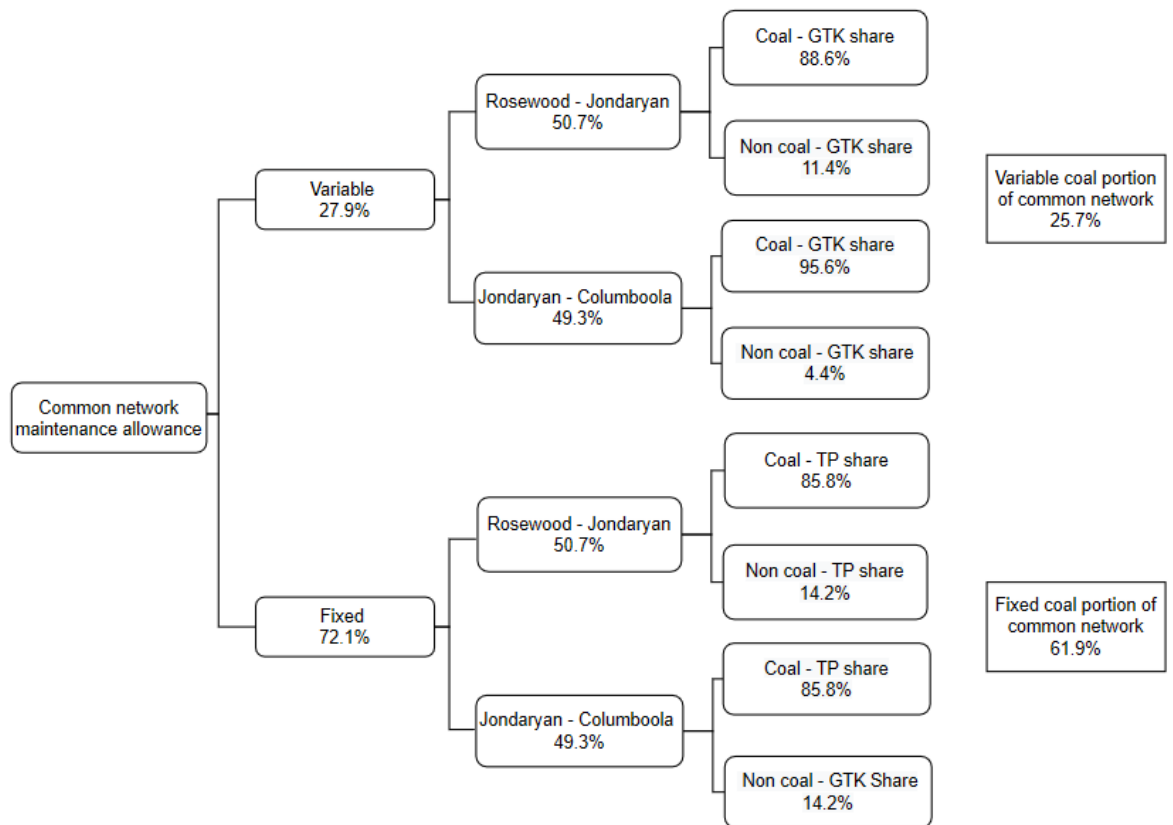
4.3.6 Allocation of maintenance costs to coal

Queensland Rail derived its maintenance costs forecasts for annual volumes of 2.1 million tonnes for coal services and ████████ tonnes for non-coal (including passenger) services.²⁰⁵ To allocate costs between coal and non-coal traffics, Queensland Rail proposed to split maintenance into fixed and variable categories and then allocate:

- the fixed component of costs to coal, on the basis of coal's share of train paths
- the variable component to coal, on the basis of coal's share of gross tonne kilometres.

We consider it is appropriate to use this allocation approach, but have adjusted the allocation to reflect the maintenance forecasts in this decision (illustrated in Figure 6).

Figure 6 Allocation of West Moreton maintenance costs to coal



Note: The variable and fixed percentages for 2.1 million tonnes are calculated by pro rata reducing the variable portion of the modelled 6.25 million tonnes split (57.3% fixed 42.7% variable) in line with the reduction in volume.

²⁰⁵ Queensland Rail sub. 42: 5.

4.4 Forecast operating costs

Queensland Rail proposed an annual operating cost forecast of \$8.2 million for coal volumes of 2.1 million tonnes (Table 6).²⁰⁶ In real terms, this is similar to the annual allowance under the 2016 DAU.

Table 6 West Moreton operating costs proposed by Queensland Rail (\$m)

	2020–21	2021–22	2022–23	2023–24	2024–25	Total
Train control	3.47	3.47	3.47	3.47	3.47	17.36
Corporate overheads and other on-costs	4.76	4.76	4.76	4.76	4.76	23.81
Total	8.24	8.24	8.24	8.24	8.24	41.18

Note: Values are in 2020–21 dollars.

Source: Queensland Rail sub. 42: 16.

We engaged Systra to assess Queensland Rail's proposed operating costs independently. As with the proposed maintenance costs, Systra's analysis of Queensland Rail's operating costs for our draft decision was based on a volume forecast of 9.1 million tonnes a year, with preliminary recommendations made for 2.1 million tonnes. We subsequently engaged Systra to review the cost allowances proposed in Queensland Rail's 2.1 million tonnes proposal submitted in November 2019. Systra reviewed the bottom-up costing of train control provided by Queensland Rail and benchmarked the remaining costs against industry benchmarks.

4.4.1 Train control

Queensland Rail said in its November 2019 tariff submission that it needed 90 per cent of the resources for train control at 2.1 million tonnes of annual volumes (six trains a day)²⁰⁷, as it did for 9.1 million tonnes (26 trains a day). This was because train control expenditure was largely fixed and did not vary with volume.

It therefore proposed a train control budget of \$17.4 million for the 2020 DAU period. The new train control cost forecast is the same as that in Systra's 2019 report. Systra found that the network control officer resources, which make up 84 per cent of the train control costs, were fixed due to the large distances and the direct train control used for network operations in the far west.²⁰⁸

Accordingly, having regard to Systra's analysis, we consider Queensland Rail's proposed allowance of \$17.4 million is appropriate for train control in a 2.1 million tonne scenario.

Summary 4.4

The QCA's decision is that the appropriate way for Queensland Rail to amend the 2020 DAU is to apply a train control allowance of \$17.4 million (2020–21 dollars) over the five-year term of the 2020 DAU, as proposed in its 2.1 million tonne submission.

²⁰⁶ Queensland Rail, sub. 42: 16.

²⁰⁷ Volumes of 2.1 million tonnes require approximately three loaded and three unloaded coal trains per day.

²⁰⁸ Systra, *Expenditure review*, April 2019: 144.

4.4.2 Corporate overheads and other on-costs

Queensland Rail proposed in its submission on West Moreton coal tariffs at 2.1 million tonnes that corporate overhead and other operating costs be calculated as 9.25 per cent of total costs. Applying that to its proposed 2.1 million tonne direct costs results in corporate overhead and other costs of \$23.8 million over the 2020 DAU period.

Systra's analysis of corporate overheads and other on-costs determined that 9.25 per cent of total direct costs is within Systra's benchmarked estimate.²⁰⁹ Applying this on-cost ratio to the cost estimates developed in this decision results in a revised on-cost estimate 21 per cent lower than Queensland Rail's estimate of on-costs.²¹⁰ This approach addresses to some extent stakeholders' concern that Queensland Rail's operating costs were fixed and would not vary with activity.²¹¹

We consider approving Queensland Rail's proposed corporate overheads and on-cost allowance includes inefficient costs, which is inconsistent with the pricing principles in the QCA Act (s. 168A(a)). This is not in the interests of access seekers and holders (ss. 138(2)(e), (h)). Therefore they are not appropriate to approve.

Having regard to Systra's assessment, we consider corporate overheads and other on-costs of \$18.8 million are appropriate to be approved.

We consider a total revenue requirement that includes efficient corporate overheads and on-costs is in Queensland Rail's interest, and in the interests of access seekers and holders (ss. 138(2)(b), (e), (h)). It is also consistent with the pricing principles in the QCA Act (s. 168A(a)).

Table 7 West Moreton corporate overheads and other on-costs estimated by Systra (\$m)

	2020–21	2021–22	2022–23	2023–24	2024–25	Total
Corporate overheads and other on-costs	3.8	3.8	3.8	3.8	3.8	18.8

Notes: Values are in 2020–21 dollars. Corporate overhead allowance calculated by applying the benchmark estimated by Systra (9.25%) to the efficient costs detailed in this decision.

Source: Systra, *Update to West Moreton System Costs and Investment Forecasts*, February 2020.

Summary 4.5

The QCA's decision is that the appropriate way for Queensland Rail to amend the corporate overheads and on-costs in the 2020 DAU is to use a forecast of \$18.8 million (2020–21 dollars) over the five-year term of the undertaking.

4.4.3 Allocation of operating costs to coal

Queensland Rail derived operating cost forecasts for coal volumes of 2.1 million tonnes a year, plus forecast non-coal volumes. To allocate costs between coal and non-coal traffics, Queensland Rail proposed to split operating costs into fixed and variable categories and then to allocate the fixed component of costs to coal on the basis of coal's share of train paths and, the variable

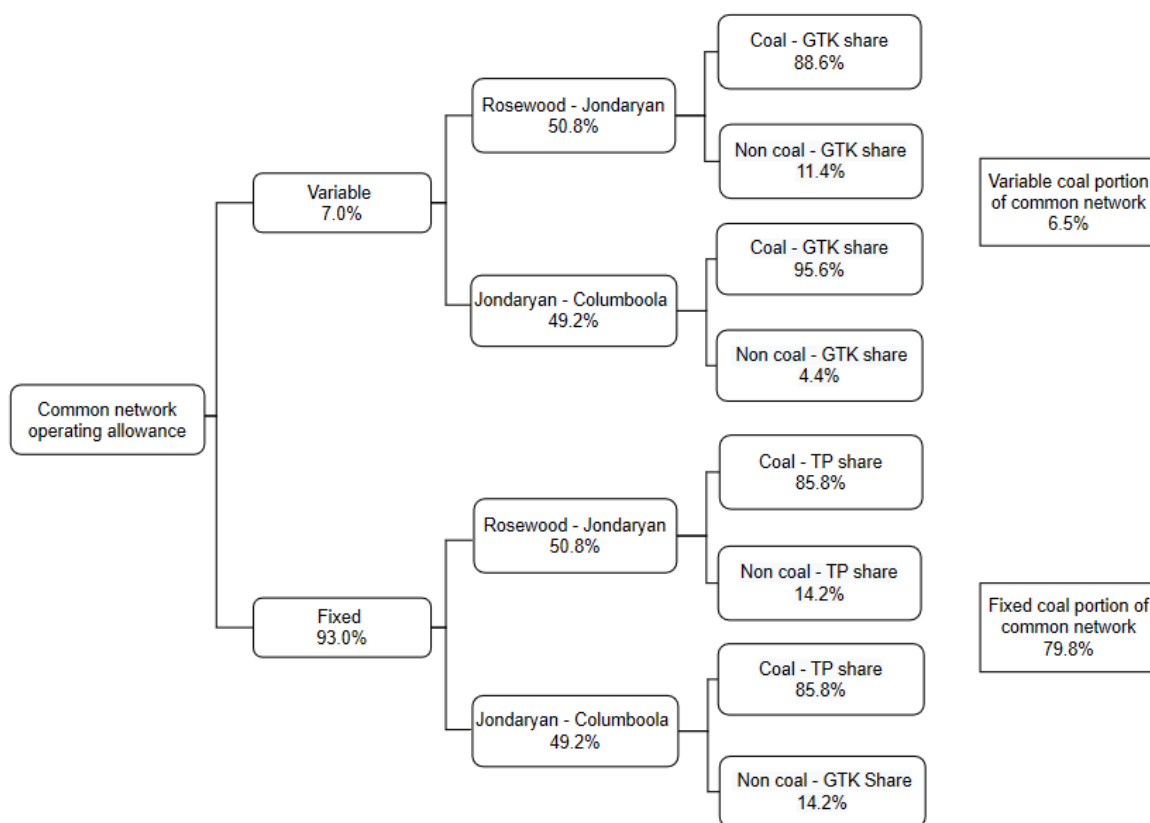
²⁰⁹ Systra, *Expenditure Review*, April 2019: 146.

²¹⁰ The \$22.0 million Toowoomba Range Slope Stabilisation project has been excluded from the direct cost build-up used to calculate on-costs. See Systra, *Update to West Moreton System Costs and Investment Forecasts*, February 2020: 30.

²¹¹ Yancoal, sub. 16: 17; New Hope, sub. 14: 23.

component on the basis of coal's share of gross tonne kilometres. We consider it appropriate to use this allocation approach (illustrated in Figure 7).

Figure 7 Allocation of West Moreton operating costs to coal



Note: The fixed/variable percentages for 2.1 million tonnes are calculated by pro rata reducing the variable portion of the modelled 6.25 million tonne split (81.6% fixed 18.4% variable) in line with the reduction in train paths.

4.5 Opening asset base—West Moreton common network asset base

Queensland Rail proposed to roll forward the West Moreton common network asset base at inflation, noting that it included capital indicators for the years 2018–19 and 2019–20 (Table 8).²¹²

Table 8 Common network asset base roll-forward proposed by Queensland Rail (\$m)

	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19	2019–20	2020–21
Opening asset value	270.6	282.9	299.4	316.4	332.5	340.1	364.9	386.8
Capex	11.7	21.0	22.0	20.4	12.8	27.7	25.3	
Inflationary gain	8.9	4.4	4.6	6.0	5.8	8.8	9.4	
Less depreciation	(8.3)	(8.9)	(9.6)	(10.3)	(11.0)	(11.8)	(12.8)	
Closing asset value	282.9	299.4	316.4	332.5	340.1	364.9	386.8	

Source: Queensland Rail, sub. 42: 8.

²¹² Queensland Rail, sub. 42: 8.

The capital indicator is an ex ante estimate of the capital expenditure that will be incurred during a regulatory period. As detailed in the 2020 DAU, the capital indicator does not imply we have accepted that level of capital expenditure into a RAB (sch. E, cl. 2.1(f)). Instead, at the end of each year Queensland Rail is required to provide us with a capital expenditure claim. We then make a decision on the expenditure claim, and the approved capital expenditure replaces the capital indicator in the RAB. Further to this, in the event that the approved capital expenditure differs from the relevant capital indicator, this difference is entered into a capital expenditure carryover account (see section 4.9 of this decision).

Our decision is to approve Queensland Rail's approach to determining the common network opening asset value; however, we require Queensland Rail to amend its 2020 DAU to include submitted capital expenditure, and actual inflation for 2018–19 (Table 9).

Table 9 Common network asset base roll-forward, QCA decision (\$m)

	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19	2019–20	2020–21
Opening asset value	270.6	282.9	299.4	316.4	332.5	340.1	363.1	385.0
Capex	11.7	21.0	22.0	20.4	12.8	28.7	25.3	
Inflationary gain	8.9	4.4	4.6	6.0	5.8	6.0	9.4	
Less depreciation	(8.3)	(8.9)	(9.6)	(10.3)	(11.0)	(11.7)	(12.7)	
Closing asset value	282.9	299.4	316.4	332.5	340.1	363.1	385.0	

Note: Including actual submitted capital expenditure for 2018–19 and the capital indicator for 2019–20.

We consider it appropriate to use submitted amounts and actual inflation, where known, rather than forecasts, as this is in the interests of Queensland Rail and access seekers and holders (ss. 138(2)(b), (e), (h)).

Summary 4.6

The QCA's decision is that the appropriate way for Queensland Rail to amend its 2020 DAU is to apply a common network opening asset value of \$385.0 million, including actual submitted capital expenditure and actual inflation in 2018–19.

4.6 Forecast capital expenditure

Queensland Rail proposed forecast capital expenditure (the capital indicator) of \$137.7 million for annual West Moreton system volumes of 2.1 million tonnes over the five-year 2020 DAU period (Table 10).

Table 10 Capital expenditure forecast proposed by Queensland Rail (\$m)

	2020–21	2021–22	2022–23	2023–24	2024–25	Total
Timber bridge upgrade						
Formation repairs						
Culvert replacement						
Track reconditioning						
Re-sleepering						
Re-railing						
Level crossing reconditioning						
Other track						
Signalling						
Telecoms						
Toowoomba Slope Stabilisation	18.3	3.7	0.0	0.0	0.0	22.0
Total	50.9	27.1	19.0	18.6	22.0	137.7

Note: Values are in 2020–21 dollars.

Source: Queensland Rail sub. 42: 12.

Although the capital indicator is reconciled to the approved actual capital expenditure through the capital expenditure carryover account, we consider it appropriate to assess the prudence of Queensland Rail's proposed capital expenditure approach so that the capital indicator is as accurate as possible. We engaged Systra to provide independent advice to assist with this assessment. As with the maintenance and operating costs, Systra's initial analysis, published with our draft decision, assessed Queensland Rail's 9.1 million tonne a year capital expenditure forecast, with additional recommendations made for 2.1 million tonnes. We subsequently engaged Systra to assess the 2.1 million tonne proposal Queensland Rail provided in November 2019, with a focus on achieving cost savings through deferring capital expenditure. Systra's analysis highlighted the importance of developing a capital expenditure budget in the context of the overall asset management philosophy, through a 'total cost approach'.²¹³

4.6.1 Timber bridge replacement

Queensland Rail's 2.1 million tonne submission proposed a timber bridge replacement budget of [REDACTED]. This represented a 42 per cent reduction from the [REDACTED] budget Queensland Rail proposed in the 2020 DAU. Queensland Rail said it was proposing to defer capital expenditure on timber bridges through increased maintenance expenditure, given the uncertainty about future volumes. It said this was efficient from a 'total cost' approach.

Systra's report supported Queensland Rail's approach to timber bridge replacement, noting that Queensland Rail's updated submission reflected the approach recommended in Systra's initial analysis of the 2.1 million tonne scenario. In this analysis, Systra found that Queensland Rail could reduce the scope of its proposed timber bridge replacement program and extend the life of the

²¹³ Systra, *Expenditure review*, April 2019: 104.

bridges through increased maintenance expenditure, implementing speed restrictions and mothballing bridges on duplicated sections of track.²¹⁴

Having regard to Systra's analysis, we accept Queensland Rail's revised timber bridge replacement budget as appropriate to approve.

4.6.2 Re-sleepering and re-railing

Queensland Rail's 2.1 million tonne submission proposed budgets for re-sleepering and re-railing of [REDACTED] and [REDACTED] respectively. While Queensland Rail noted that Systra had recommended reductions from both of these works in its initial assessment of the 2.1 million tonne scenario, Queensland Rail maintained that its originally proposed budgets remained appropriate because:

- Re-sleepering works were independent of traffic because the work was determined by time-based deterioration of the timber sleepers, rather than traffic-based deterioration. Queensland Rail stated that re-sleepering was routinely performed on its very low tonnage systems due to this time-based deterioration profile.²¹⁵
- The re-railing capital indicator initially proposed had already been reduced appropriately for the low volume scenario.²¹⁶
- For both re-railing and re-sleepering work, Queensland Rail, not access holders, was taking the risk of stranding of these works from either low utilisation or the completion of Inland Rail.²¹⁷

In its updated assessment of the 2.1 million tonne scenario, Systra recommended the budget for these works be reduced in line with the recommendations made in its initial assessment. Systra found that the works had scope to be value-engineered under the context of an operational model that made use of slower train speeds and the mothballing of some duplicated sections of track.²¹⁸

Both Yancoal and New Hope made submissions in support of deferring capital expenditure while low volumes persisted.²¹⁹

Having regard to Systra's assessment, we consider that Queensland Rail's proposed capital indicators for re-sleepering and re-railing works are not appropriate to approve. Given the ongoing volume uncertainty associated with New Acland Stage 3 approvals and Inland Rail, we consider it is appropriate for Queensland Rail to defer capital expenditure where possible. We consider that a budget of [REDACTED] for re-sleepering works and [REDACTED] for re-railing works is appropriate to be approved.

4.6.3 Level crossing signalling upgrade

Queensland Rail's 2.1 million tonne submission proposed a budget of [REDACTED] for level crossing signalling upgrades. This budget was unchanged from the 9.1 million tonne submission as Queensland Rail did not consider the works to be tonnage dependent.²²⁰

²¹⁴ Systra, *Expenditure Review*, April 2020: 112.

²¹⁵ Queensland Rail sub. 42: 32.

²¹⁶ Queensland Rail sub. 42: 32.

²¹⁷ Queensland Rail sub. 42: 32.

²¹⁸ Systra, *Update to West Moreton System Costs and Investment Forecasts*, February 2020: 27.

²¹⁹ New Hope sub. 44: 6; Yancoal sub. 46: 18.

²²⁰ Systra, *Expenditure review*, April 2019: 78.

We consider that the scope of the level crossing signalling upgrade works is excessive for annual volumes of 2.1 million tonnes, or six trains a day. While we accept that the safety purpose of level crossings makes these pieces of infrastructure more critical, the underutilisation of the line means the risk being mitigated by the level crossing expenditure is reduced.²²¹ Given the ongoing volume uncertainty associated with New Acland Stage 3 approvals and Inland Rail, we consider it is appropriate for Queensland Rail to defer some of these works and, if appropriate, submit new spending forecasts for higher volumes when the outlook is clearer or if an urgent safety case emerges. In its analysis, Systra suggested the scope of the level crossing signalling upgrade works be reviewed and value engineered to take advantage of slower trains and the mothballing of duplicated sections of track at low volumes, and recommended that the proposed budget be halved.²²²

Having regard to Systra's assessment, we consider that Queensland Rail's proposed capital indicator for level crossing signalling upgrades is inappropriate. We consider that a budget of [REDACTED] is appropriate to approve.

4.6.4 Culvert replacement

Queensland Rail's 2.1 million tonne submission proposed a culvert replacement budget unchanged from the costs initially submitted for annual volumes of 9.1 million tonnes—[REDACTED] over the 2020 DAU period. Queensland Rail stated that the proposed culvert replacement program was required to maintain the safety and reliability of the network, including at 2.1 million tonnes. Queensland Rail also noted that all capital expenditure was reviewed for prudence ex-post.²²³

We consider that Queensland Rail's culvert replacement program is excessive for a system carrying 2.1 million tonnes of coal a year. While we accept that the safety implications of the culverts make these pieces of infrastructure more critical, the underutilisation of the line means that capital expenditure should be deferred where possible, and that Queensland Rail has scope to implement changes in maintenance and operation practices to extend the operational life of the culverts. In its analysis, Systra recommended that the culvert replacement program should be value engineered through the use of expedient engineering methods such as propping culverts and through the use of speed restrictions or restricting traffic to good weather.²²⁴

Having regard to Systra's analysis, we consider that Queensland Rail's proposal is not appropriate to approve, and that a budget of [REDACTED] over the 2020 undertaking period would be appropriate.

4.6.5 Other capital expenditure

Queensland Rail's proposed budgets for a number of works were assessed by Systra as reasonable, including formation renewal, level crossing reconditioning, minor signalling renewal and remote monitoring systems roll-out. Further, Queensland Rail's 2.1 million tonne submission adopted Systra's recommendation in its 2019 report to defer a number of capital projects. These included the Rangeview Cable Route Upgrade Copper to Fibre project and five signalling projects.

²²¹ Queensland Rail's proposed level crossing maintenance expenditure, contained within trackside systems maintenance, has been accepted as appropriate to approve.

²²² Systra, *Update to West Moreton System Costs and Investment Forecasts*, February 2020: 27–28.

²²³ Queensland Rail sub. 42: 31.

²²⁴ Systra, *Update to West Moreton System Costs and Investment Forecasts*, February 2020: 29.

QCA decision

We consider approving Queensland Rail's proposed capital expenditure would allow it to recover inefficient costs, which is inconsistent with the pricing principles in the QCA Act (s. 168A(a)). This would not be in the interests of access seekers and holders (ss. 138(2)(e), (h)). Therefore the proposed capital expenditure is not appropriate to approve.

Our decision is that a capital indicator of \$122.7 million (2020–21 dollars) is appropriate for the 2020 DAU. In making this decision, we have taken into account:

- stakeholder support for deferring capital expenditure while volumes remain low.²²⁵
- Systra's assessment that Queensland Rail can make greater use of speed restrictions and mothball duplicated sections of track while volumes remain low.²²⁶

We consider a total revenue requirement that includes efficient capital expenditure forecasts is in Queensland Rail's interest, and in the interests of access seekers and holders (ss. 138(2)(b), (e), (h)). It is also consistent with the pricing principles in the QCA Act (s. 168A(a)).

Table 11 2020 DAU capital indicator, QCA decision (\$m)

	2020-21	2021-22	2022-23	2023-24	2024-25	Total	Change ^a
Timber bridge upgrade							
Formation repairs							
Culvert replacement							
Track reconditioning							
Re-sleepering							
Re-railing							
Level crossing reconditioning							
Other track							
Signalling							
Telecoms							
Toowoomba Slope Stabilisation	18.3	3.7	0.0	0.0	0.0	22.0	0
Total	41.9	28.3	21.9	15.4	15.3	122.7	(15.0)

^a 'Change' refers to the difference between the approved capital indicator and that proposed in Queensland Rail's 2.1 million tonne submission.

Note: Values are in 2020–21 dollars.

Summary 4.7

The QCA's decision is that the appropriate way for Queensland Rail to amend the 2020 DAU is to apply a capital indicator of \$122.7 million (2020–21 dollars).

²²⁵ New Hope sub. 44: 6; Yancoal sub. 46: 18.

²²⁶ Systra, *Update to West Moreton System Costs and Investment Forecasts*, February 2020: 27.

4.7 Coal's share of the common network asset base

Queensland Rail included an opening value for coal's share of the common network asset base of \$318.4 million, in its November 2019 updated proposal. This was little changed from its 2020 DAU proposal. It updated its capital expenditure forecasts, to reflect its 2.1 million tonne proposal, giving a closing asset value of \$425.3 million (see Table 12).²²⁷

Table 12 Coal share of the common network asset base proposed by Queensland Rail (\$m)

	2020–21	2021–22	2022–23	2023–24	2024–25
Opening asset value	318.4	360.6	381.8	395.5	408.8
Capex	45.4	24.8	17.8	17.8	21.7
Inflationary gain	8.5	9.3	9.8	10.1	10.5
Less depreciation	(11.6)	(12.9)	(13.8)	(14.7)	(15.6)
Closing asset value	360.6	381.8	395.5	408.8	425.3

Source: Queensland Rail sub. 42: 12.

Our decision on coal's share of the West Moreton common network asset base reflects submitted (as opposed to forecast) capital expenditure and actual inflation for 2018–19 (see section 4.5). This gives an opening asset value of \$316.9 million. We have also reflected efficient capital indicator allowances for the 2020 undertaking period and our inflation forecast, to give a closing asset value of \$406.8 million (see Table 13).

Table 13 Coal share of the common network asset base, QCA decision (\$m)

	2020-21	2021-22	2022-23	2023-24	2024-25
Opening asset value	316.9	350.4	372.0	387.8	397.5
Capex	37.0	25.5	20.3	14.5	14.8
Inflationary gain	8.0	8.6	9.1	9.4	9.6
Less depreciation	(11.4)	(12.6)	(13.5)	(14.3)	(15.1)
Closing asset value	350.4	372.0	387.8	397.5	406.8

We consider it appropriate to use submitted (as opposed to forecast) capital expenditure and actual inflation, and efficient capital indicator allowances, as this is in the interests of Queensland Rail and access seekers and holders (s. 138(2)(b), (e), (h)).

Summary 4.8

The QCA's decision is that the appropriate way for Queensland Rail to amend its 2020 DAU is to reflect Queensland Rail's claimed capital expenditure in its asset base, giving an opening value in July 2020 of \$316.9 million.

²²⁷ Queensland Rail, sub. 42: 8.

4.8 Inflation

Queensland Rail's West Moreton reference tariff is calculated using an estimate of expected inflation across the undertaking period. This estimate affects the reference tariff through:

- (a) the inflation building block, which is deducted from the return on assets, and
- (b) escalating the RAB and costs, such as maintenance, operational and capital expenditure, across the undertaking period.

An estimate of expected inflation is applied to these areas, because Queensland Rail's regulatory model is intended to provide a real return. Queensland Rail's WACC is a nominal WACC, so it includes an implicit level of expected inflation. As Queensland Rail receives compensation for inflation ex post—through the escalation of its RAB at outturn inflation through the roll-forward process—an estimate of expected inflation is deducted ex ante from the allowable revenue to prevent potential double-compensation for inflation, thereby providing a real return.

Expected inflation is not observable, so an estimate of expected inflation is used. Because the inflation estimate has a material effect on the reference tariff, it is desirable that the forecast of expected inflation is as accurate as possible.

Queensland Rail's proposal

Queensland Rail's proposal applied an inflation estimate of 2.5 per cent to its RAB, cost escalations and inflation building block. However, Queensland Rail also said the reference tariffs and allowable revenues for the DAU period should be calculated using an inflation estimate of 1.64 per cent.²²⁸ It derived this estimate using:

- a forecast period of five years
- an average of the RBA forecast method estimate and the break-even forecast method estimate.

Queensland Rail submitted that the RBA forecast method—used in our UT5 final decision²²⁹—did not produce an estimate that was statistically superior to the break-even forecast method, and so it was appropriate to use an average of estimates from the two methods.²³⁰

4.8.1 Forecast period

The inflation forecast proposed by Queensland Rail was developed for a five-year forecast period. Queensland Rail did not provide an argument to support this choice.²³¹

As discussed above, Queensland Rail's nominal WACC includes an implicit level of inflation. This implicit inflation is included in the risk-free rate, which is estimated over a 10-year bond term (see section 3.2.3). We consider that estimating inflation over a 10-year period to match the term of the risk-free rate is appropriate, as it most accurately reflects the relevant term of expected inflation for the regulatory context.

²²⁸ Queensland Rail, sub. 42: 8.

²²⁹ The RBA forecast method was used in the December 2018 final decision on Aurizon Network's 2017 access undertaking.

²³⁰ Queensland Rail, sub. 20: 13.

²³¹ Queensland Rail, sub. 42: 8.

4.8.2 Forecast method

The break-even forecast method

The break-even forecast method is a market-based inflation estimate that is calculated by taking the difference in yield between inflation-indexed Commonwealth Government Securities (CGS) and nominal CGS. The advantage of the break-even approach is that it is market-based and therefore indicates the inflation expectations of investors, who have a significant incentive to be well informed. However, this approach relies on a number of assumptions, including:

- Nominal and indexed bonds are available with the same maturity dates.
- Inflation-indexed bonds compensate for inflation over the period from the current point in time until their maturity (i.e. there are no lags).
- Investors are indifferent to inflation risk on nominal bonds.
- Nominal and indexed bonds have the same liquidity.

Of these assumptions, the last two—investors are indifferent to inflation risk and that the indexed and nominal bonds have the same liquidity—are the most significant.

Firstly, nominal bonds carry inflation risk, which indexed bonds do not. An investor who is risk-averse would require a positive (or if expectations are deflationary, a negative) risk premium on nominal bonds as compared to indexed bonds to be indifferent between the two. Secondly, the market for indexed bonds is significantly smaller than that of nominal bonds.²³² While we acknowledge Houston Kemp's observation that the supply of indexed bonds has increased, it remains comparatively illiquid when compared to the market for nominal bonds—and it is the relative liquidity of the two instruments that matters. This represents an increased risk to the investor, who can be less certain of selling the asset quickly without affecting the price, and so commands a premium.

The inflation risk premium on nominal bonds and liquidity premium on indexed bonds are commonly understood to somewhat counteract each other. However, this is not certain as academic literature indicates that 'the inflation risk premium' bias could be in either direction.²³³ Given this uncertainty, the net effect of the two premiums is difficult to quantify and changes over time. Finlay and Wende estimated that the net impact of both the inflation risk and illiquidity effects varies from 2.5 per cent to –1.0 per cent.²³⁴ We consider that, in the absence of reliable methods to quantify these effects, the break-even method is an unreliable estimator of expected inflation and inappropriate to be used for the inflation forecast method for the 2020 DAU. This is supported by the RBA, which stated that the shortcomings discussed above probably make market-based inflation measures such as the break-even method unviable.²³⁵

²³² Australian Office of Financial Management, *Annual Report 2018–19*, September 2019: 24.

²³³ If there are deflationary concerns, then the inflation risk premium can be negative. If this is the case, then an estimate of expected inflation using the indexed bond method will be biased down. For the United States, in the more stable inflationary period of 2000–2008, estimates of the inflation risk premium are negative, statistically significant, and up to –0.50 per cent. See: OV Grishchenko & J Huang, *Inflation Risk Premium: Evidence from the TIPS Market*, Finance and Economics Discussion Series, working paper 2012–06, United States Federal Reserve Board, 2012.

²³⁴ R Finlay & S Wende, 'Estimating Inflation Expectations with a Limited Number of Inflation-Indexed Bonds', *International Journal of Central Banking*, vol. 8, no. 2, 2012.

²³⁵ RBA, *Regulatory treatment of inflation—inflation expectations*, letter to the Australian Energy Regulator, 5 July 2017, p.1.

The RBA forecast method

The RBA forecast method takes the geometric mean of the RBA inflation forecast a year and two years out, and the midpoint of the RBA target range for the remaining years of the forecast period. We consider that this method provides an accurate estimate of long-term inflation expectations. Research by the AER shows that, so long as the RBA is perceived to be effective at managing outturn inflation, long-term inflation expectations are anchored to the RBA's target band and relatively stable over time.²³⁶ We consider that there is insufficient evidence to challenge this perception and so the assumption that long-term inflation expectations are anchored to the midpoint of the RBA target range remains appropriate.

Appropriate inflation forecast

The RBA forecast method is superior to strict reliance on the midpoint of the RBA target band. While an estimate from the RBA forecast method tends toward the RBA target band for long-term forecasts, it takes short-term inflation expectations into account by way of the RBA's short-term forecasts. Relevantly, research has shown the RBA short-term forecasts have been effective at predicting actual outcomes.²³⁷

The RBA forecast method is also superior to market-based inflation estimates as it is more representative of long-term inflation expectations. While the RBA uses market-based estimates to inform the development of its own inflation forecast, research by the ACCC and AER found that the RBA forecast method is less volatile and less susceptible to surprises in inflation.²³⁸ We also note that Houston Kemp's analysis shows that for the period from March 2007 to June 2009, the RBA forecast method produced a better estimate of 10-year inflation than the indexed bond method.²³⁹

The RBA forecast method is transparent, with all necessary information being publicly available, and simple for stakeholders to calculate, which provides regulatory certainty. This is in the interests of Queensland Rail, access seekers and access holders (ss. 138(2)(b), (e), (h)). We therefore consider that it is the appropriate method for estimating inflation for the 2020 DAU.

Summary 4.9

The QCA's decision is that the appropriate way for Queensland Rail to amend the inflation estimate used to assess the West Moreton coal tariff in the 2020 DAU is that it:

- (1) apply a forecast term of 10 years, to match the term of the risk free rate
- (2) use the RBA forecast method, taking the geometric mean of the RBA's inflation forecast for the first and second year of the forecast term along with the midpoint of the RBA's inflation target band for the remaining years of the forecast period.

Using this method, we consider an inflation estimate of 2.38 per cent is appropriate.

²³⁶ H Mathysen, *Consideration of best estimates of expected inflation: comparing and ranking approaches*, working paper no. 11, ACCC/AER working paper series, April 2017: 94.

²³⁷ P Tulip & S Wallace, *Estimates of uncertainty around the RBA's forecasts*, research discussion paper, RBA, November 2012: 22.

²³⁸ H Mathysen, *Consideration of best estimates of expected inflation: comparing and ranking approaches*, working paper no. 11, ACCC/AER working paper series, April 2017: 94.

²³⁹ Queensland Rail, sub. 40: 12.

4.9 Capital expenditure carryover account

A carryover balance is determined each year by calculating the difference between the return on capital, depreciation and tax depreciation associated with the original capex estimate, and the equivalent returns from the actual capital expenditure (sch. E of the 2016 undertaking). These yearly balances are then rolled forward by the applicable WACC in a capital carryover account and the net balance of this account at the end of the regulatory period is added to (or subtracted from) the total revenue requirement calculated for the next regulatory period.

Queensland Rail recorded an over-recovery of \$6.0 million (2020–21 dollars) in its capital expenditure carryover account from the 2016 undertaking (section 4.5 above). This is due to the approved (or submitted) capital expenditure for years 2013–14 to 2018–19 being \$33.7 million less than the corresponding years' capital indicators in the 2016 undertaking. To clear this balance, \$6.0 million has been deducted from the present value (2020–21 dollars) of the West Moreton revenue requirement for coal in the 2020 DAU.

Summary 4.10

The QCA's decision is that the appropriate way for Queensland Rail to amend the 2020 DAU is to apply a carryover balance to the West Moreton total revenue requirement for coal services by deducting \$6.0 million (mid-year, 2020–21 dollars) before determining the West Moreton tariff.

4.10 Revenue requirement (building blocks) and reference tariffs

4.10.1 Building blocks

Queensland Rail proposed a total revenue requirement for coal of \$250.2 million (2020–21 dollars)²⁴⁰ over the 2020 undertaking period (see Table 14).

Table 14 Revenue requirement for coal proposed by Queensland Rail (\$m)

<i>Financial year</i>	2020-21	2021-22	2022-23	2023-24	2024-25	Total
Return on capital	24.6	25.0	24.4	23.5	22.7	120.1
Plus depreciation	11.2	11.6	11.5	11.4	11.3	57.0
Less inflation	(8.2)	(8.4)	(8.2)	(7.9)	(7.6)	(40.2)
Less TSC capital charge	(1.2)	(1.1)	(1.0)	(1.0)	(0.9)	(5.1)
Plus operating allowance	7.2	6.8	6.5	6.2	5.9	32.7
Plus maintenance allowance	18.5	17.5	16.5	15.6	14.7	82.8
Plus working capital allowance	0.2	0.2	0.1	0.1	0.1	0.8
Plus tax allowance	1.1	2.0	1.9	1.9	1.8	8.7
Plus capital carryover account	(6.6)	–	–	–	–	(6.6)
Total revenue requirement	46.8	53.6	51.8	49.9	48.0	250.2

Note: Queensland Rail's proposed revenue requirement has been converted from end-of-year totals to mid-year totals by deflating by WACC for six months. All figures in 2020–21 dollars.

Source: Queensland Rail sub. 42.

On the basis of the analysis presented in this chapter, our view is that the West Moreton system building blocks proposed by Queensland Rail produce a total revenue requirement that includes inefficient costs and should be amended to reflect:

- a maintenance allowance of \$85.3 million (2020–21 dollars) (see section 4.3)
- a capital indicator of \$122.7 million (2020–21 dollars) (see section 4.6)
- a WACC of 5.46 per cent (see Chapter 3) affecting the return on assets
- an operating cost allowance of \$36.2 million (2020–21 dollars) (see section 4.4)
- the actual capital expenditure in years 2013–14 to 2017–18 and actual submitted capital expenditure for 2018–19 (see section 4.5)
- a negative balance of \$6.0 million in the capital carryover account (see section 4.9).

Table 15 shows an appropriate total revenue requirement of \$200.4 million (2020–21 dollars), incorporating the amendments outlined above. This total revenue requirement will not be used to derive the West Moreton reference tariff. Instead, it will be used as the basis for the loss capitalisation account that will accrue while volumes, and therefore recovered revenue, remain

²⁴⁰ Queensland Rail's November submission (p. 17) states its proposed NPV of allowable revenue over the 2020 undertaking period as \$237.5 million; however, \$250.2 million is the figure from Queensland Rail's modelling that generates its estimated cost-recovery tariff of \$47.10.

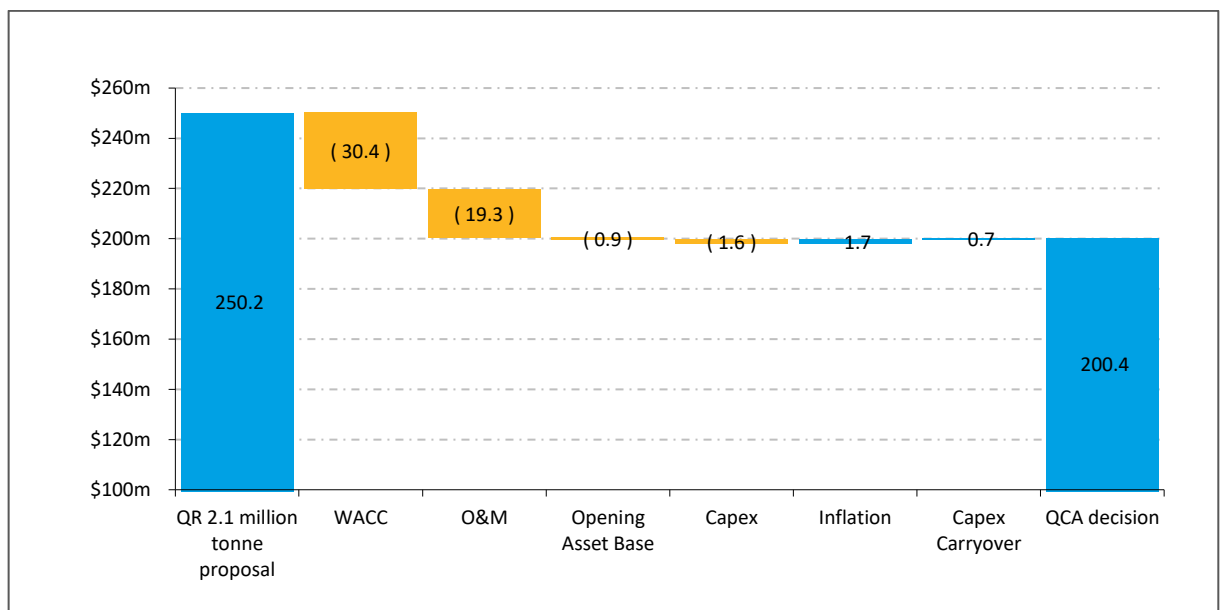
low (see section 2.3). However, we note that the reference tariff required to recover the total revenue requirement at 2.1 million tonnes would be \$36.46/000'gtk, or \$20.15 a net tonne.

Table 15 Revenue requirement for coal—QCA decision (\$m)

	2020-21	2021-22	2022-23	2023-24	2024-25	Total
Return on capital	17.8	18.3	18.3	17.9	17.4	89.7
Plus depreciation	11.1	11.7	11.8	11.9	11.9	58.4
Less inflation	(7.8)	(8.0)	(8.0)	(7.8)	(7.6)	(39.1)
Less TSC capital charge	(0.9)	(0.9)	(0.8)	(0.8)	(0.7)	(4.1)
Plus operating allowance	6.2	6.1	5.9	5.7	5.5	29.4
Plus maintenance allowance	17.0	16.3	14.4	11.8	11.3	70.8
Plus working capital allowance	0.1	0.1	0.1	0.1	0.1	0.6
Plus tax allowance	–	–	–	–	0.6	0.6
Plus capital carryover account	(6.0)	–	–	–	–	(6.0)
Total revenue requirement	37.7	43.6	41.7	38.8	38.4	200.4

Note: All figures in 2020–21 dollars.

Figure 8 Total revenue requirement, Queensland Rail's proposal and the QCA's decision (\$m)



Note: All figures are in 2020–21 dollars.

Summary 4.11

The QCA's decision is that the appropriate way for Queensland Rail to amend the 2020 DAU is to include a total revenue requirement of \$200.4 million (2020–21 dollars) for coal haulage on the West Moreton system over the 2020 undertaking period. This gives an annual West Moreton approved ceiling revenue limit of \$47.8 million for 2020–21.²⁴¹

4.10.2 Appropriate reference tariffs

West Moreton

The West Moreton coal tariff of \$22.39/000 gtk that Queensland Rail proposed in the 2020 DAU is based on a volume forecast that is no longer expected to apply (see section 4.2). Given Queensland Rail has proposed a different reference tariff (and a different derivation and recovery approach), approving the tariff as submitted in the 2020 DAU is not in Queensland Rail's interest (s. 138(2)(b)). Furthermore a tariff that has regard to the latest information is in the interests of access seekers and access holders (ss. 138(2)(e), (h)). Therefore, we do not consider it is appropriate to approve Queensland Rail's proposed 2020 DAU tariff.

As Queensland Rail said, a building blocks reference tariff is beyond the affordability of customers while volumes remain low.²⁴² We consider it is appropriate for Queensland Rail to recover at least its avoidable, or incremental, costs of having coal services on the West Moreton system. We consider the appropriate measure of incremental costs to be coal's share of:

- forecast efficient operating and maintenance costs, and
- return on, and of, forward looking capital expenditure during the term of the 2020 undertaking.

These incremental costs add up to \$118.1 million, or 59 per cent of efficient costs (see Table 16).

Table 16 Incremental reference tariff revenue build-up—QCA Decision (\$m)

	2020-21	2021-22	2022-23	2023-24	2024-25	Total
Return on capital	1.0	2.5	3.5	4.0	4.4	15.4
Plus depreciation	0.5	1.4	1.9	2.3	2.5	8.6
Less inflation	(0.4)	(1.1)	(1.5)	(1.8)	(1.9)	(6.7)
Less TSC capital charge	-	-	-	-	-	-
Plus operating allowance	6.2	6.1	5.9	5.7	5.5	29.4
Plus maintenance allowance	17.0	16.3	14.4	11.8	11.3	70.8
Plus working capital allowance	0.1	0.1	0.1	0.1	0.1	0.6
Plus tax allowance	-	-	-	-	-	-
Incremental cost revenue	24.4	25.3	24.3	22.2	22.0	118.1

Note: All figures are mid-year, 2020–21 dollars.

²⁴¹ This approved ceiling revenue limit includes coal services on both the West Moreton and Metropolitan systems.

²⁴² Queensland Rail sub. 42: 1.

Based on the forecasts discussed above, this gives a West Moreton reference tariff of \$21.50/'000 gtk, or \$11.88 a net tonne. This reference tariff is, inevitably, a compromise that reflects the continued uncertainty about future West Moreton coal volumes. If contracted volumes rise, the tariff approach is likely to be modified to reflect the known circumstances at the time. But there are a number of measures and benchmarks that indicate a low-volume reference tariff in the range of \$21.50/'000 gtk is appropriate to approve, including:

- the current price, after the review event approved in December 2019, of \$21.13/'000 gtk (all prices escalated to 2020–21 dollars, based on actual and forecast CPI)
- the price of \$16.81/'000 gtk, approved in 2010 when the then owners of Cameby Downs first contracted for access, which escalates to \$21.25/'000 gtk in 2020–21²⁴³
- Queensland Rail's nominated floor price of \$21.81/'000 gtk, which it said would recover the cash operating and maintenance costs of providing the service.²⁴⁴

Furthermore, Queensland Rail's cost recovery is expected to be higher, to the extent that the miners operate additional (ad hoc) services that take actual annual volumes above 2.1 million tonnes.

Accordingly, we consider that the reference tariff of \$21.50/'000 gtk is appropriate to approve. While it is not expected to provide full revenue adequacy, it reflects the interests of Queensland Rail, to the extent it recovers its short-term incremental costs, retains some coal access revenue to offset its total costs, and can apply a loss-capitalisation approach (ss. 138(2)(a), (b), (g), 168A(a)). It is also in the interests of access holders and access seekers, to the extent it is consistent with historical expectations and is below the cost-recovery price at low volumes (ss. 138(2)(e), (h)).

Summary 4.12

The QCA's decision is that the appropriate way for Queensland Rail to amend the 2020 DAU is to include a West Moreton reference tariff of \$21.50/'000 gtk. This gives tariff components of:

- AT1: \$10.75/'000 gtk
- AT2: \$5,963.46/train path.

Metropolitan

Queensland Rail proposed to apply the 2016 undertaking proxy methodology for the 2020 DAU Metropolitan system reference tariff.²⁴⁵ It proposed a tariff of \$18.13/'000 gtk.

As discussed in section 2.4.1 of this decision, the proxy approach developed in the 2016 undertaking remains an appropriate way of determining the Metropolitan reference tariff. While this approach has a number of limitations, detailed in our June 2016 decision on Queensland Rail's 2015 DAU, the approach continues to have the support of stakeholders.²⁴⁶ Our decision is therefore that Queensland Rail's proposed Metropolitan system reference tariff for coal services

²⁴³ See QCA, *Draft Decision on QR Network's 2010 DAU—Tariffs and Schedule F*, June 2010: 88.

²⁴⁴ Queensland Rail sub. 42: 3.

²⁴⁵ See QCA, *Queensland Rail's Draft Access Undertaking*, decision, June 2016: 168–174.

²⁴⁶ New Hope, sub. 14: 30; Yancoal, sub. 27: 3.

is appropriate to approve as it promotes the interests of Queensland Rail and access seekers and holders (ss. 138(2)(b), (e), (h)).

Summary 4.13

The QCA's decision is that it is appropriate to approve Queensland Rail's proposed Metropolitan reference tariff for coal services of \$18.13/'000 gtk for the 2020 DAU.²⁴⁷ This gives tariff components of:

- AT1: \$9.07/'000 gtk
- AT2: \$1,250.51/train path.

²⁴⁷ The reference tariff inputs set out in the undertaking at clause 3.1(e) of Schedule D assume annual CPI of 2.5 per cent for the two years to March 2020. Queensland Rail is to update these Metropolitan reference tariff figures to reflect the actual CPI when it submits its amended DAU in response to our secondary undertaking notice. If for any reason the actual CPI for the March 2020 quarter is not published at the time Queensland Rail submits its amended DAU it must include a provision in the DAU for updating the reference tariff inputs to reflect the actual CPI to March 2020.

5 PREAMBLE; APPLICATION AND SCOPE (PART 1)

The preamble sets out the high-level context for Queensland Rail's 2020 DAU. Part 1 of the 2020 DAU contains provisions on the duration and scope of the undertaking, the non-discriminatory treatment of access seekers and access holders, and the negotiation of funding agreements when access seekers agree to pay for extensions. The provisions in Part 1 are largely consistent with the provisions in the 2016 undertaking, although there are some differences.

Overview of the decision

Our decision on the preamble is that it is appropriate to be approved. We require Queensland Rail to make some amendments to Part 1 of the 2020 DAU, but there are many provisions we consider appropriate to be approved.

Preamble; application and scope (Part 1)—summary

<i>Queensland Rail DAU</i>	<i>Clause</i>	<i>QCA decision</i>
Preamble		
Provides high-level context for Queensland Rail's 2020 DAU.	n/a	The proposal is appropriate to be approved (see section 5.1).
Term of the undertaking		
Five-year term—1 July 2020 to 30 June 2025.	1.1	The proposal is appropriate to be approved (see section 5.2).
A shorter term will apply in certain circumstances, for example, if the service is no longer declared.	1.1	The proposal is not appropriate to be approved. Amendments are required to clarify that the undertaking will continue if the service, or part of the service, is declared (see section 5.2).
Compliance with the undertaking		
Queensland Rail is not obliged to comply with the undertaking if this would result in non-compliance with its passenger priority and preserved train path obligations. This clause is no longer subject to schedule F as it was in the 2016 undertaking.	1.2.1(b)(ii)	The proposal is not appropriate to be approved. ²⁴⁸ Not making the clause subject to the network management principles in schedule F reduces clarity and transparency about how Queensland Rail would achieve compliance with passenger priority obligations and preserved train path obligations. The proposal does not appropriately balance the interests of Queensland Rail with access seekers, access holders and train operators (ss. 138(2)(b), (e), (h)). Amendments are required to add the words 'subject to schedule F' to the beginning of this clause.
Extensions and network connections		
There are various provisions relating to the negotiation, development and funding of extensions. There is no standard connection agreement.	1.4 (and others)	The proposal is largely appropriate to be approved. However, clarifying amendments to the definition of 'extension' are required (see section 5.3).

²⁴⁸ We note that Queensland Rail did not justify the proposal and that stakeholders did not support it (Yancoal, sub. 27: 16; New Hope, sub. 24: 18, sub. 33: 31).

<i>Queensland Rail DAU</i>	<i>Clause</i>	<i>QCA decision</i>
Master planning provisions		
Master plans for the Mount Isa Line and West Moreton system will be developed on request. Queensland Rail is not required to develop a plan if customers do not agree to fund it.	1.5	The proposal is not appropriate to be approved. Amendments are required to extend access to the master planning process to all lines and systems (except the North Coast Line) and provide customers with greater input and involvement in the process for developing the plans (see section 5.4).

5.1 Preamble

The preamble provides high-level context for Queensland Rail's 2020 DAU. New Hope and Yancoal suggested deleting the preamble because it would no longer be appropriate if the declaration review resulted in some of Queensland's services no longer being declared. New Hope also said that the preamble added nothing of substance to the undertaking.²⁴⁹

At the time of making this decision, there has been no change to the declaration status of Queensland Rail's services, so it is not appropriate to amend or remove the preamble on the basis of potential changes. Queensland Rail proposed a solution (discussed in section 5.2) to address changes to the declaration status of any of its services during the term of the undertaking, if such changes should occur.

New Hope and Yancoal disagreed with Queensland Rail's description of the extent to which there is competition between road and rail transport.²⁵⁰ In the draft decision, we too noted that our view on the extent to which road transport is a viable alternative mode of transport to rail may not align with the view expressed by Queensland Rail in the preamble. Nevertheless, we do not consider that the expression of Queensland Rail's view in the preamble would affect the operation of the undertaking.

Queensland Rail's proposal is appropriate to be approved. We do not consider it would adversely affect the interests of any party (ss. 138(2)(b), (e), (h)).

Summary 5.1

The QCA's decision is that it is appropriate to approve the preamble in the 2020 DAU.

5.2 Term of the undertaking (cl. 1.1)

Under Queensland Rail's proposal, the undertaking will commence on the approval date, which is expected to be 1 July 2020, and terminate on the earlier of:²⁵¹

- (a) 30 June 2025
- (b) in respect of any part of the service to which this undertaking relates, the date on which that part of the service ceases to be a declared service for the purposes of Part 5 of the QCA Act
- (c) the date on which this undertaking is withdrawn in accordance with the QCA Act.

²⁴⁹ Yancoal, sub. 27: 15; New Hope, sub. 24: 17–18, sub. 33: 30.

²⁵⁰ Yancoal, sub. 27: 15; New Hope, sub. 24: 17–18.

²⁵¹ See also the associated definition of 'terminating date' in cl. 7.1.

Proposed five-year term

Queensland Rail considered that a five-year term—1 July 2020 to 30 June 2025—was appropriate, noting that it had only proposed targeted amendments to the 2016 undertaking and that fewer reviews would lower costs to Queensland Rail, the QCA and stakeholders, without compromising outcomes.²⁵² Stakeholders also supported a five-year term.²⁵³

A five-year term appropriately balances the benefits of providing certainty to stakeholders about the terms and conditions of access for a reasonable period of time and flexibility to deal with changing circumstances. This is in the interests of Queensland Rail, access seekers and access holders, and the public interest (ss. 138(2)(b), (d), (e), (h)).

Summary 5.2

The QCA's decision is that it is appropriate to approve the five-year term in the 2020 DAU.

Addressing the expiry of the declaration of the service

Queensland Rail's proposal could result in a term of less than five years if the undertaking is withdrawn in accordance with the QCA Act or if the service (or part of the service) is no longer declared.

The current declaration of the Queensland Rail service, which is described in s. 250(1)(b) of the QCA Act, will expire on 8 September 2020. We are about to complete a review for the purposes of providing a recommendation to the Treasurer about whether the Queensland Rail service, or part of the service, should remain declared following the expiry of the existing declaration.²⁵⁴ We must provide our final recommendations to the Minister by early March 2020 and the Minister will ultimately decide whether to declare the Queensland Rail service or part of the service.

Queensland Rail's proposal to address the expiry of the declaration is appropriate, as it removes uncertainty about whether the undertaking would automatically cease to apply if any parts of the service that are currently declared cease to be declared. This is in the interests of Queensland Rail, access seekers, access holders and other parties (ss. 138(2)(b), (e), (h)).²⁵⁵

However, Queensland Rail's proposed drafting is not appropriate to approve. Queensland Rail should amend the proposed definition of 'terminating date' (cl. 7.1) to clarify that the undertaking would continue to apply to any parts of the service that continue to be taken to be declared.²⁵⁶ Our position, which was supported by New Hope and Yancoal²⁵⁷, is in the interests of all parties (ss. 138(2)(b), (d), (e), (h)).

²⁵² Queensland Rail, sub. 2: 59.

²⁵³ New Hope, sub. 15: 8, sub. 24: 17–18, sub. 33: 30; Pacific National, sub. 17: 7; Yancoal, sub. 27: 15.

²⁵⁴ We also provide recommendations on the other services declared under s. 250—that is, services provided by Aurizon Network and DBCT Management.

²⁵⁵ Pacific National (sub. 17: 12–13) argued that Queensland Rail's proposal with regard to the terminating date was unnecessary at this stage and should be reviewed when there was more certainty as to the outcome of the declarations review. However, at the time of making this decision, no decision had been made on the declarations.

²⁵⁶ The process under Part 5, division 2, subdivisions 4 and 4A of the QCA Act involves the Minister making a new declaration under s. 84 of the QCA Act.

²⁵⁷ New Hope, sub. 15: 17–18, sub. 24: 17–18, sub. 33: 30; Yancoal, sub. 27: 15.

We note that there are direct links between Queensland Rail's 2020 DAU and s. 250(1)(b) of the QCA Act in some instances.²⁵⁸ Irrespective of any decision by the Minister to make a new declaration, s. 250(1)(b) will automatically expire in September 2020, so this discrepancy may cause unforeseen issues with the operation of the undertaking. Therefore, Queensland Rail should amend its proposal to include a new clause (cl. 6.3), which refers to any new declaration by the Minister.

Summary 5.3

The QCA's decision is that the appropriate way for Queensland Rail to amend the 2020 DAU is to clarify that the undertaking will continue to apply to the service, or part of the service, that is declared under Part 5 of the QCA Act, by:

- (1) amending the definition of 'terminating date'
- (2) adding a new clause, which refers to any new declaration by the Minister.

Drafting: cls. 6.3 and 7.1 (definition of 'terminating date').

5.3 Extensions and network connections (cl. 1.4 and other clauses)

Queensland Rail's proposal contains various provisions relating to the negotiation, development and funding of extensions.²⁵⁹ An 'extension' includes an enhancement, expansion, augmentation, duplication or replacement of all or part of the network, but excludes private infrastructure (cl. 7.1).

Pacific National said it was concerned that the 2020 DAU did not explicitly apply to network connections or include an associated provision for dispute resolution.²⁶⁰ In the decision on Queensland Rail's 2015 DAU, we considered that rail connections were a form of 'extension' and that the provisions relating to 'extensions' would apply.²⁶¹ However, to avoid uncertainty, a clarifying amendment to the definition of 'extension' should be made to explicitly include network connections.²⁶²

Pacific National also suggested that a standard connection agreement should be developed, but did not elaborate.²⁶³ New Hope said its recent experience with negotiating a rail connection agreement with Queensland Rail highlighted that there were insufficient protections for access seekers or private infrastructure owners, particularly in relation to negotiating connection charges.²⁶⁴ While noting that it may not be appropriate to require a standard connection agreement, New Hope suggested including in the undertaking a set of principles for developing agreements, including in relation to connection charges and technical specifications.

Stakeholders have not had an opportunity to comment on the merits of New Hope's proposal, which we received late in the review process. At this time, we consider there is insufficient evidence to conclude that the provisions proposed by Queensland Rail in relation to developing extensions are insufficient, such that it is necessary to include principles for developing

²⁵⁸ For example, the preamble and definition of 'network'.

²⁵⁹ See, for instance, cls. 1.4 and 2.7.2, and schs. A and I of the 2020 DAU.

²⁶⁰ Pacific National, sub. 17: 7.

²⁶¹ QCA, *Queensland Rail's draft access undertaking*, decision, June 2016: 5.

²⁶² This position was supported by Yancoal (sub. 27: 15) and New Hope (sub. 24: 17–18, sub. 33: 30).

²⁶³ Pacific National, sub. 17: 7.

²⁶⁴ New Hope, sub. 33: 19–20.

connection agreements. It is also not clear that the benefits of developing a standard connection agreement would outweigh the associated costs. If a dispute is referred to us in relation to negotiating a connection agreement, we are likely to, amongst other relevant factors, have regard to the standard connection agreement contained in the Aurizon Network undertaking to the extent it provides relevant information.

Pacific National and New Hope also suggested there should be an explicit right to access dispute resolution in relation to network connections.²⁶⁵ However, we do not consider this is necessary, because we have made a decision that access to the general dispute resolution mechanism in Part 6 should extend to any party who receives the benefit of an obligation in the undertaking, rather than being limited to access seekers, as proposed by Queensland Rail (see Chapter 10).

Our decision appropriately balances the rights and interests of Queensland Rail, access seekers and access holders (ss. 138(2)(b), (e), (h)).

Summary 5.4

The QCA's decision is that the appropriate way for Queensland Rail to amend the 2020 DAU is to clarify that network connections are included in the definition of 'extension'.

Drafting: cl. 7.1 (definition of 'extension').

5.4 Master planning provisions (cl. 1.5)

The 2016 undertaking sets out a process for Queensland Rail to develop master plans covering proposed expansion projects for the West Moreton system, Mount Isa Line and North Coast Line. During the term of the undertaking, Queensland Rail would develop a master plan for each line or system if stakeholders agree to fund the plan. Queensland Rail is not obliged to develop a plan if stakeholders do not agree to fund it.

In the 2020 DAU, Queensland Rail proposed some changes to the existing arrangements, which it argued would make the process more fit for purpose (cl. 1.5). The key changes are:²⁶⁶

- A master plan will only be prepared on request.
- No master plan can be requested for the North Coast Line, because the authority for planning and funding that line has moved to the Department of Transport and Main Roads.

While Aurizon Bulk advised that it did not have any concerns with Queensland Rail's proposal in principle²⁶⁷, other stakeholders raised concerns about the proposed changes to the existing arrangements and to the process for developing plans, including input and involvement of the regional network planning group.²⁶⁸

The key issues around master planning provisions are:

- funding arrangements
- rail lines and systems covered
- master plan development process.

²⁶⁵ Pacific National, sub. 17: 7; New Hope, sub. 33: 20.

²⁶⁶ Queensland Rail, sub. 2: 58–60.

²⁶⁷ Aurizon Bulk, sub. 11.

²⁶⁸ Yancoal, sub. 16: 19; New Hope, sub. 15: 8–9; Pacific National, sub. 17: 7.

5.4.1 Funding arrangements

Some stakeholders argued that Queensland Rail should fund master plans, at least for major lines and systems, because planning for future investment should be an ordinary business activity.²⁶⁹ New Hope and Yancoal also noted that Aurizon Network and DBCT Management undertook master planning without requiring customer funding.²⁷⁰ Glencore said that a new master plan should be developed for the Mount Isa Line, without user funding, to transparently demonstrate that the increased government funding to maintain and improve the line was spent prudently.²⁷¹ New Hope suggested that a compromise might be to require master planning without user funding if contracted capacity reached a certain level on major lines and systems.²⁷²

We maintain our draft decision that it is appropriate for the funding arrangements to be negotiated between the parties. Stakeholders have not adequately justified why Queensland Rail should be required to develop a plan if the parties that stand to benefit from its development do not agree to fund it. Queensland Rail's proposal that it is only required to prepare a plan on request is consistent with the funding requirement. Even if master planning were to be viewed as an ordinary business activity, stakeholders have not justified why Queensland Rail should be precluded from recovering the cost of developing plans from users.

Our decision is that Queensland Rail's proposal is appropriate, having regard to the interests of access holders and access seekers and Queensland Rail's legitimate business interests (ss. 138(2)(b), (d), (e), (h)).

Summary 5.5

The QCA's decision is that it is appropriate to approve Queensland Rail's provisions on the funding arrangements for master plans in the 2020 DAU.

Drafting: cl. 1.5.

5.4.2 Rail lines and systems covered

Queensland Rail proposed that the master planning process should apply only to the West Moreton system and Mount Isa Line. New Hope, on the other hand, suggested that customers should have access to the master planning process on lines/systems with little or no commercial traffic to the extent there is customer demand for expansions.²⁷³

Having regard to the factors in s. 138(2) of the QCA Act, our decision is that Queensland Rail's proposal is not appropriate to approve, because it unnecessarily restricts access to the master planning process to certain lines/systems. We consider it is appropriate that Queensland Rail amends the 2020 DAU to extend access to the master planning process to Queensland Rail's other lines and systems. This will provide flexibility to deal with changing circumstances, including potential increases in demand on lines and systems that are currently underutilised. Our decision is in the interests of access seekers and access holders and does not adversely affect the

²⁶⁹ Yancoal, sub. 16: 19, sub. 27: 15–16; New Hope, sub. 15: 8–9, sub. 24: 17–19, sub. 33: 30. Pacific National (sub. 17: 7) also considered that Queensland Rail should fund master plans, but did not provide reasons.

²⁷⁰ Yancoal, sub. 16: 19; New Hope, sub. 15: 8–9.

²⁷¹ Glencore, sub. 29: 2.

²⁷² New Hope, sub. 24: 17–19.

²⁷³ New Hope, sub. 15: 9.

legitimate business interests of Queensland Rail, because Queensland Rail is only required to develop plans on request and if stakeholders agree to fund them (ss. 138(2)(b), (e), (h)).

However, specific provisions should apply to the North Coast Line, given that, as Queensland Rail advised, it is no longer responsible for the planning of that line. There should be a provision to include the North Coast Line if Queensland Rail resumes responsibility for the planning of that line during the term of the undertaking.²⁷⁴

Summary 5.6

The QCA's decision is that the appropriate way for Queensland Rail to amend the provisions about the lines and systems covered by the master planning process in the 2020 DAU is to:

- (1) provide access to the master planning process for all lines and systems, except the North Coast Line
- (2) include a provision to incorporate the North Coast Line into that process if Queensland Rail resumes responsibility for the planning of that line
- (3) make consequential amendments to relevant definitions and terminology.

Drafting: cls. 1.5 and 7.1 (definition of 'system').

5.4.3 Master plan development process

Stakeholders argued that the process for developing master plans should be improved, because there were insufficient protections for stakeholders in relation to the funding arrangements and oversight of the process.²⁷⁵

Queensland Rail's proposed master plan development process is not appropriate to approve, because it does not provide stakeholders with sufficient input and involvement in relation to funding arrangements and the process for developing the plan, particularly if they are funding the plan. We do not consider that Queensland Rail's proposal provides an appropriate balance between the rights and interests of access seekers, access holders and Queensland Rail (ss. 138(2)(b), (e), (h)).

Earlier in our review process, Queensland Rail acknowledged stakeholders' concerns and advised that it would consult with stakeholders in an attempt to resolve many of the issues raised.²⁷⁶ However, Queensland Rail has not since advised of the status of those discussions or submitted a revised approach for our consideration.

In the absence of further information from Queensland Rail, we consider the appropriate way for Queensland Rail to amend its 2020 DAU is to include the following requirements:

- Queensland Rail must provide the planning group with a proposed scope, budget and timeframe for developing the plan, and terms for a funding agreement, within a reasonable period after receiving a request to prepare a plan.

²⁷⁴ This is consistent with Pacific National's suggestion (sub. 17: 7). New Hope (sub. 15: 8) considered that customers should still have access to plans for future investments and expansions of the North Coast Line. However, an undertaking could not impose obligations on the Department of Transport and Main Roads.

²⁷⁵ Yancoal, sub. 16: 19, sub. 27: 15–16; New Hope, sub. 15: 9, sub. 24: 17–19, sub. 33: 30; Aurizon Coal, sub. 23: 3.

²⁷⁶ Queensland Rail, sub. 18: 20–21.

- The planning group must have a reasonable opportunity to provide input on the proposal and Queensland Rail must take that input into account before preparing a revised proposal.
- If the planning group agrees to fund the plan based on the revised proposal, Queensland Rail must provide the group with reasonable progress reports and opportunities to provide input during the preparation of the plan.

We consider that our decision provides an appropriate balance between the rights and interests of access seekers, access holders and Queensland Rail (ss. 138(2)(b), (e), (h)).

Summary 5.7

The QCA's decision is that the appropriate way for Queensland Rail to amend the master plan development process in the 2020 DAU is to include provisions that provide stakeholders with greater input and involvement in relation to funding arrangements and the process for developing the plan.

Drafting: cls. 1.5 and 7.1 (definitions of 'system master plan' and 'system planning group').

6 NEGOTIATION PROCESS (PART 2; SCHEDULES B AND C)

A framework for how Queensland Rail and access seekers are to negotiate access and provide information is provided in Part 2 of the 2020 DAU. Amongst other matters, the framework addresses:

- the responsibilities of the negotiating parties and issues to be addressed during negotiations
- rules to deal with access seekers competing for limited available capacity and the treatment of access holders renewing their contracts
- Queensland Rail's obligations to provide preliminary and capacity information (in conjunction with sch. A)
- access seekers' obligations to provide certain information in access applications (in conjunction with sch. B).

The provisions are largely unchanged from the 2016 undertaking, but Queensland Rail proposed some changes, including to the information requirements for access applications and contract renewal provisions.

Overview of the decision

We require Queensland Rail to make some amendments to Part 2 of the 2020 DAU, but there are many provisions we consider appropriate to be approved.

Negotiation process (Part 2)—summary

<i>Queensland Rail DAU</i>	<i>Clause</i>	<i>QCA decision</i>
Access requests in different forms		
If Queensland Rail agrees, a request for access rights does not need to be in the form of an 'access application'.	2.1.1	The proposal is not appropriate to be approved. Amendments are required to accommodate applications that do not fully satisfy the information requirements in sch. B, as per Queensland Rail's revised proposal (see section 6.1).
Information exchanged in preliminary stages of negotiations		
Information provided, and discussions held, in the preliminary stages of access negotiations are not binding on the negotiating parties. Queensland Rail will keep preliminary information current and accurate.	2.1.2	The proposal is not appropriate to be approved. Amendments are required, as per Queensland Rail's revised proposal, to clarify the provisions about the non-binding nature of the information, and include requirements for the parties to act reasonably and for Queensland Rail to keep capacity information current and accurate (see section 6.2).
Permitted disclosures in confidentiality agreements		
Confidentiality agreements must permit disclosure of confidential information to certain parties and as required by law.	2.2.2(d)	The proposal is not appropriate to be approved. Amendments are required to apply the same exceptions to the disclosure of confidential information that apply in cl. 2.2.1(b)(ii) (see section 6.3).
Contract renewal provisions		
Contract renewal provisions are available to eligible access holders.	2.7.2, 2.9.3, 3.3(h)–(j)	The proposal is not appropriate to be approved. Amendments are required to remove access to prescribed renewal rights for new access seekers,

<i>Queensland Rail DAU</i>	<i>Clause</i>	<i>QCA decision</i>
		add additional provisions to strengthen the bargaining position of access seekers to mitigate the risk of 'hold-up' at contract renewal, and expand renewal rights for certain existing access holders (see section 6.4).
Other matters		
Other provisions in Part 2 have been identified for further consideration.	Various	Our decision on each provision is provided in Table 17 in section 6.5.

6.1 Access requests in different forms (cl. 2.1.1)

Queensland Rail initially proposed that a request for access rights must be in the form of an access application that included the information specified in schedule B, unless Queensland Rail agreed otherwise. Compared to the 2016 undertaking, Queensland Rail considered that its proposed approach would improve the efficiency and flexibility of the application process, because Queensland Rail could agree to accept requests for access in different forms.²⁷⁷

Stakeholders generally supported greater flexibility when applying for access.²⁷⁸ However, some stakeholders considered that the definition of 'access application' should be amended so that applications made in different forms would be treated as access applications for the purposes of the undertaking.²⁷⁹ Consistent with our draft decision, we consider that Queensland Rail's proposal is not appropriate to be approved because the definition of 'access application' is too narrow. The term 'access application' is used throughout the 2020 DAU and it is not appropriate for applications in different forms to fall outside the definition of an access application, because this could adversely affect the operation of the undertaking and the rights of access seekers. Our decision is appropriate, having regard to the legitimate business interests of Queensland Rail and the interests of access seekers (ss. 138(2)(b), (e)).

In the draft decision, we considered that Queensland Rail should amend the definition of 'access application' to include applications in different forms, in addition to applications that met the schedule B information requirements. In response to the draft decision and to address stakeholders' concerns, Queensland Rail submitted a revised proposal for our consideration. Under the revised proposal, which Queensland Rail said had widespread support from stakeholders, the definition of 'access application' was expanded to include applications that do not fully satisfy the information requirements in schedule B. Queensland Rail also proposed changes to cl. 2.1.1 and sch. B, but those changes are largely consequential and relatively minor.²⁸⁰ Yancoal, New Hope, Aurizon Coal and Glencore confirmed their support for Queensland Rail's revised proposal.²⁸¹

Having regard to the matters in s. 138(2) of the QCA Act, Queensland Rail's revised proposal is appropriate to be approved. We consider that it appropriately addresses the concerns raised in the draft decision and the concerns of stakeholders.

²⁷⁷ Queensland Rail, sub. 2: 58, 60.

²⁷⁸ New Hope, sub. 15: 9–10; Aurizon Bulk, sub. 11; Pacific National, sub. 17: 8.

²⁷⁹ New Hope, sub. 15: 9–10; Yancoal, sub. 16: 19.

²⁸⁰ Queensland Rail, sub. 36: 5, sub. 37.

²⁸¹ Yancoal, sub. 41: 11; New Hope, sub. 33: 31; Aurizon Coal, sub. 28: 1; Glencore, sub. 29: 1, sub. 30.

Summary 6.1

The QCA's decision is that the appropriate way for Queensland Rail to amend the 2020 DAU is to extend the definition of 'access application' to capture applications that do not fully satisfy the information requirements in sch. B (as per Queensland Rail's revised drafting).

Drafting: cls. 2.1.1 and 7.1 (definition of 'access application'); and sch. B.

6.2 Information exchanged in preliminary stages of negotiations (cl. 2.1.2)

Under Queensland Rail's initial proposal, information provided and discussions held in the preliminary stages of access negotiations would not be binding on the access seeker or Queensland Rail (cls. 2.1.2(a), (b)). In addition, preliminary information must be kept current and accurate, but this requirement would not also apply to capacity information (cl. 2.1.2(c)).

Some stakeholders initially opposed introducing the provision that information provided in the preliminary stages of negotiations would not be binding, which is not in the 2016 undertaking.²⁸² Aurizon Bulk, on the other hand, considered the provisions provided clarification, noting that Queensland Rail must keep preliminary information current and accurate and that indicative access proposals were also indicative and non-binding.²⁸³ In the draft decision, we considered that Queensland Rail's proposed amendments to cls. 2.1.2(a) and (b)) would likely clarify rather than change Queensland Rail's obligations. Binding the parties to discussions or information provided in the early stages of access negotiations could hinder negotiations and incentivise parties to withhold information, which is not in the interests of the negotiating parties.²⁸⁴

However, taking into account the interests of Queensland Rail and access seekers (ss. 138(2)(b), (e)), we maintain our draft decision that the initial proposal to keep preliminary information current and accurate is not appropriate to be approved, because the requirement does not also apply to capacity information (cl. 2.1.2(c)).

In response to our draft decision, Queensland Rail submitted a revised proposal for our consideration, which it said had widespread support from stakeholders.²⁸⁵ The revised proposal further clarified the drafting regarding the non-binding nature of the information provided. It also added a requirement that the parties were to act reasonably when providing or requesting information, and included a requirement for Queensland Rail to keep capacity information current and accurate. The revised proposal was supported by Yancoal, New Hope, Aurizon Coal and Glencore.²⁸⁶

Taking into account stakeholder support and having regard to s. 138(2) of the QCA Act, Queensland Rail's revised proposal is appropriate to be approved. We consider it addresses the concerns raised in our draft decision and appropriately balances the rights and interests of Queensland Rail and access seekers (ss. 138(2)(b), (e)).

²⁸² Yancoal, sub. 16: 19; New Hope, sub. 15: 10.

²⁸³ Aurizon Bulk, sub. 11.

²⁸⁴ The parties would also remain obliged to negotiate in good faith (s. 100(1) of the QCA Act).

²⁸⁵ Queensland Rail, sub. 36: 6, sub. 37.

²⁸⁶ Yancoal, sub. 41: 11; New Hope, sub. 33: 31; Aurizon Coal, sub. 28: 1; Glencore, sub. 29: 1, sub. 30.

Summary 6.2

The QCA's decision is that the appropriate way for Queensland Rail to amend the provisions dealing with information exchanged in the preliminary stages of negotiations in the 2020 DAU is to apply Queensland Rail's revised drafting, which:

- (1) clarifies the provisions about the non-binding nature of preliminary information
- (2) includes a requirement for the parties to act reasonably in providing or requesting preliminary information
- (3) includes a requirement for Queensland Rail to keep capacity information current and accurate.

Drafting: cl. 2.1.2.

6.3 Permitted disclosures in confidentiality agreements (cl. 2.2.2)

Under Queensland Rail's proposal, any confidentiality agreement between Queensland Rail and an access seeker must permit the disclosure of information to the QCA, Queensland Rail's board members and employees, and as required by law (cl. 2.2.2(d)). This clause was not included in the 2016 undertaking, but Queensland Rail considered it should be included to accommodate Queensland Rail's structure and reporting obligations.²⁸⁷

Aurizon Bulk did not oppose Queensland Rail's proposal.²⁸⁸ New Hope and Yancoal accepted Queensland Rail's proposal, subject to access seekers also being permitted to make disclosures to members of their board, senior management and related bodies corporate.²⁸⁹ Yancoal also suggested adding joint venturers.²⁹⁰

Under Queensland Rail's proposal, access seekers do not have reciprocal rights to disclose confidential information within their organisations. Therefore, Queensland Rail's proposal does not provide an appropriate balance between the rights and interests of Queensland Rail and access seekers (ss. 138(2)(b), (e)). Our decision is that it is not appropriate to approve Queensland Rail's proposal. Amendments are appropriate for consistency with the confidentiality exceptions that apply to the general provision of confidential information under cl. 2.2.1(b)(ii).²⁹¹ This would permit the disclosures proposed by Queensland Rail, as well as providing reciprocal disclosure rights to an access seeker, including permitting disclosures to a related body corporate of the access seeker. Any additional exceptions (e.g. allowing disclosures to joint venturers, as suggested by Yancoal) should be subject to agreement between the parties.

Pacific National suggested that Queensland Rail should only be permitted to disclose confidential information to board members and senior executives.²⁹² Pacific National did not justify this

²⁸⁷ Queensland Rail, sub. 2: 58, 61.

²⁸⁸ Aurizon Bulk, sub. 11.

²⁸⁹ New Hope, sub. 14: 11; Yancoal, sub. 16: 19.

²⁹⁰ Yancoal, sub. 16: 19.

²⁹¹ New Hope (sub. 24: 21–22, sub. 33: 32) and Yancoal (sub. 27: 17) supported this position, which is consistent with our draft decision.

²⁹² Pacific National, sub. 17: 8. Pacific National also submitted that the disclosure requirements must be made explicit in a confidentiality agreement, not just contained in an undertaking. However, the proposed clause already allows for this, as it sets out the permitted disclosures that must be contained in a confidentiality agreement.

position, however, and we consider this would be an overly restrictive requirement that does not reflect the practical realities of dealing with information within organisations.

Our decision provides an appropriate balance between the rights and interests of Queensland Rail and access seekers (ss. 138(2)(b), (e)).

Summary 6.3

The QCA's decision is that the appropriate way for Queensland Rail to amend the requirements relating to confidentiality agreements in the 2020 DAU is to permit the disclosure of confidential information where disclosure would be allowed under a confidentiality exception in cl. 2.2.1(b)(ii), unless the parties agree otherwise.

Drafting: cl. 2.2.2(d).

6.4 Contract renewal provisions (cls. 2.7.2, 2.9.3, 3.3)

Queensland Rail proposed that eligible access holders should have the following rights, consistent with those in the 2016 undertaking, when renewing their access agreements:

- *pricing rights*—if a reference tariff applies, access charges would continue to be set in accordance with the reference tariff. If no reference tariff applies, access charges could only be varied from those that apply in the expiring access agreement to reasonably reflect differences in cost or risk between the expiring and renewed access agreement (cls. 2.7.2(e), 3.3(h))
- *access rights*—a renewing access holder would have priority over a new access seeker to negotiate an access agreement when they are competing for the same access rights (cl. 2.9.3).

However, Queensland Rail proposed to apply more restrictive eligibility criteria for those renewal rights than provided for in the 2016 undertaking. To be eligible for renewal rights, access holders must meet all of the following criteria (cls. 2.9.3, 3.3(h)):

- The current access rights are for train services carrying coal or other bulk minerals.
- The access holder can only renew its access rights once (although the drafting is unclear as to whether the one-off right applies specifically to renewals for the remaining life of the mine or whether it applies to all renewals).²⁹³
- The term of the existing access agreement is from five to ten years, and a maximum renewal term of five years can be sought.

Queensland Rail said its proposed changes were designed to provide a balance between its interests and the interests of its customers and noted there was a recent trend towards short-term agreements, with many contracts now for one year or less.²⁹⁴ It argued the first two changes would bring into effect the rights originally intended by our decision on the 2015 DAU. The last change, Queensland Rail initially explained, reflected the diversity of contracts in place.²⁹⁵ Queensland Rail later expanded on the need for the change:

²⁹³ See cls. 2.9.3(c)(iv) and 3.3(h)(iv), including the footnotes to each clause.

²⁹⁴ Queensland Rail, sub. 18: 20, sub. 26: 16.

²⁹⁵ Queensland Rail, sub. 2: 54.

The minimum five year term threshold for a renewal right was intended to remove the incentive for access holders to enter into short duration contracts, multiple times. If access holders were truly concerned about their potential sunk investment they would be motivated to contract longer term access agreements.

The maximum ten year duration threshold was intended to limit existing access seekers who have already had the benefit of a long term access agreement to recover their investment from receiving a renewal right.

It is reasonable that in the case of any longer term contract, at the time of renewal the original pricing intent will be unascertainable, or no longer applicable due to significantly changed circumstances. In those circumstances, Queensland Rail believes that it should be able to rebase pricing within the existing pricing principles of the Undertaking (i.e. floor, ceiling and price differentiation provisions).²⁹⁶

Reflecting advice it commissioned from Houston Kemp, Queensland Rail argued that its proposal would:

- better promote economic efficiency by providing Queensland Rail with more flexibility to allocate capacity to those that value it the highest and shift closer to efficient costs (limiting the subsidy)
- limit barriers to entry in dependent markets by reducing the advantage that renewing access holders have over new access seekers.²⁹⁷

Stakeholders did not support Queensland Rail's proposal to restrict renewal rights.²⁹⁸ Yancoal and New Hope argued that evergreen or ongoing renewal rights were important for investment certainty.²⁹⁹ Queensland Rail responded that it was concerned about the competitive impacts of providing ongoing renewal rights, because in the event that rail capacity was constrained, it would not be possible to allocate that capacity to a new entrant, even if that entrant placed a higher value on that capacity than the renewing access holder.³⁰⁰

6.4.1 Renewal rights for new access seekers

We acknowledge Queensland Rail's concerns about the adverse efficiency and competition impacts of the renewal provisions in the 2016 undertaking. However, we are concerned that the provisions in the 2020 DAU are too restrictive, because they do not adequately signal that the sunk investments of access seekers will be protected, which may adversely affect the prospects for investment and competition in dependent markets.

Renewal pricing rights—addressing the hold-up problem

The presence of sunk investments gives rise to the 'hold-up problem'. Hold-up is an economic problem where the value of a relationship-specific sunk investment is potentially appropriable after the investment is made, which may discourage efficient investment in the first place.

We consider that Queensland Rail's proposal would not adequately protect any new access seeker from hold-up, as Queensland Rail might be able to significantly increase access charges at contract renewal (i.e. after an access seeker has made its sunk investment) to capture the value

²⁹⁶ Queensland Rail, sub. 26: 16.

²⁹⁷ Queensland Rail, sub. 2: 54–55, sub. 10: 11–14.

²⁹⁸ Aurizon Bulk, sub. 11; Yancoal, sub. 16: 19–20, sub. 27: 17–19, sub. 41: 14; New Hope, sub. 15: 11–12, sub. 24: 22–26, sub. 33: 32–34; Pacific National, sub. 17: 6, 9; Incitec Pivot, sub. 32: 5–6.

²⁹⁹ Yancoal, sub. 16: 19–20, sub. 27: 17–19, sub. 41: 14; New Hope, sub. 15: 11–12.

³⁰⁰ Queensland Rail, sub. 18: 20.

of the access seeker's sunk investment.³⁰¹ Limiting the renewal provisions to customers with contract terms of five to ten years would exclude some customers that have made substantial sunk investments, while a maximum five-year renewal term may not be sufficient to align with the payback period of the customer's investment.

Our decision is that Queensland Rail's proposal is not appropriate to be approved. While the likelihood of future investment and entry in dependent markets is unknown, we consider that Queensland Rail's proposal does not promote investment certainty in dependent markets, which may adversely affect the prospects for future entry and competition in those markets (ss. 138(2)(d), (e), (h)). We also consider that the proposal does not provide an appropriate balance between the rights and interests of Queensland Rail and access seekers/holders (ss. 138(2)(b), (e), (h)).

We consider that access seekers are likely to be well-placed when entering the market to define the contractual provisions needed to address the risks they face. These provisions might include protecting against 'hold-up' and guaranteeing the ongoing availability of rail capacity. The access seeker may be able to achieve this by including appropriate clauses that specify renewal rights in its initial contract, or negotiating a contract that aligns the term of the contract with the investment pay-back period.³⁰² This approach is likely to result in more efficient outcomes and a more appropriate sharing of risks than requiring the parties to adopt a one-size-fits-all approach by prescribing specific renewal right terms in the undertaking (ss. 138(2)(a), (b), (e), (h)).

Stakeholders had different views about whether renewal rights should be left to negotiation. New Hope and Yancoal did not support leaving renewal rights to negotiation.³⁰³ Yancoal argued that changing renewal rights now created uncertainty, which would have a chilling effect on investment. New Hope was concerned that new access seekers might not have sufficient bargaining power to negotiate renewal rights, or that, even if they could, Queensland Rail might be able to extract monopoly rents under the guise of compensation for renewal rights. Incitec Pivot, on the other hand, noted that the certainty of long-term access rights was required to justify investments in an environment of competing areas for investment, but supported leaving renewal rights to negotiation.³⁰⁴

We consider that before an access seeker makes its investment decision, Queensland Rail and access seekers would have an incentive to make the relationship work. Access seekers have various protections in the QCA Act and access undertaking (including access to dispute resolution) and may have alternative investment options. We also expect that Queensland Rail would have an incentive to reach agreement with an access seeker to encourage market entry, particularly if there is spare capacity on its network. Nevertheless, we consider that the bargaining position of access seekers should be strengthened. This could be done by including a requirement in the access undertaking for Queensland Rail to negotiate in good faith when an access seeker requests renewal rights, having regard to the access seeker's need for long-term certainty in relation to investments made on the basis of it requiring continued access on reasonable terms.

³⁰¹ For an extensive discussion of the hold-up problem, see O Williamson, *The Economic Institutions of Capitalism: Firms, Markets, Relational Contracting*, The Free Press, New York, 1985.

³⁰² While Queensland Rail (sub. 18: 20) indicated it was open to negotiating long-term contracts with access seekers, we consider that contracts may not always successfully resolve the hold-up problem, particularly when access seekers are investing in long-lived assets.

³⁰³ New Hope, sub. 24: 25–26, sub. 33: 32–34; Yancoal, sub. 41: 14.

³⁰⁴ Incitec Pivot, sub. 32: 6.

Furthermore, if a new access seeker does not acquire negotiated renewal rights or a long-term contract with Queensland Rail that aligns with its investment horizon, additional protections for access seekers are necessary at contract renewal. At this point, the renewing access seeker would likely have sunk costs, which would reduce its bargaining power relative to the initial contract stage, and expose the access seeker to the risk of hold-up. While we expect the rights afforded to access seekers in the QCA Act and the undertaking would provide some protection against hold-up, we consider that further measures are necessary. In particular, as we understand that most of Queensland Rail's lines and systems are significantly underutilised (i.e. there is a lot of spare capacity) and are supported by subsidies³⁰⁵, the upper limit on the revenue that Queensland Rail can collect through access charges (i.e. the full cost recovery level) is likely to be well above the revenue currently obtained from negotiated access charges (see section 7.1).

The presence of sunk costs, combined with the potentially large gap between current revenue and the ceiling revenue limit, provides scope for Queensland Rail to significantly increase access charges at contract renewal.³⁰⁶ Therefore, the 2020 DAU should be amended so that it includes a requirement for Queensland Rail to negotiate access charges with a renewing access seeker in good faith, having regard to the access seeker's expectations at the time of its initial investment.

However, we also consider that the protections and certainty provided to access seekers/holders against the risk of hold-up need to be balanced against Queensland Rail's ability to recover its efficient costs, consistent with the promotion of efficient investment in rail infrastructure and the pricing principles (ss. 138(2)(a), (b), (g), 168A(a)). Therefore, subject to the operation of the queuing mechanism (see cl. 2.9.2), Queensland Rail should not be precluded from seeking more favourable terms from alternative access seekers in the event that capacity is constrained at the time of contract renewal, unless the renewing access seeker has negotiated a right of renewal in its contract.³⁰⁷ This approach is consistent with the allocation of scarce capacity to the customer with the highest valuation, which would reduce the need for government subsidies and promote the efficient use of and investment in rail infrastructure (ss. 138(2)(a), (b), (g), 168A(a)).

Application of renewal provisions to West Moreton coal services

It is not necessary or appropriate for the 'hold-up' protections discussed above to apply to coal customers on the West Moreton system, because those customers would have access to a reference tariff. We note submissions by New Hope and Yancoal that argue that Queensland Rail's concerns about the current renewal arrangements foreclosing efficient entry were not relevant to the West Moreton system, because capacity constraints were not expected to emerge, and a reference tariff applied.³⁰⁸

The reference tariff is calculated for a 'reference train service', which is a train service with a particular set of characteristics, including that it operates in accordance with the terms and conditions of the standard access agreement.³⁰⁹ However, where access is provided under an agreement with negotiated terms and conditions, there is scope to depart from the reference

³⁰⁵ Queensland Rail, sub. 2: 2, sub. 5: 10.

³⁰⁶ If network utilisation increased, the gap would be expected to close, providing less scope for Queensland Rail to engage in hold-up and a greater likelihood of access charges remaining within customer expectations.

³⁰⁷ The order of the queue would initially be based on the date the application is received, but Queensland Rail could change the order of the queue in certain circumstances (cl. 2.9.2(i)). This would include where an application is more favourable to Queensland Rail's legitimate business interests (subject to cls. 2.9.2(j)–(k)).

³⁰⁸ New Hope, sub. 15: 12, sub. 24: 25–26, sub. 33: 32–34; Yancoal, sub. 16: 19–20, sub. 27: 17–19, sub. 41: 14.

³⁰⁹ Clause 3.0; sch. D, cl. 2.1(f).

tariff to reflect differences in the cost or risk of providing access relative to the terms and conditions in the standard access agreement.³¹⁰

As the standard access agreement does not specify contract renewal terms, we consider that the ability to negotiate departures from the reference tariff provides sufficient flexibility to accommodate negotiated renewal rights. This applies particularly in relation to non-pricing risks that customers may face, such as the lack of spare rail capacity in future, even if capacity constraints were not expected to emerge in the near term. By the same token, customers that do not expect capacity constraints to emerge may see little benefit in negotiating renewal rights and would be subject to the queuing mechanism if there was a capacity constraint at contract renewal (cl. 2.9.2).

Summary

Having regard to the matters in s. 138(2) of the QCA Act, we do not consider it appropriate to approve Queensland Rail's proposal, because it:

- does not promote investment certainty in dependent markets, which may adversely affect the prospects for future entry and competition in those markets (ss. 138(2)(d), (e), (h))
- does not appropriately balance Queensland Rail's interests with the interests of its customers (ss. 138(2)(b), (e), (h)).

We maintain our draft decision that renewal rights are more appropriately determined by commercial negotiation, because this is likely to result in more efficient outcomes and a more appropriate sharing of risks than prescribing renewal rights in the undertaking (ss. 138(2)(a), (b), (e), (h)). However, additional provisions to strengthen the bargaining position of access seekers are appropriate, to mitigate the risk of 'hold-up' at contract renewal and more appropriately balance the rights and interests of Queensland Rail, access seekers and access holders (ss. 138(2)(b), (d), (e), (h)).

Summary 6.4

The QCA's decision is that the appropriate way for Queensland Rail to amend the contract renewal provisions applying to new access seekers in the 2020 DAU is to:

- (1) Remove access to prescriptive renewal rights (both the pricing and access aspects) for new access seekers.
- (2) Provide for Queensland Rail to negotiate renewal rights with access seekers in good faith, and include some additional requirements to strengthen the bargaining position of access seekers.
- (3) Include a requirement for Queensland Rail to negotiate access charges with renewing access seekers in good faith, having regard to access seekers' expectations at the time of their initial investment.

Drafting: cls. 2.7.2, 2.9.3, 3.3; and sch. H, cl. 1.2 and sch. 7 (new schedule).

6.4.2 Renewal rights for existing access holders

We consider that renewal rights are more appropriately determined by commercial negotiation, with some additional protections for access seekers (discussed in section 6.4.1). Access

³¹⁰ Clause 3.3(c); sch. D, cl. 2.1(f).

undertakings have, however, explicitly provided renewal rights to mining customers for more than a decade.³¹¹ In our draft decision, we considered that customers might have entered into contracts and made substantial sunk investments based on an expectation that renewal rights would continue to be specified in the undertaking. We note that Queensland Rail disagreed:

Under QR Network's 2008 undertaking (2008AU) these renewal rights were only available to coal access agreements, and when registered in the committed capacity register. No West Moreton coal contracts were entered into the committed capacity register during the 2008AU term, which expired on 30 June 2015. Further, the QCA took the view that there was no access undertaking in place from the 2008AU expiry until AU1 was approved in October 2016. AU1 offered a one-off renewal right. As such, investments were not made on the basis of renewal rights as no such right existed until AU1.³¹²

We acknowledge the difficulty of ascertaining access holders' expectations about their renewal rights at the time of making their investments, given these rights have changed over time. However, renewal rights were provided in the 2016 undertaking, and access holders may, therefore, have reasonably expected that renewal rights would be provided in future undertakings. Removing renewal rights from the undertaking without adequate transitional provisions for existing access holders may adversely affect investment incentives and competition in dependent markets (ss. 138(2)(d), (e), (h)).

In the draft decision, we said that Queensland Rail should amend its proposal to provide customers that have made substantial sunk investments with reasonable price and access security for the remaining life of their investments. We suggested that a possible approach was to provide a final right of renewal for access agreements pertaining to train services carrying coal or other bulk minerals. However, we sought further submissions from stakeholders on an appropriate approach.

One-off right of renewal

Queensland Rail and New Hope disagreed with our suggestion in the draft decision of providing a one-off right of renewal per access agreement. Queensland Rail argued that extending renewal rights could have anti-competitive effects by locking out new entrants and encouraging capacity hoarding³¹³, while New Hope considered that a one-off renewal right was not workable, given uncertainty about mine lives and take-or-pay obligations.³¹⁴

We consider that providing a one-off right of renewal per access agreement is appropriate in the circumstances. It provides access holders with an incentive to either match the term of the new contract with the remaining life of the mine, or to negotiate a further right of renewal in their new contract. We do not consider that a right of renewal should be provided to customers that have already exhausted the renewal rights available to them in an earlier undertaking, because they could not reasonably have expected further rights to be made available.

Customer eligibility

Stakeholders considered that eligibility should be extended beyond access holders of coal and bulk-mineral-carrying train services. Aurizon Bulk and Incitec Pivot said that some access holders operate mines and/or transport products (e.g. fertiliser and sulphuric acid) that might not meet

³¹¹ For example, QR Limited's 2006 undertaking (cl. 7.5.1), QR Network's 2008 undertaking (cl. 7.5.1) and Queensland Rail's 2016 undertaking (cls. 2.7.2, 2.9.3, 3.3), all of which applied or apply to what is now the declared portion of Queensland Rail's business.

³¹² Queensland Rail, sub. 26: 16.

³¹³ Queensland Rail, sub. 26: 16.

³¹⁴ New Hope, sub. 24: 23–26.

the definition of 'bulk mineral'.³¹⁵ Incitec Pivot suggested these products might be captured by the term 'industrial product'. Pacific National considered that access holders transporting non-mineral bulk products and using intermodal services related to bulk production should also have access to renewal rights, but it did not elaborate on this position.³¹⁶

Having considered stakeholder submissions, we find that access holders of agreements for train services carrying bulk products substantially derived from bulk minerals should be eligible for the one-off renewal right, because we expect those access holders would also have made substantial sunk investments. We do not consider there is sufficient justification to expand eligibility further than that.

Summary

Having regard to s. 138(2) of the QCA Act and stakeholder submissions, our decision is that it is appropriate for Queensland Rail to amend its 2020 DAU to provide a final right of renewal for access holders of agreements for train services carrying coal or other bulk minerals, as well as bulk products substantially derived from bulk minerals (unless that final right has already been exercised). We consider that our decision:

- promotes regulatory and investment certainty by recognising the expectations of customers about renewal rights at the time of their initial investment, which is consistent with the promotion of investment and competition in dependent markets (ss. 138(2)(d), (e), (h))
- is consistent with moving to an approach where renewal rights are commercially negotiated, which we consider is more likely to result in efficient outcomes and a more appropriate sharing of risks than prescribing renewal rights in the undertaking (ss. 138(2)(a), (b), (e), (h)).

Summary 6.5

The QCA's decision is that the appropriate way for Queensland Rail to amend the contract renewal provisions applying to existing access holders in the 2020 DAU is to:

- (1) Provide a final right of renewal per agreement, if a final right of renewal has not been exercised in an earlier undertaking.
- (2) Provide eligibility for the final right of renewal to access holders of agreements that:
 - (a) were signed before the 2020 DAU commences
 - (b) pertain to train services carrying coal, bulk minerals or bulk products substantially derived from bulk minerals.

Drafting: cls. 2.7.2, 2.9.3, 3.3 and 7.1 (definition of 'renewal access seeker').

³¹⁵ Aurizon Bulk, sub. 11; Incitec Pivot, sub. 32: 6.

³¹⁶ Pacific National, sub. 17: 6, 9.

6.5 Other matters

The following table provides our analysis and decisions in respect of other matters, not discussed in the sections above.

Table 17 Other Part 2 matters—decision

<i>Issue</i>	<i>Clause</i>	<i>QCA analysis and decision</i>
Queensland Rail proposed that access applications be sent to the address nominated on its website.	2.1.1(a)	Queensland Rail's proposal is appropriate to be approved. Stakeholders generally supported the proposal ³¹⁷ , although Pacific National suggested amendments to reflect that a Queensland Rail officer was typically assigned to manage the application after the initial application was submitted. We do not consider it necessary to specify a requirement regarding subsequent correspondence, as this is a matter that could be agreed between the parties.
Queensland Rail proposed that an access seeker would be required to promptly advise if it does not intend to proceed with its access application on the basis of the indicative access proposal.	2.5.1(b)	Queensland Rail's proposal is appropriate to be approved. New Hope said it supported this requirement, as long as it was made clear that the access seeker had formed the intention not to proceed. ³¹⁸ We consider the proposed clause makes it clear that the access seeker only needs to advise Queensland Rail if it does not intend to proceed. As New Hope stated, the requirement is reasonable to facilitate access to genuine access seekers. Our decision is appropriate, having regard to the interests of Queensland Rail and access seekers (ss. 138(2)(b), (e)). ³¹⁹
Queensland Rail proposed changing '2008 undertaking' to 'AU1'.	2.8.3(a)(ii)(A)	Queensland Rail's proposal is appropriate to be approved. Stakeholders accepted the proposed amendment ³²⁰ and we consider the amendment is appropriate to update the undertaking.

³¹⁷ Aurizon Bulk, sub. 11; Yancoal, sub. 27: 17; New Hope, sub. 24: 21–22, sub. 33: 33; Pacific National, sub. 17: 8.

³¹⁸ New Hope, sub. 15: 11.

³¹⁹ Yancoal (sub. 27: 17) and New Hope (sub. 24: 21–22, sub. 33: 33) supported this position, which is consistent with our draft decision.

³²⁰ Aurizon Bulk, sub. 11; New Hope, sub. 15: 11, sub. 24: 21–22, sub. 33: 33; Yancoal, sub. 27: 18.

7 PRICING RULES (PART 3)

Access charges for non-reference tariff services are to be determined in accordance with the pricing rules in Part 3 of the 2020 DAU. The proposed pricing rules for non-reference tariff services are largely consistent with the rules in the 2016 undertaking, although there are some differences in the application of the pricing limits and price differentiation rules, and the contract renewal provisions (discussed in Chapter 6). Provisions for recovering QCA fees in access charges are also included in Part 3.³²¹

Overview of the decision

We require Queensland Rail to make some amendments to Part 3 of the 2020 DAU, but there are many provisions we consider appropriate to be approved.

Pricing rules (Part 3)—summary

<i>Queensland Rail DAU</i>	<i>Clause</i>	<i>QCA decision</i>
Pricing limits rule		
Access charges will be set so that expected revenue does not exceed the ceiling revenue limit and, unless approved by us, fall below the floor revenue limit.	3.2	The proposal is not appropriate to be approved. However, amendments are only required to clarify the application of the floor revenue limit and the definition of the weighted average cost of capital (WACC) in the formula used to calculate the ceiling revenue limit (see section 7.1.1).
Price differentiation rule		
Queensland Rail will have regard to a range of factors when formulating access charges, but will not differentiate between access seekers where the characteristics of the train service are alike and the access seekers operate in the same end market.	3.3	The proposal is not appropriate to be approved. However, amendments are only required to extend the limitation on price differentiation to capture access holders, and for consistency purposes (see section 7.1.2).
QCA levy		
Queensland Rail can charge access holders a levy to recover the annual fees it pays to us.	3.7	The proposal is not appropriate to be approved. Amendments are required to simplify the process, reduce the regulatory burden and improve certainty (see section 7.2).

7.1 Pricing rules (cls. 3.0 to 3.4)

Consistent with the 2016 undertaking, Queensland Rail proposed that access charges for non-reference tariff services should continue to be negotiated within the bounds of the pricing rules (cls. 3.0 to 3.4 of the 2020 DAU). The pricing rules, which are to apply in the order listed, are:

- price differentiation—how access charges can vary among Queensland Rail's customers

³²¹ Some provisions in Part 3 apply only to reference tariff services. Our considerations and decisions on matters relating solely to reference tariff services are provided in Chapters 2 to 4.

- pricing limits—expected revenue from access charges must fall between the incremental cost and standalone cost of providing access to any train service (or group of train services)
- network utilisation—how access charges can be determined when capacity is insufficient to meet the requests of all access seekers
- revenue adequacy—expected revenue should be at least enough to meet the efficient costs of providing access and include a return on investment commensurate with the regulatory and commercial risks involved.

The pricing rules in the 2020 DAU are largely consistent with the rules in the 2016 undertaking, although there are differences in the application of the pricing limits rule and price differentiation rule.

7.1.1 Pricing limits rule (cl. 3.2)

Under Queensland Rail's proposed pricing limits rule, access charges would be set so that expected revenue does not:

- unless approved by us, fall below the floor revenue limit, which is the incremental cost of providing access to any train service (or group of train services)
- exceed the ceiling revenue limit, which is the standalone cost of providing access to any train service (or group of train services).

Queensland Rail's proposed pricing limits rule is unchanged from the 2016 undertaking, except for an amendment to account for transport service contract (TSC) payments when determining whether access charges fall below the floor revenue limit (cl. 3.2.2).

Floor revenue limit (cl. 3.2.2)

In its submission accompanying the 2020 DAU, Queensland Rail advised that, except for the West Moreton system, its rail systems were significantly underutilised and they were either supported by government subsidies (TSC payments) or, in the case of the Mount Isa Line, received access revenue only marginally above the floor revenue limit.³²² Since that submission, the Queensland Government announced it would provide Queensland Rail with \$80 million over four years—starting in July 2019—to reduce access charges on the Mount Isa Line and improve the competitiveness of rail transport over road transport.³²³ This suggests that Queensland Rail is now receiving direct subsidies to support the operation of the Mount Isa Line as well.

Queensland Rail said that the floor revenue limit would be breached for many parts of the network unless TSC payments were taken into account.³²⁴ Aurizon Bulk initially said it had no concerns with Queensland Rail's proposal³²⁵, but later argued the formula for calculating the floor and ceiling revenue limits should be disclosed.³²⁶

The requirements for calculating the floor and ceiling revenue limits are set out in the 2020 DAU (cl. 3.2). As part of access negotiations, Queensland Rail must also provide access seekers with

³²² Queensland Rail, sub. 2: 2, sub. 5: 10, sub. 18: 22–23.

³²³ J Trad & M Bailey, *Mount Isa Line plan puts North West minerals freight on fast track*, media release, Queensland Government, 9 June 2019; Department of State Development, Manufacturing, Infrastructure and Planning, *North West Queensland Economic Diversification Strategy 2019*, strategy document, Queensland Government, August 2019: 13.

³²⁴ Queensland Rail, sub. 2: 55–56.

³²⁵ Aurizon Bulk, sub. 11.

³²⁶ Aurizon Bulk, sub. 22: 3. Incitec Pivot (sub. 32: 3) made a similar point.

the methodology for calculating access charges and explain how the pricing rules have been applied (see, for instance, cls. 2.4.2(d) and 2.7.2(a)(vi)). Stakeholders have not adequately justified why the proposed obligations are insufficient and we do not consider that imposing additional obligations on Queensland Rail would provide an appropriate balance between the rights and interests of Queensland Rail and other parties (ss. 138(2)(b), (e), (h)).

New Hope was initially concerned about the lack of transparency about the level of TSC payments and resultant price impacts.³²⁷ It later indicated that it accepted including TSC payments in the floor revenue limit, because they were revenue received by Queensland Rail.³²⁸ Subsidising Queensland Rail's below-rail services through TSC payments is a government policy matter and we understand that details of the subsidy arrangements are not publicly available.³²⁹ We consider that Queensland Rail's proposal is generally appropriate, although amendments are required to clarify that the relevant TSC payments are those reasonably expected to be received by Queensland Rail in respect of the relevant part of the network. This is consistent with the treatment of TSC payments in setting the ceiling revenue limit (cl. 3.2.3(a)(ii)).

Having regard to the pricing principles and the government's responsibility in determining subsidies, our decision would result in the combination of access charges and government subsidies for each part of the network being at least sufficient to meet the incremental cost of providing access (ss. 138(2)(g), (h), 168A(a)).

Summary 7.1

The QCA's decision is that the appropriate way for Queensland Rail to amend the floor revenue limit provisions in the 2020 DAU is to clarify that the relevant TSC payments are those to be provided in respect of the relevant part of the network.

Drafting: cl. 3.2.2.

Ceiling revenue limit (cl. 3.2.3)

Queensland Rail proposed to continue to apply the approach to calculating the ceiling revenue limit that applied in the 2016 undertaking. The formula for calculating the ceiling revenue limit is consistent with a building block approach, whereby the revenue a firm is allowed to earn reflects the estimated efficient costs of providing the relevant service, including an appropriate return on investment.

Calculating the ceiling revenue limit

Aurizon Bulk said that the ceiling revenue limit should be calculated with regard to the market conditions of each system and argued that Queensland Rail's proposed approach was irrelevant in its current form, because it contemplated access charges that were substantially higher than what the market could bear.³³⁰ Queensland Rail argued that amending the ceiling revenue limit to achieve broader policy objectives or to respond to market circumstances was not appropriate and would reduce transparency about the true costs of providing rail services and the level of

³²⁷ New Hope, sub. 15: 13.

³²⁸ New Hope, sub. 24: 24.

³²⁹ In 2018–19, TSC payments for Queensland Rail's rail systems and passenger operations were around \$1.8 billion, or almost 85 per cent of Queensland Rail's total revenue (Queensland Rail, *Annual and Financial report for the year ended 30 June 2019*, September 2019: 64).

³³⁰ Aurizon Bulk, sub. 11, sub. 22: 5. Other stakeholders made similar points—Incitec Pivot, sub. 32: 2–5; Pacific National, sub. 25: 2–3, sub. 34: 1–2; New Hope, sub. 24: 24.

subsidisation provided.³³¹ Queensland Rail said it must take into account a range of competing considerations when setting access charges, including:

- competition with road transport and the objective of maximising rail freight volumes
- the ongoing financial viability of the system, achieved by recovering at least system floor costs
- recovering sufficient revenue for investment to support the competitiveness of rail
- not contravening the price differentiation provisions.³³²

Aurizon Bulk argued that Queensland Rail had 'taken advantage of the latitude afforded to it under the present structure on numerous occasions by increasing the cost of access to users substantially' and provided an example of an unnamed customer it said faced substantial price increases on the Mount Isa Line.³³³ Incitec Pivot said that high access charges on the Mount Isa Line were hindering the ability of users to remain competitive.³³⁴

While we acknowledge stakeholders' concerns about high access charges, Queensland Rail appears unable to recover its efficient costs of supply, particularly given low network utilisation, and it is subsidised to support the costs of operating its rail systems. Queensland Rail said that it was difficult to balance customers' demands for lower access charges and service quality improvements, without additional financial support.³³⁵

Some stakeholders suggested that access charges should be subject to additional rules³³⁶, such as a restriction on escalating access charges over the 2020 DAU term. As discussed in Chapter 6, we acknowledge that Queensland Rail may have an incentive to increase access charges significantly at contract renewal (i.e. to engage in hold-up) if customers have significant sunk costs. However, we have decided that specific measures to address this issue are appropriate, as discussed in section 6.4. In our view, further restrictions are neither necessary nor appropriate and could reduce the flexibility of the parties to negotiate access charges that are appropriate to their individual circumstances.

Having regard to the matters in s. 138(2) of the QCA Act, we maintain our draft decision that Queensland Rail's proposal is appropriate to be approved, except for the proposed definition of the weighted average cost of capital (WACC)—as discussed below. The proposed ceiling revenue limit sets an appropriate upper bound for price negotiations—being the efficient costs of providing access—while also providing flexibility to accommodate changes in the market conditions of each rail system over time. It provides an opportunity for Queensland Rail to recover its efficient costs in the event that rail volumes increase and system utilisation improves, thereby promoting the efficient investment in, and operation of, the network, and the pricing principles (ss. 138(2)(a), (b), (g), 168A(a)). If access charges at the ceiling exceed customers' willingness to pay, it is likely to be in the interests of all parties to negotiate access charges below the ceiling. This may also encourage the efficient use of the network and promote competition in dependent

³³¹ Queensland Rail, sub. 36: 14–15.

³³² Queensland Rail, sub. 18: 21–23.

³³³ Aurizon Bulk, sub. 22: 3–4.

³³⁴ Incitec Pivot, sub. 32: 2–5. Pacific National (sub. 25: 2–4) was also concerned about high access charges on the North Coast Line and the Mount Isa Line.

³³⁵ Queensland Rail, sub. 36: 14–15.

³³⁶ Glencore, sub. 29: 2; Pacific National, sub. 25: 5, sub. 34: 2; Aurizon Bulk, sub. 22: 2–3.

markets, while providing an opportunity for Queensland Rail to limit the gap between revenue and costs (ss. 138(2)(a), (b), (e), (g), (h), 168A(a)).

We also note that the parties have access to dispute resolution if they fail to reach agreement on access charges. If we are called on to resolve a dispute, we must not make a determination that is inconsistent with the undertaking, including the pricing rules. However, we are not required to accept any price that is consistent with the pricing rules but, rather, must make a determination having regard to the matters in s. 120 of the QCA Act.

Definition of WACC

We consider it is not appropriate to approve the proposed definition of WACC that is used in the formula to calculate the ceiling revenue limit (cls. 3.2.3(a), 7.1):

WACC means the weighted average cost of capital which from 1 July 2020 until 30 June 2025 is 7.47% per annum nominal post-tax.

We have estimated a WACC only for the purposes of calculating a reference tariff for coal services on the West Moreton and Metropolitan systems (see Chapter 3), not for other services. Consistent with the definitions of other components of the ceiling revenue limit formula, the definition of WACC should reflect the high-level principles or objectives to be achieved.³³⁷ Our decision is that it is appropriate to amend the proposed definition of WACC so that it reads:

WACC means the weighted average cost of capital, being the return on investment commensurate with the regulatory and commercial risks of providing Access for the Train Service(s) in respect of the relevant part of the Network.

Summary

In summary, we consider that our decision in relation to the proposed ceiling revenue limit is appropriate having regard to the matters in s. 138(2) of the QCA Act, including the object of Part 5, the pricing principles, the public interest, and the rights and interests of the various parties (ss. 138(2)(a), (b), (d), (e), (g), (h), 168A(a)).

Summary 7.2

The QCA's decision is that the appropriate way for Queensland Rail to amend the ceiling revenue limit formula in the 2020 DAU is to amend the definition of WACC, so that it reads: 'WACC means the weighted average cost of capital, being the return on investment commensurate with the regulatory and commercial risks of providing Access for the Train Service(s) in respect of the relevant part of the Network'.

Drafting: cl. 3.2.3(a).

7.1.2 Price differentiation rule (cl. 3.3)

Queensland Rail proposed to largely adopt the price differentiation provisions in the Australian Rail Track Corporation (ARTC) interstate rail network access undertaking in place of the provisions

³³⁷ New Hope (sub. 24: 23–24, sub. 33: 33) and Yancoal (sub. 27: 18) supported defining the WACC by reference to the risks of providing the relevant service.

in the 2016 undertaking (cls. 3.3(a), (b), (d), (e)).³³⁸ Under the proposal, the factors Queensland Rail would have regard to in formulating access charges include:³³⁹

- the characteristics of the train service
- the commercial and logistical impacts on Queensland Rail's business
- capital or other contributions by the access seeker
- the cost of any additional capacity.

Queensland Rail would not have regard to the identity of the access seeker in formulating access charges, and would not differentiate between access seekers, where the characteristics of the train service are alike and the access seekers are operating in the same end market (cls. 3.3(b), (d), (e)).

The provisions in the 2016 undertaking do not allow Queensland Rail to set different access charges in respect of train services for the same commodity in the same geographical area, except in the case of:

- differences in the cost or risk to Queensland Rail of providing access
- insufficient capacity to meet the requests of all access seekers.³⁴⁰

Queensland Rail argued that the rules in the 2020 DAU provided greater scope for efficient price discrimination than the rules in the 2016 undertaking.³⁴¹ Queensland Rail engaged Houston Kemp to assess its proposal against the assessment criteria in the QCA Act. Houston Kemp considered that Queensland Rail's proposal would promote more efficient outcomes than the current price differentiation provisions.³⁴²

Greater pricing flexibility may provide greater scope for Queensland Rail to increase the revenue it recovers from access charges and reduce the subsidy, while promoting the efficient use of the network (ss. 138(2)(a), (b), (g), 168A(a), (b)). Greater pricing flexibility promotes the efficient usage of rail infrastructure, by enabling Queensland Rail to adjust prices in response to competition from alternative modes of transport (particularly road for some types of freight) and expand the demand for its service by targeting customers that are more price-sensitive, potentially promoting competition in dependent markets (ss. 138(2)(a), (b), (d), (e), (g), 168A(b)). However, we acknowledge that insufficient information about customers' willingness to pay may limit the extent to which Queensland Rail is able to effectively differentiate.³⁴³

Aurizon Bulk supported greater pricing flexibility, but was also concerned that Queensland Rail would develop a process that supported the highest bidder. It considered there should be rules to improve pricing certainty.³⁴⁴

Our view is that the purpose of the pricing rules is to establish bounds to guide negotiations, not to determine specific pricing outcomes. If the parties fail to reach agreement, they may access the dispute resolution provisions in the QCA Act or the undertaking. However, as noted above,

³³⁸ Queensland Rail, sub. 2: 52.

³³⁹ See cl. 3.3(a).

³⁴⁰ Clause 3.3(b) of the 2016 undertaking.

³⁴¹ Queensland Rail, sub. 2: 50–53, sub. 18: 23–24.

³⁴² Queensland Rail, sub. 2: 53, sub. 9: 11–15, sub. 18: 23–24.

³⁴³ Productivity Commission, *National Access Regime*, inquiry report no. 66, October 2013: 79; ACCC, *Australian Rail Track Corporation, Access Undertaking – Interstate Rail Network*, final decision, July 2008: 132.

³⁴⁴ Aurizon Bulk, sub. 11, sub. 22: 5.

we consider that specific measures are appropriate to protect customers from the risk of hold-up at the contract renewal stage (as addressed in section 6.4).

We acknowledge that monopolies can sometimes use price discrimination to increase their monopoly profits or provide favourable treatment to related parties in dependent markets. However, the ceiling revenue limit (cl. 3.2.3) should prevent Queensland Rail from earning monopoly profits. Queensland Rail is also not vertically integrated into above-rail freight operations and therefore cannot favour a related party.

Queensland Rail also proposed restrictions on differentiating between access seekers where the characteristics of the train service were alike and the access seekers were competing in the same end market (cl. 3.3(d)). We consider that it is appropriate to extend this provision to capture access holders, not just access seekers. New Hope supported extending the rule to access holders, noting this was where price differentiation was more likely to occur.³⁴⁵

Having regard to the factors in s. 138(2), including the object of Part 5, the public interest, the pricing principles, Queensland Rail's legitimate business interests and the interests of access seekers and access holders, we consider that most aspects of Queensland Rail's proposal are appropriate to approve (ss. 138(2)(a), (b), (d), (e), (g), (h), 168A(a), (b)). However, the following amendments are required to improve the clarity and workability of the clauses:³⁴⁶

- Extend cl. 3.3(d) so that it includes access holders, not just access seekers.
- Make consequential amendments to cls. 3.3(g)–(h), 3.6(a)(ii), 3.9(a) and sch. H, cl. 27.20, so that they are consistent with cl. 3.3(d).

Summary 7.3

The QCA's decision is that the appropriate way for Queensland Rail to amend the price differentiation rule in the 2020 DAU is to:

- (1) extend cl. 3.3(d) so that includes access holders
- (2) make consequential amendments to cls. 3.3(g)–(h), 3.6(a)(ii), and 3.9(a); and sch. H, cl. 27.20, so that they are consistent with cl. 3.3(d).

Drafting: cls. 3.3(d), 3.3(g)–(h), 3.6(a)(ii) and 3.9(a); and sch. H, cl. 27.20.

7.1.3 Pacific National's proposed road to rail pricing rule

Pacific National argued that a new pricing rule should be introduced to encourage modal shift from road to rail and deliver access price reductions on the North Coast and Mount Isa Lines.³⁴⁷ Pacific National said that, despite rail transport delivering significant economic and community benefits relative to road transport, policy imbalances³⁴⁸, including an inequitable pricing framework, were creating an uneven playing field:

Domestic rail freight markets should operate on a level footing with other modal choices (particularly road) by creating an environment where there is an equitable and comparable regulatory environment and/or competitive neutrality between competing modes of transport.

³⁴⁵ New Hope, sub. 24: 23–24.

³⁴⁶ This position, which is unchanged from the draft decision, was supported by Yancoal (sub. 27: 18) and New Hope (sub. 24: 23–24, sub. 33: 33).

³⁴⁷ Pacific National, sub. 25: 1–6, 10–12, sub. 34: 1–2.

³⁴⁸ Pacific National (sub. 25: 1–3, 11–12) identified other policy imbalances, including in relation to accreditation, safety, training and regulation.

We submit to discharge its obligations under the QCA Act (and to play its part in addressing these imbalances), the QCA must amend the 2020 DAU to include a road to rail modal shift pricing rule to lower access charges.³⁴⁹

Incitec Pivot supported Pacific National's argument that encouraging rail usage carried significant public benefits, including increased safety, reduced accident costs and lower congestion and emissions.³⁵⁰ However, Queensland Rail did not support Pacific National's proposal, noting that there were a range of initiatives that supported carrying freight on rail, including the Queensland Government's subsidisation of rail access charges.³⁵¹ Queensland Rail said it took competition with road transport into account when negotiating access charges with access seekers, but it noted that service quality differences also affected what customers would pay for rail transport.³⁵²

Taking into account the matters in s. 138(2) of the QCA Act, we do not require Queensland Rail to amend the 2020 DAU to introduce a road to rail pricing rule. In the absence of a holistic approach to assessing and addressing any distortions in transport policies, a pricing rule that promotes one mode of freight transport over another—potentially leading to greater subsidisation of rail access—may introduce further distortions. This would be inconsistent with the object of Part 5 and the pricing principles (ss. 138(2)(a), (g)) and would not appropriately balance Queensland Rail's legitimate business interests with the interests of access seekers, access holders and train operators (ss. 138(2)(b), (e), (h)). However, we expect that changes to the price differentiation rule (section 7.1.2 above) would provide greater flexibility for Queensland Rail to adjust access charges in response to situations where there is effective competition from alternative modes of transport.

7.2 QCA levy (cl. 3.7)

The 2020 DAU provides for Queensland Rail to charge its access holders a levy to recover the annual fees it pays to us (cl. 3.7). This provision, which is carried over unchanged from the 2016 access undertaking, states:

An Access Charge for a Train Service may include a QCA Levy component to be collected for the QCA by Queensland Rail. This component will, where applicable, be determined from year to year based on the QCA Levy levied by the QCA to Queensland Rail and allocated amongst Train Service types in a manner approved by the QCA.

While the intent of the clause can be discerned, the wording is unclear. In considering applications from Queensland Rail under cl. 3.7 of the 2016 undertaking, we sought to make it clear that the levy is a tariff component charged by Queensland Rail, which recovers the fee Queensland Rail pays to us for regulatory services.³⁵³



³⁴⁹ Pacific National, sub. 25: 2.

³⁵⁰ Incitec Pivot, sub. 32: 4.

³⁵¹ Queensland Rail, sub. 36: 16.

³⁵² Queensland Rail (sub. 36: 15) said it had recently reduced intermodal access charges on the Mount Isa Line by around 5 per cent, taking into account competition with road transport.

³⁵³ Our decisions on Queensland Rail's QCA levy applications can be found on our [website](#).

After considering all relevant matters, we do not consider that cl. 3.7 as proposed by Queensland Rail is appropriate to be approved.

Our recent decisions on the levy have largely revolved around determining whether the proportions of the fee allocated by Queensland Rail to different types of services when calculating the levy are appropriate. Once the allocations have been determined, calculating the levy amounts that are required to recover the allocated fee from each service is effectively a mechanical exercise.

We said in our draft decision that there was an unnecessary regulatory burden in reconsidering the allocation proportions each year. It would be simpler and provide greater certainty if the allocations among the service types were provided in a schedule to the undertaking. Queensland Rail could then calculate the resulting levy charges, and publish the updated amounts and the way they were derived on its website. There would still be scope for the allocations to be changed via a draft amending access undertaking (DAAU), and they would be reconsidered as part of the DAU process before each new undertaking period.

7.2.1 Timing of levy submission

We proposed in the draft decision that Queensland Rail be required to publish the levy amounts within 30 days of receiving our fee estimate notice for the relevant year. The levies for the various services would therefore be known early in the financial year, as we typically send the fee estimate notice in May or early June.³⁵⁴

Queensland Rail said this was impractical, as it could not finalise its levy calculations for the coming financial year until it received the final audited fee for the previous financial year. These arrived in September of 2018 and 2019, for example. Queensland Rail therefore proposed that it publish the levy on its website 30 days after it received the final audited fee.³⁵⁵ Stakeholders supported pre-determining the allocations, and Queensland Rail's proposed timing.³⁵⁶

Accordingly, our decision is that Queensland Rail is required to publish the levy amounts within 30 days of receiving notice of the final audited fee for the previous financial year.

7.2.2 Allocation percentages

We proposed in our draft decision that, for the 2020 DAU period, Queensland Rail adopt the allocation percentages approved in our December 2018 decision on the 2018–19 QCA levy. These allocation percentages were approved after a comprehensive review, which included two rounds of consultation and a draft decision. The allocations were:

- 67.4 per cent for coal users on the West Moreton system
- 18.3 per cent for freight and minerals users on the Mount Isa Line
- 13.1 per cent for freight and minerals users on the North Coast Line and West Moreton system
- 1.2 per cent for long-distance passenger services.

Several stakeholders said their levy should recover a smaller proportion of the fee.³⁵⁷ Glencore said the proportion of the fee applied to Mount Isa Line access holders should be lower, given the

³⁵⁴ We send a final fee notice in September or October of the financial year to which it applies.

³⁵⁵ Queensland Rail, sub. 26: 16.

³⁵⁶ New Hope, sub. 24: 26, sub. 33: 35; Yancoal, sub. 27: 19, sub. 41: 14.

³⁵⁷ Glencore, sub. 29: 3; New Hope, sub. 24: 26, sub. 33: 35; Yancoal, sub. 27: 19, sub. 41: 14.

share of matters considered by us that concerned the West Moreton system.³⁵⁸ New Hope and Yancoal said less time should be required to deal with West Moreton coal issues during the 2020 undertaking assessment and term, compared with the previous undertaking.³⁵⁹ Yancoal said that it would be bearing the 'vast bulk (and potentially all)' of the West Moreton share of the fee in a low volume scenario.³⁶⁰

While the costs of assessing the 2020 DAU have been lower than the costs of the approval process for the 2016 undertaking, matters relating to the West Moreton reference tariff have again accounted for the majority of our work. Nevertheless, much of the undertaking, including, among many other matters, the SAAs and the negotiation, dispute and renewal provisions, applies to most or all access holders and seekers.

With regard to Yancoal's concern about bearing much of the cost when West Moreton volumes are low, we note that the fee has been much lower in years when we have not been investigating a DAU. This should be the case for most of the 2020 undertaking period.

However, we have changed the required allocations to reflect those proposed by Queensland Rail, and approved by us, for the 2019–20 financial year. Those allocations are:

- 64.4 per cent for coal users on the West Moreton system
- 19.7 per cent for freight and minerals users on the Mount Isa Line
- 14.5 per cent for freight and minerals users on the North Coast Line and West Moreton system
- 1.3 per cent for long-distance passenger services.

We consider that these allocations appropriately reflect the high proportion of the regulatory work that arises from the West Moreton coal reference tariff, while also having regard to the share of Queensland Rail's commercial access revenue that comes from the Mount Isa Line and the North Coast Line.³⁶¹

Accordingly, the allocations appropriately balance the interests of access seekers and holders in various traffic categories, across Queensland Rail's network (ss. 138(2)(e), (h)). The certainty and reduced regulatory burden of determining the allocations in advance of the regulatory period are efficient and in the interests of Queensland Rail, access seekers and access holders (ss. 138(2)(a), (b), (e), (h)).

³⁵⁸ Glencore, sub. 29: 3.

³⁵⁹ New Hope, sub. 24: 26, sub. 33: 35; Yancoal, sub. 27: 19, sub. 41: 14.

³⁶⁰ Yancoal, sub. 41: 14.

³⁶¹ In 2018–19, Queensland Rail's commercial access revenue was \$66.9 million (36%) for West Moreton and Metropolitan coal haulage, \$71.8 million (39%) for Mount Isa Line freight, and \$46.2 million (25%) for North Coast Line freight.

Summary 7.4

The QCA's decision is that the appropriate way for Queensland Rail to amend the QCA levy provision in the 2020 DAU is to:

- (1) correct the drafting to specify that the QCA levy recovers the QCA fee paid by Queensland Rail
- (2) add a requirement that Queensland Rail's QCA levy be published on Queensland Rail's website within 30 days of Queensland Rail receiving notice of the final audited QCA fee for the previous financial year
- (3) provide for the calculation of the levy amounts to be specified in a schedule to the undertaking that includes:
 - (a) the allocation proportions that the QCA approved in its final decision on the 2019–20 QCA levy application
 - (b) the units and calculation methodology for the levy for each service type.

Drafting: cl. 3.7; sch. J; and sch. 3 of SAA (sch. H).

8 OPERATING REQUIREMENTS (PART 4 AND SCHEDULE F)

Part 4 of the 2020 DAU provides for the operating requirements that govern how Queensland Rail delivers train service entitlements (TSEs). These include:

- the network management principles (NMPs) for Queensland Rail to schedule, manage, and demonstrate capacity for train services (sch. F)
- the operating requirements manual (ORM), which prescribes rules for how train operators gain access to and operate on the network.

Queensland Rail proposed to omit the ORM (sch. G in the 2016 undertaking) from the 2020 DAU and add a new category of 'ad hoc' planned possessions. Queensland Rail also proposed measures to promote productivity and operational improvements, which we address in Part 4.

Overview of the decision

We require a number of amendments to Queensland Rail's proposed Part 4 and schedule F, but there are many provisions we consider appropriate to approve. Queensland Rail is required to include the ORM as a schedule to the undertaking, and implement a transparent process for updating it, with QCA oversight. Queensland Rail is also required to publish supply chain calendars showing disruptions and possessions on parts of its network with greater traffic.

Operating requirements (Part 4 and sch. F)—summary

<i>Queensland Rail DAU</i>	<i>Clause</i>	<i>QCA decision</i>
Operating requirements manual		
Do not include the ORM in the access undertaking. Consult before amending the ORM.	4.3; sch. G	The proposal is not appropriate to be approved. Amendments are required to include the ORM as a schedule to the undertaking and revise the way it is reviewed and altered (see section 8.1).
Network management principles		
Create a new category of possessions called 'ad hoc planned possessions'.	sch. F, cl. 2	The proposal is appropriate to be approved, subject to ad hoc planned possessions being recorded in the supply chain calendar (see section 8.2.1).
Permit variations to the daily train plan (DTP) on short notice to accommodate special events.	sch. F, cl. 2.2(f)(i)	The proposal is not appropriate to be approved. Amendments are required so Queensland Rail consults about special events and promptly updates the supply chain calendar (see section 8.2.1).
No provision for a supply chain calendar to record possessions and disruptions	sch. F, cl. 2.1(a)(i)	Amendments are required to provide for a supply chain calendar to record regular and ad hoc planned possessions, special events and other network disruptions (see section 8.2.1).
Maintain the approach for modifying a master train plan (MTP), save to update to account for ad hoc planned possessions.	sch. F, cl. 2.1(m)(ii)	The proposal is not appropriate to be approved. Amendments are required to provide certainty about an access holder's TSE when modifying a MTP or scheduling an ad hoc planned possession (see section 8.2.1).

Queensland Rail DAU	Clause	QCA decision
Remove the requirement that a planned possession that is subject to a dispute raised by an access holder should be delayed until that dispute is resolved.	sch. F, cl. 2.4	The proposal is not appropriate to be approved. Amendments are required so that access holders and operators need to raise planned possession disputes within 30 days of receiving notice (see section 8.2.1).
Maintain the Traffic Management Decision Making Matrix from the 2016 access undertaking.	sch. F, cl. 3(g)	The proposal is not appropriate to be approved. Amendments are required so that there are 15-minute on-time windows outside the Metropolitan system (see section 8.2.2).
Maintain the principles for managing deviations from a DTP.	sch. F, cl. 3(i)(i)(B)	The proposal is appropriate to be approved (see section 8.2.2).
Productivity and operational improvements		
Introduce a regional network user group for each of the West Moreton, North Coast and Mount Isa systems.	4.4	Amendments are required to provide for regional network user groups (see section 8.3)

8.1 Operating requirements manual (cl. 4.3)

The ORM sets out practices, standards, systems, protocols, requirements, rules, policies and other information relating to network control and access to, and use of, the network by train operators. It also includes interface management and coordination requirements, safeworking procedures, safety standards, emergency and investigation procedures, requirements for the management of network incidents, and environmental requirements.³⁶²

Queensland Rail proposed in the 2020 DAU not to include the ORM as a schedule to the undertaking.³⁶³ Queensland Rail submitted that:

Under AU1 Queensland Rail is required to submit a draft amending access undertaking to the QCA for approval for any changes to the ORM as the ORM is part of the AU1, which is a burdensome and time consuming process for both Queensland Rail and Access Holders.³⁶⁴

In omitting the ORM from the 2020 DAU, Queensland Rail proposed to maintain the ORM and make it available, as well as consult with access holders and nominated rollingstock operators before amending it (cl. 4.3).

Yancoal, New Hope, Aurizon Coal and Pacific National all disagreed with Queensland Rail's proposal to omit the ORM from the undertaking.³⁶⁵ In general, stakeholders considered it was important that the process for amending the ORM remained transparent and subject to regulatory oversight.

We consider it is not appropriate to approve the consult-only process proposed by Queensland Rail in the 2020 DAU for amending the ORM (cl. 4.3), as that would give stakeholders limited opportunity to contest changes to a document that used to provide certainty when it was part of

³⁶² Queensland Rail, *Operating Requirements Manual*, October 2015: 1.

³⁶³ Under Queensland Rail's proposal, the ORM as set out in schedule G of the 2016 access undertaking would apply until Queensland Rail amended it.

³⁶⁴ Queensland Rail, sub. 2: 61.

³⁶⁵ Yancoal, sub. 16: 20; New Hope, sub. 15: 3–4; Aurizon Coal, sub. 12: 2, sub. 12: 3; Pacific National, sub. 17: 9–10.

the SAAs.³⁶⁶ We consider that access holders should have the opportunity to seek review of proposed changes that they consider will materially affect them and jeopardise their ability to receive their TSEs.

As Queensland Rail's proposal in the 2020 DAU may impose unnecessary costs on both operators and access seekers, it is inconsistent with the efficient operation of the network (s. 138(2)(a)). Consequently, we do not consider Queensland Rail's proposal provides an appropriate balance between the rights and interests of access seekers, access holders, operators and Queensland Rail (ss. 138(2)(b), (e), (h)).

In its collaborative submission on the draft decision, Queensland Rail proposed to include the ORM as a schedule to the undertaking. The revised approach also gives Queensland Rail a limited degree of flexibility to amend the ORM, without requiring a DAAU in every instance.³⁶⁷

Queensland Rail provided proposed drafting to stakeholders, which requires it to consult with access holders and nominated rollingstock operators before amending the ORM. It also allows for Queensland Rail to change the ORM where Queensland Rail has obtained the QCA's written confirmation that it is satisfied with the proposed change and where the change:

- (a) is trivial or administrative in nature
- (b) has no material adverse impacts on access seekers, access holders or rollingstock operators, provided Queensland Rail first consults with access seekers, access holders and rollingstock operators, or
- (c) has been requested by, or agreed with, all access seekers and access holders who will be affected by the variation.³⁶⁸

Pacific National, Aurizon Coal, Glencore, Yancoal and New Hope all supported Queensland Rail's proposed process for amending the ORM.³⁶⁹

Queensland Rail did not specify the details of the ORM that it intended to include within the undertaking. In the interests of transparency, we consider it appropriate to include the ORM as it appears in the 2016 undertaking. This will give stakeholders an opportunity to raise concerns over any departures Queensland Rail proposes from the drafting of the existing ORM.

Queensland Rail's proposed amendment process offers a transparent approach, as Queensland Rail must consult with stakeholders before amending the ORM. It also gives stakeholders the opportunity to oppose amendments to the ORM if they consider them inappropriate. At the same time, the process will reduce the regulatory burden faced by Queensland Rail, by allowing it to make changes to the ORM without necessarily requiring a DAAU.

However, we consider that there will be greater certainty for Queensland Rail and its stakeholders if they know how we will assess a proposed change to the ORM. We therefore require that Queensland Rail amend the DAU to include the drafting it provided in its collaborative submission, but that it introduce an additional provision that the QCA, in assessing changes, will have regard to the criteria in s. 138(2) of the QCA Act.

³⁶⁶ Most of the material in the ORM was part of the SAAs before it was moved into the ORM in the 2016 undertaking.

³⁶⁷ Queensland Rail, sub. 36: 6.

³⁶⁸ Queensland Rail, sub. 37: 3–4.

³⁶⁹ Yancoal, sub. 41: 11; New Hope, sub. 33: 35–37; Aurizon Coal, sub. 28: 1; Glencore, sub. 30: 8–9; Pacific National, sub. 34: 1.

This additional provision, together with Queensland Rail's revised drafting—which stakeholders support—achieves an appropriate balance between the interests of access seekers, access holders, rollingstock operators and Queensland Rail (ss. 138(2)(a), (b), (e), (h)). It is also in the interests of future access seekers.

Summary 8.1

The QCA's decision is that the appropriate way for Queensland Rail to amend the treatment of the ORM in the 2020 DAU is to include the ORM as a schedule to the undertaking and to establish a transparent process for amending the ORM that provides for QCA oversight.

Drafting: cl. 4.3; sch. G.

8.2 Network management principles (schedule F)

The NMPs set out how Queensland Rail will coordinate maintenance and other track restrictions, schedule and operate trains, and demonstrate available capacity. The two main documents that Queensland Rail's NMPs prescribe are the master train plan (MTP) and the daily train plan (DTP). Our decision also provides for a third document—the supply chain calendar (see Box 3).

Box 3: Train scheduling and planning

The documents that are relevant to Queensland Rail's NMPs in the 2020 DAU are:

- the **master train plan (MTP)**—which details the scheduled times as advised by Queensland Rail for all train services and any regular planned possessions where scheduled times are unchanged from week to week
- the **supply chain calendar**—which details upcoming regular and ad hoc planned possessions, urgent possessions (to the extent known) and special events on the network
- the **daily train plan (DTP)**—which is derived from both the MTP and the supply chain calendar and shows the actual expected schedule on the day of operation (a short-term planning document).

Queensland Rail can amend its scheduling and planning documents before the day of operation and before the DTP is scheduled. This can be done either by agreement with access holders, or because of operational constraints, which may include track closures for maintenance and construction activities or restrictions on train weights or speeds. The four types of operational constraints for maintenance and construction are:

- **emergency possessions**—closures to correct 'dangerous or potentially dangerous' faults or 'severe speed restrictions' within five days after they are detected
- **urgent possessions**—closures to correct 'potentially dangerous' problems less than three months after they are detected
- **regular planned possessions**³⁷⁰—closures that occur at regular intervals and are typically known between three months and two years before the day of operation
- **ad hoc planned possessions**—closures that occur at irregular intervals and are typically known between three months and two years before the day of operation.

Queensland Rail can amend the DTP after the DTP has been scheduled if requested by an access holder—and the change would not affect another access holder's train service entitlement—or for an emergency possession.

³⁷⁰ For ease of differentiation between ad hoc planned possessions and possessions that are entered into the MTP and occur at regular intervals, we have changed the naming of planned possessions to 'regular' planned

8.2.1 Changes to train plans

The train planning principles within the network management principles set out the scheduling of train services and how Queensland Rail will undertake maintenance activities on its network.

Queensland Rail and stakeholders have raised concerns about a range of issues relating to how possessions and disruptions on the network are planned and communicated. We have separated our analysis into:

- (a) ad hoc planned possessions and the supply chain calendar
- (b) special events
- (c) master train plan consultation
- (d) Cross River Rail
- (e) disputes over possessions

Ad hoc planned possessions

Queensland Rail proposed to implement a new type of possession called an 'ad hoc planned possession', which it defined as:

a possession (other than an urgent possession, an emergency possession or a planned possession) that is not entered into the MTP because it is not a regularly scheduled possession, and adversely affects the operation of train services.³⁷¹

Queensland Rail said the purpose of the new category of possession was to:

recognise the fact that the possessions included in the Master Train Plan (MTP) are possessions that are scheduled consistently at the same time during each year ... Other possessions, while they are planned in advance, are not scheduled at the same intervals. Even so, Queensland Rail for practical purposes treats ad hoc planned possessions in the same way as changes to possessions contained in the MTP—in other words, it considers access holders entitled to the same rights to consultation and provision of contracted train service entitlements.³⁷²

In response to stakeholder concerns, our draft decision proposed that ad hoc planned possessions be added to a planning document such as the Western Corridor Alignment Calendar (alignment calendar). We considered that a regularly updated central document that tracked all possessions and disruptions on a network was likely to lead to a greater level of transparency and promote the alignment of maintenance across the entire network supply chain.

Queensland Rail said in its collaborative submission on the draft decision that it would include in the NMPs the requirement to publish the alignment calendar and keep it up to date.³⁷³

Pacific National considered 'ad hoc planned possessions' were not required and an alignment calendar was not appropriate.³⁷⁴

Aurizon Coal, Yancoal and New Hope all generally supported our proposed approach for dealing with ad hoc planned possessions, subject to a number of changes to the NMPs to accommodate

possessions. They are referred to as regular planned possessions both in this document and in the required amendments to the 2020 DAU (Appendix B to this decision).

³⁷¹ Queensland Rail, sub. 1: 58 (cl. 7.1 definition of 'ad hoc planned possession').

³⁷² Queensland Rail, sub. 26: 14–15.

³⁷³ Queensland Rail, sub. 26: 15.

³⁷⁴ Pacific National, sub. 25: 12.

the use of the alignment calendar.³⁷⁵ New Hope said it was essential that the NMPs made clear that:

- (a) the alignment calendar was developed from the MTP (but containing additional information)
- (b) the restrictions on modifying the MTP also applied to modifying the alignment calendar
- (c) the DTP for each day was derived from the alignment calendar (rather than the MTP)
- (d) the NMPs specified what must be included in the alignment calendar, including everything from the MTP (regular planned possessions and all regular train services), ad hoc planned possessions, special events, 'no train' periods and information on recent changes to the network.³⁷⁶

Under Queensland Rail's proposal, customers are entitled to the same rights and protections for ad hoc planned possessions as they are for regular planned possessions, with the only difference being that regular planned possessions are placed in the MTP and ad hoc planned possessions are not. As such, we consider that access holders, access seekers, and train operators should be no worse off by the creation of this new category of possession, so long as there is a transparent process for notifying stakeholders of these possessions.

Supply chain calendar

Queensland Rail publishes several planning documents for various parts of its network, which serve the same purpose as the Western Corridor alignment calendar—namely, the Mount Isa Line closure alignment calendar, the North Coast Line supply chain calendar and the metropolitan planned track closure 12-month calendar.³⁷⁷ We consider that all of these documents should be subject to the same approach, as that will increase transparency about expected disruptions and possessions across all of Queensland Rail's better-used lines. Instead of referring to each of these documents individually, we use the term 'supply chain calendar' for all of them.

For access holders and train operators, it is important to have a high degree of transparency over train scheduling and any factor that might disrupt the normal operation of train services. That enables them to plan their train services and cope with necessary disruptions. Our view is that Queensland Rail's current approach of publishing MTPs and supply chain calendar documents on its website largely accomplishes this objective.

However, stakeholders are entitled to know what the supply chain calendar will contain and how often it will be updated, and this should be formalised within the NMPs. As Queensland Rail's proposal does not set this out, it is not in the interests of access seekers, access holders and train operators (ss. 138(2)(b), (d), (e), (h)).

The MTP should continue to function as is—that is, a document that details the scheduled times of train services and any regular planned possessions where such scheduled times remain unchanged from week to week. While the supply chain calendar should continue to accompany the MTP, we do not consider it necessary for the supply chain calendar itself to include a schedule of train services. Rather than basing the DTP on a supply chain calendar document alone, using

³⁷⁵ Yancoal, sub. 27: 19–20; New Hope, sub. 24: 29–30; Aurizon Coal, sub. 23: 2–3.

³⁷⁶ New Hope, sub. 24: 30.

³⁷⁷ The Metropolitan planned track closure 12-month calendar can be viewed on the Queensland Rail [website](#).

both the MTP and the supply chain calendar is appropriate.³⁷⁸ It is important that the supply chain calendar is updated frequently—at least monthly—subject to notifying affected parties when this occurs.

Using the supply chain calendar in such a way is likely to achieve a reasonable and appropriate balance of the interests of Queensland Rail, access seekers, access holders, and train operators, and to enhance the efficient operation of the network (ss. 138(2)(a), (b), (d), (e), (h)). As such, it is appropriate for the new category of ad hoc possessions to be introduced, and for regular and ad hoc planned possessions, urgent possessions (to the extent known) and special events to be added to the supply chain calendar, which should be updated at least monthly.

We also require that Queensland Rail make consequential amendments to schedule F to implement the supply chain calendar.

Summary 8.2

The QCA's decision is that it is appropriate for Queensland Rail to amend its 2020 DAU to provide that ad hoc planned possessions are recorded in the supply chain calendar that is updated at least monthly.

Drafting: sch. F, cl. 2.1(a); sch. H, cl. 28.1 (definition of 'planned possession'); cl. 7.1 (definition of 'ad hoc planned possession' and 'supply chain calendar').

Special events

Queensland Rail proposed in the 2020 DAU that it should be able to vary the DTP from the MTP at least two business days before the day of operation, to accommodate a special event (sch. F, cl. 2.2(f)).³⁷⁹ It defined 'special events' as events or occasions for which Queensland Rail was required to provide passenger services in addition to the then scheduled passenger timetable.³⁸⁰

New Hope and Yancoal considered a two-day notice period for changes to the MTP was not sufficient, particularly for events for which the date was known well in advance. Pacific National also did not support Queensland Rail's proposed treatment of special events in the 2020 DAU.³⁸¹

Most of the defined special events are known far in advance. Very few—such as sporting finals—are likely to occur at short notice. Consequently, it is not appropriate that stakeholders might have only two days' notice for events known months or years in advance. As such, Queensland Rail's amendments to schedule F, cl. 2.2(f) in relation to special events are not in the interests of access seekers and access holders (ss. 138(2)(e), (h)).

The draft decision considered it was appropriate that stakeholders be notified of special events and that consultation take place well ahead of time, where possible. It also proposed that special events could be added to the alignment calendar, to assist in providing greater transparency with network and scheduling planning.

³⁷⁸ We have also clarified that the DTP include urgent possessions and emergency possessions (to the extent known). This is consistent with the network management principles that apply as part of Aurizon Network UT5.

³⁷⁹ Queensland Rail, sub. 1: 144.

³⁸⁰ Special event as a category did not exist in the 2016 undertaking.

³⁸¹ Pacific National, sub. 17: 12–14.

Queensland Rail submitted that special events were listed within the alignment calendar (supply chain calendar) published by Queensland Rail.³⁸² Queensland Rail accepted the requirement to use reasonable endeavours to consult with access holders about changes to the DTP as a result of the scheduling of special events, and to keep the alignment calendar up to date.

Aurizon Bulk did not agree that Queensland Rail should be able to amend the MTP or DTP in the way described for special events. It said the proposed changes did not consider the impacts on rail users and did not force a strong enough consultation process.³⁸³ Aurizon Bulk said the current process typically favoured passenger services over non-passenger services.

Aurizon Coal, Yancoal and New Hope generally supported the use of a supply chain calendar-type document to record special events.³⁸⁴ Aurizon Coal said similar timeframes should be introduced for special events as applied for planned possessions.³⁸⁵

While special events add an extra level of disruption to the network³⁸⁶, they are unavoidable, as many of the services using Queensland Rail's network cross metropolitan Brisbane. Typically they recur every year and Queensland Rail and its customers are accustomed to working around them.

We note that for some sporting finals events, Queensland Rail may be unable to provide notice well in advance. For this reason, we consider that it is not appropriate to introduce strict timeframes outlining when stakeholders must be notified of a special event. Ultimately, what is important is that consultation takes place well ahead of time where possible and stakeholders are made aware of any upcoming special event promptly.

Consequently, we consider much of Queensland Rail's proposed treatment of special events is appropriate to approve, subject to:

- Queensland Rail being required to make reasonable endeavours to consult with stakeholders in a timely manner, where possible
- Queensland Rail including special events within the supply chain calendar³⁸⁷ and making reasonable endeavours to keep it updated to reflect upcoming special events.

We consider that such an approach provides Queensland Rail with flexibility to schedule variations in the DTP from the MTP for events that are outside its control, while also providing a high level of transparency. As such, this approach is likely to promote the efficient operation of the network and the public interest and to be in the interests of access seekers/holders and train operators (ss. 138(2)(a), (d), (e), (h)).

³⁸² Queensland Rail, sub. 26: 15.

³⁸³ Aurizon Bulk, sub. 22: 6.

³⁸⁴ Yancoal, sub. 27: 20; New Hope, sub. 24: 30; Aurizon Coal, sub. 23: 2–3.

³⁸⁵ Aurizon Coal, sub. 23: 2–3.

³⁸⁶ Pacific National (sub. 25: 12) was concerned about the disruptive nature of special events. The NMPs require Queensland Rail to use reasonable endeavours to minimise any material adverse effects on train services that are caused by a modification to the MTP or the scheduling of a DTP that varies from the MTP (sch. F, cl. 2.3 of the 2020 DAU and 2016 undertaking). We consider that this clause is appropriate in limiting the adverse impacts of possessions and special events.

³⁸⁷ Consistent with the above section, we consider it appropriate that special events are included within the Mount Isa Line closure alignment calendar and the North Coast Line supply chain calendar.

Summary 8.3

The QCA's decision is that the appropriate way for Queensland Rail to amend the treatment of special events in the 2020 DAU is that Queensland Rail should be required to make reasonable endeavours to both consult with affected stakeholders and update the supply chain calendar.

Drafting: sch. F, cl. 2.2(f).

Master train plan modification consultation

Queensland Rail proposed to provide for ad hoc planned possessions in the rules for consulting about modifying a MTP (sch. F, cl. 2.1(m)(ii)). The process for consulting about modifying a MTP is otherwise the same as in the 2016 undertaking.

Aurizon Coal considered the drafting in the 2016 undertaking and 2020 DAU was not sufficiently clear on when Queensland Rail was required to obtain agreement from access holders for variations to the MTP and planned possessions. Aurizon Coal said the current drafting of cl. 2.1(m)(ii) was illogical, as it was not clear how a modification could be either within or not within the scope of an access holder's TSE. Aurizon Coal suggested that the drafting should be updated to reflect that an access holder must agree to the MTP variation where that variation would result in scheduled train services not being met.³⁸⁸

New Hope and Yancoal supported clarifying the requirement for Queensland Rail to consult about modifying a MTP or scheduling an ad hoc planned possession (cl. 2.1(m)(ii)).³⁸⁹

We consider that the proposed wording of the rules for consulting about modifying a MTP or scheduling an ad hoc planned possession (cl. 2.1(m)(ii)) is not sufficiently clear and could cause confusion as to what it means for a modification of a MTP, or the scheduling of an ad hoc planned possession, to be 'within the scope' of an access holder's TSE. As such, we consider Queensland Rail's proposal brings about legal uncertainty.

We are of the view that the clause is intended to apply where an access holder's use of its TSE may be adversely affected—such as scheduled train services not being able to operate—when the MTP is modified or an ad hoc planned possession is scheduled. Because Queensland Rail's proposal does not make this clear, we do not consider the proposal is appropriate and in the interests of access holders, operators, and access seekers (ss. 138(2)(e), (h)).

Instead, the rules for consulting about an MTP or scheduling an ad hoc planned possession should make clear that the MTP should not be varied without an access holder's agreement where the variation would result in scheduled train services not being met. Amending the clause in such a way is likely to strike a balance between the interests of Queensland Rail and those of access holders, operators, and access seekers (ss. 138(2)(b), (e), (h)).

³⁸⁸ Aurizon Coal, sub. 12: 3.

³⁸⁹ New Hope, sub. 24: 27; Yancoal, sub. 27: 20.

Summary 8.4

The QCA's decision is that the appropriate way for Queensland Rail to amend the process in the 2020 DAU for modifying a MTP or scheduling an ad hoc planned possession, is to make it clear that the MTP should not be varied without an access holder's agreement where the variation would result in scheduled train services not being met.

Drafting: cl. 2.1(m)(ii).

Cross River Rail

New Hope said the Cross River Rail project was likely to be developed during the term of the 2020 DAU, and that during such development Queensland Rail might seek material closures of parts of the Metropolitan system (that will disrupt West Moreton services that require access to the Metropolitan system).³⁹⁰ New Hope considered that it would need to make material adjustments to its supply chain, given the significance and likelihood of these closures. It said the NMPs should be amended to provide for:

- (a) Queensland Rail to provide periodic updates (at least quarterly until completion of the Cross-river rail development) to Metropolitan system users and rail haulage operators of future anticipated closures and the impacts; and
- (b) Subject to any legal requirements which Queensland Rail is subject to, a cap on possessions of:
 - (i) in aggregate, no more than two months in one year
 - (ii) the longest possession being no longer than 12 days; and
 - (iii) no more than one extended outage, being an outage of ten days or greater, in any rolling 12 month period.³⁹¹

We note that stakeholders will still receive the same protections for possessions related to the Cross River Rail project as they would for other possessions. While Cross River Rail has the potential to cause significant disruptions to the network, the 2020 DAU requires that Queensland Rail minimise the adverse effects of possessions (sch. F, cl. 2.3). We consider that Queensland Rail has limited ability to manage disruptions posed by Cross River Rail, beyond using its reasonable endeavours to minimise any material adverse effects on train services. As such, we do not consider it reasonable to incorporate a cap on the number or duration of possessions that Queensland Rail may require.

Given constructing Cross River Rail will be disruptive and create uncertainty, it will be appropriate for Queensland Rail to engage with stakeholders and update them on the project's status and on any anticipated possessions. The regional network user groups that Queensland Rail proposed could act as an appropriate platform for such engagement to take place. Any disruptions to be caused by Cross River Rail will also be entered in the supply chain calendar.

As such, we are of the view that the NMPs in the 2020 DAU are appropriate to address the disruptions caused by building Cross River Rail, having regard to the factors in s. 138(2), including the object of Part 5, the interests of Queensland Rail and access holders, and the efficient operation of the network (ss. 138(2)(a), (b), (h)).

³⁹⁰ New Hope, sub. 24: 31–32.

³⁹¹ New Hope, sub. 24: 32.

Summary 8.5

The QCA's decision is that the NMPs in the 2020 DAU are appropriate to address the disruption that the Cross River Rail project will cause.

Disputes over possessions

Queensland Rail proposed not to include in the 2020 DAU a requirement that a regular planned possession that was subject to a dispute raised by an access holder be delayed until the dispute was resolved. The 2016 undertaking includes that requirement (sch. F, cl. 2.4). Queensland Rail considered that the requirement could damage its business:

Queensland Rail may have multiple contracts in place with external contractors over several worksites across the network linking into one Planned Possession. Requiring Queensland Rail to stop the work right up until the day of the possession is not reasonable or effective, and in many cases would result in reputational damage and financial compensation to external contractors potentially in the order of millions of dollars.³⁹²

New Hope, Yancoal, Aurizon Bulk and Pacific National opposed not including such a dispute clause.³⁹³ New Hope and Yancoal submitted that it should have a right to dispute variations to the MTP, given that variations could result in cancellations, demurrage and take-or-pay costs. Aurizon Bulk considered that operators should also have the ability to dispute a planned possession. Pacific National said the dispute clause as in the 2016 access undertaking might create problems for Queensland Rail, and suggested that it could be amended to require any dispute to be lodged at least 30 days before the start of the possession.

It is possible under the dispute clause—as drafted in the 2016 undertaking—for an access holder to raise a dispute just before the start of a planned possession, which could potentially lead to significant negative consequences for Queensland Rail. However, this type of behaviour is unlikely to occur, because foregoing required maintenance could lead to more significant track issues and, as a consequence, a long-term reduction in railings. Indeed, when requested, Queensland Rail did not supply any evidence of instances where it had been negatively impacted by a dispute raised in relation to a regular or ad hoc planned possession.

A planned possession has the potential to significantly disrupt train services, and thereby negatively affect access holders and operators. Consequently, Queensland Rail's proposal to not include a relevant dispute clause is not appropriate to approve, having regard to the factors in s. 138(2), including the interests of access seekers, access holders, and train operators and the public interest (ss. 138(2)(d), (e), (h)).

While it is unlikely for a dispute to be raised just before the start of a planned possession, our draft decision recognised Queensland Rail's concern that the drafting in the 2016 undertaking makes this possible. As stakeholders are informed of a planned possession at least 90 days before it takes place, we considered it would not be reasonable for stakeholders to raise a dispute just before a planned possession started. Instead, a clause similar to the dispute clause (sch. F, cl. 2.4) in the 2016 undertaking should be introduced, but it should provide that stakeholders have a fixed period before a planned possession within which to file a dispute.

³⁹² Queensland Rail, sub. 2: 64.

³⁹³ New Hope, sub. 15: 19–20; Yancoal, sub. 16: 22; Aurizon Bulk, sub. 11: 19; Pacific National, sub. 17: 14.

Queensland Rail considered allowing stakeholders to file a dispute before a planned possession would lead to inefficiencies and disruptions to the running of the network, and that it would also be possible for stakeholders to use the process frivolously to compromise train running at the expense of other parties. Queensland Rail submitted that if we insisted on maintaining the requirement that planned possessions cannot proceed until disputes have been resolved, then at minimum, disputes should be lodged within two weeks of the MTP being locked down, as detailed consultation takes place in the lead-up to the three month lock-down of the MTP.³⁹⁴

New Hope, Yancoal and Aurizon Coal generally supported our approach regarding disputes over possessions, subject to minor changes.³⁹⁵ New Hope suggested requiring that disputes be filed within 30 days of being notified (via the alignment calendar). New Hope considered that this would allow access holders' dispute rights to be protected against any late notification of a planned possession by Queensland Rail.³⁹⁶ Aurizon Coal proposed that the dispute provisions be expanded to include special events.³⁹⁷

It is our view that it is not appropriate for the dispute clause to include special events. Queensland Rail may have limited control over disruptions to the network caused by special events. Additionally, Queensland Rail is bound by its passenger priority obligations under the *Transport Infrastructure Act 1994* (Qld). As such, we do not consider it appropriate for a dispute to be raised by a stakeholder involving Queensland Rail's compliance with its required passenger services.

We consider that requiring a dispute to be filed within 30 days of being notified of a regular or ad hoc planned possession is likely to lead to an appropriate outcome for stakeholders. For Queensland Rail, this would provide an incentive to notify possessions as soon as reasonably possible. Access holders and operators will still be protected in instances where Queensland Rail is late to notify stakeholders of a planned possession.

The dispute clause should apply equally to both ad hoc and regular planned possessions. Operators should also be able to lodge disputes, as they, too, could be impacted adversely.³⁹⁸

Enabling stakeholders to contest possessions that they consider have been inappropriately scheduled will promote disciplined operation of the network. The amended clause is also likely to advantage Queensland Rail, relative to the provision in the 2016 undertaking, as stakeholders will file disputes well in advance of the possession, where Queensland Rail provides sufficient notice. Consequently, we consider that this approach achieves a reasonable and appropriate balance of the interests of Queensland Rail, access seekers, access holders and train operators, and also enhances the efficient operation of the network (ss. 138(2)(a), (b), (d), (e), (h)).

Summary 8.6

The QCA's decision is that the appropriate way for Queensland Rail to amend the 2020 DAU is to require that access holders and operators that wish to raise a dispute over a regular or ad hoc planned possession do so within 30 days of being notified of the possession.

Drafting: sch. F, cl. 2.4.

³⁹⁴ Queensland Rail, sub. 26: 15.

³⁹⁵ Yancoal, sub. 27: 20; New Hope, sub. 24: 31; Aurizon Coal, sub. 23: 3.

³⁹⁶ New Hope, sub. 24: 31.

³⁹⁷ Aurizon Coal, sub. 23: 3.

³⁹⁸ One such impact could be on the scheduling of train crews.

8.2.2 Network control principles

The prime objective of network control is to facilitate the safe running of train services, and the start and finish of possessions, as scheduled in the DTPs. The network management principles (sch. F, cl. 3(g)) state that:

In the context of the Traffic Management Decision Making Matrix, the meaning of “On Time”, “Ahead” and “Late” are determined by the scheduling of paths in the relevant DTP. For example, if a Train Service is travelling in accordance with the path allocated to it in the relevant DTP, it is running “On Time”.

In considering the network control principles, our analysis is divided to address:

- (a) on-time windows
- (b) train priority.

On-time windows

Pacific National said Queensland Rail's current practice was that a train that was not on time to the minute was classified as either 'ahead' or 'late', which meant that under the Traffic Management Decision Matrix, such a train could be disadvantaged. Pacific National considered that for freight trains travelling up to 1700 kilometres, such precision for defining 'on-time' services was unrealistic. Furthermore, Pacific National said Queensland Rail provided a much more generous definition of 'on time' when reporting its own performance—for instance, Queensland Rail proposed in the 2020 DAU to be required to report on the number and percentage of possessions that did not start or finish within 30 minutes of their scheduled time (see section 9.1).³⁹⁹

Queensland Rail was not opposed to the idea of extending on-time windows for freight traffic, and considered that appropriate times may be 30 minutes for West Moreton system traffic, and 60 minutes for North Coast Line system traffic due to the longer journey time. However, Queensland Rail submitted that this might impact on network planning, requiring extra possessions or possessions of longer duration. Queensland Rail also noted that it must comply with its passenger priority obligations under the *Transport Infrastructure Act 1994* (Qld).⁴⁰⁰

Aurizon Bulk was in favour of a 15-minute on-time window, provided that it was limited to areas outside of the Brisbane metropolitan system.⁴⁰¹ Aurizon Coal supported extending the on-time windows for freight rail to 15 minutes, noting that this was consistent with standard timeframes for freight rail operators for other network providers. Aurizon Coal considered that the windows for on-time performance for freight rail and Queensland Rail's planned possessions should be aligned.⁴⁰²

New Hope and Yancoal submitted that, subject to the view of haulage operators, the existing practices on the West Moreton and Metropolitan systems should be maintained.⁴⁰³

Our view is that requiring trains to be on time to the minute for them to be classified as 'on time', is unreasonably restrictive for freight trains travelling long distances. However, most freight traffic on the Queensland Rail network will travel on the Metropolitan system, where a higher degree of accuracy is required, because it is a more congested passenger network. As such, we

³⁹⁹ Pacific National, sub. 17: 14–15.

⁴⁰⁰ Queensland Rail, sub. 26: 15.

⁴⁰¹ Aurizon Bulk, sub. 22: 6.

⁴⁰² Aurizon Coal, sub. 23: 3.

⁴⁰³ Yancoal, sub. 27: 20; New Hope, sub. 24: 31.

do not consider it appropriate for trains travelling on the Metropolitan system to be provided such an on-time window.

However, as extended on-time windows will not create the same problems outside the Metropolitan system, we consider that it is not appropriate to maintain the current classification of 'on-time' for trains travelling there. Consequently, we are of the view that Queensland Rail's proposal is not appropriate to approve having regard to the interest of train operators, access seekers and access holders, and the public interest (ss. 138(2)(d), (e), (h)).

Instead, we consider an on-time window of 15 minutes for traffic outside of the Metropolitan system is appropriate and will contribute to a more efficient operation of the network. We are of the view that this should apply to both freight and passenger rail, as we see no reason why passenger trains should be disadvantaged, compared to freight trains, when evaluated using the Traffic Management Decision Matrix. This approach is appropriate, having regard to the interests of Queensland Rail, train operators, access seekers and access holders, and the public interest (ss. 138(2)(b), (d), (e), (h)). We note that this also aligns with the 15-minute on-time windows Queensland Rail has for reporting on the completion of regular and ad hoc planned possessions (see section 9.1.1).

Summary 8.7

The QCA's decision is that the appropriate way for Queensland Rail to amend the 2020 DAU is to extend the on-time window for rail outside the Metropolitan system to 15 minutes.

Drafting: sch. F, cl. 3(g).

Train priority

In both the 2016 undertaking and the 2020 DAU, the Traffic Management Decision Making Matrix guides network control decisions. Aurizon Bulk noted Queensland Rail had not proposed in the 2020 DAU to change the existing Traffic Management Decision Matrix (sch. F, cl. 3 in the 2016 undertaking). Aurizon Bulk considered:

The rules provided are relatively clear, but Network Controllers are provided with the flexibility under the "Principles for managing deviations from a DTP" that muddy the waters in the application of these decisions.⁴⁰⁴

Aurizon Bulk said that cl. 3(i)(i)(B) of schedule F in particular allowed for a network controller to 'remedy, or to mitigate or avoid, the operation of Train Services on any part of the Network being congested, prevented or otherwise materially adversely affected'. Aurizon Bulk considered that, aside from safety reasons, 'healthy' (i.e. on-time) trains should always be given priority ahead of unhealthy trains, in accordance with the decision-making matrix.⁴⁰⁵

It also submitted that:

For practical reasons a controller is not consulting the Undertaking when making decisions. There is no reporting mechanism that allows operators to challenge decisions made by controllers, nor is there a requirement for the rail operator to be provided information from QR. Poor decision making in train control leads to additional costs for rail operators, such as additional crew hours

⁴⁰⁴ Aurizon Bulk, sub. 11: 19.

⁴⁰⁵ Aurizon Bulk, sub. 11: 19.

required to move products, excess overtime, increase risk of fatigue and potential penalties with customers in meeting KPI targets.⁴⁰⁶

Aurizon Bulk said there should be transparency, and an opportunity for rail operators to participate in improving Queensland Rail's processes for the benefit of all users.⁴⁰⁷

Yancoal supported leaving in place the principles for managing deviations from a DTP, while New Hope also was in favour of this position, provided that a productivity and operational improvement regime be implemented.⁴⁰⁸

The 2016 access undertaking process introduced a number of principles for managing deviations from a DTP, including the principle outlined by Aurizon Bulk. While cl. 3(i)(i)(B) of schedule F provides network controllers with the discretion to favour an unhealthy train over a healthy train⁴⁰⁹, the undertaking requires that this discretion is applied 'if it is reasonably necessary'. We are not aware of circumstances to date in which this clause has been applied unreasonably.

We note that one of Aurizon Bulk's key concerns was about the transparency of Queensland Rail's decision-making, particularly when controllers exercised discretion to avoid congestion. It is our view that this concern can be addressed by requiring Queensland Rail to report on the number of instances where it has exercised discretion in relation to managing deviations from the DTP. This issue has been addressed in further detail in section 9.1.4.

Therefore, while we generally support healthy trains receiving priority over unhealthy trains, we consider it is appropriate to retain cl. 3(i)(i)(B) of schedule F. Given Queensland Rail is required to report on its use of discretion to avoid congestion, we consider the relevant provisions are appropriate, having regard to the factors in s. 138(2), including the object of Part 5, the interests of Queensland Rail and access holders and the efficient operation of the network (ss. 138(2)(a), (b), (h)).

Summary 8.8

The QCA's decision is that it is appropriate to approve the principles in Queensland Rail's 2020 DAU for managing deviations from a DTP, including sch. F, cl. 3(i)(i)(B).

8.3 Productivity and operational improvements

Queensland Rail's 2020 DAU does not include specific measures to promote productivity and operational improvements. However, Queensland Rail agreed with several stakeholders during the collaborative submission process on including new provisions in the undertaking to establish regional network user groups (user groups) to review, discuss and improve rail operational issues which could affect system or supply chain performance.⁴¹⁰

Queensland Rail proposed new drafting to implement this agreed measure, but did not indicate where the proposed clauses would sit in the undertaking. We are of the view that the new clauses should be added to Part 4 of the undertaking.

⁴⁰⁶ Aurizon Bulk, sub. 22: 6.

⁴⁰⁷ Aurizon Bulk, sub. 22: 6.

⁴⁰⁸ Yancoal, sub. 27: 20; New Hope, sub. 24: 31.

⁴⁰⁹ Provided that this is done 'to remedy, or to mitigate or avoid, the operation of train services on any part of the network being congested, prevented or otherwise materially adversely affected' (sch. G, cl. 3(i)(i)(B)).

⁴¹⁰ Queensland Rail, sub. 36: 7–8.

Queensland Rail proposed to establish these user groups for the West Moreton, North Coast Line and Mount Isa Line rail systems. The groups should consist of access holders, rail transport operators and end user access seekers relevant to each regional network.⁴¹¹

Yancoal, New Hope, Aurizon Coal, Glencore and Pacific National all supported the proposal to introduce user groups.⁴¹² However, Pacific National considered that, while introducing user groups was a step in the right direction, it fell short, because Queensland Rail's only requirement was to convene a group.⁴¹³ New Hope said the existing terms of reference for the South Western Users Group should continue to apply until new terms of reference were agreed, so as to not disrupt the already established user group.⁴¹⁴ Yancoal, New Hope and Glencore said it was more appropriate for the user groups to be chaired by a user representative, rather than a Queensland Rail representative, as Queensland Rail proposed.⁴¹⁵ In addition, these stakeholders considered that it was appropriate that the groups' scope of discussions be extended to include capital investment, which might be the best way to achieve some productivity or operational improvements.

Queensland Rail considered that the user groups should be focused on operational performance rather than supply chain investment decisions, as these were dealt with in other sections of the undertaking, including development and funding of extensions and enhancements to the network.⁴¹⁶

We are of the view that user groups are likely to contribute to the efficient operation of the network. Their objective is to improve system and supply chain performance through operational means. We consider that, while there may be a focus on operational performance at meetings, there could be instances where this is best achieved through some form of capital expenditure or investment—thus contributing to better overall supply chain performance and the efficient use of the network. As such, we are of the view that it would be counterproductive to limit discussion within the user groups to purely operational matters. Therefore, we consider that the undertaking should not set out in detail the scope of user group discussions.

Similarly, it is not necessary that the undertaking specify who will chair the user group meetings—stakeholders should be able to determine that amongst themselves. So, while we have largely adopted the drafting that Queensland Rail proposed, we have not specified who will chair the user group meetings, or their scope of discussions. We have also provided that terms of reference already in place for an existing user group will apply until any new terms of reference is agreed.

Our view is that introducing Queensland Rail's proposed productivity and operational improvements will promote the efficient operation of the network. As such we consider the relevant provisions are appropriate, having regard to the factors in s. 138(2), including the object of Part 5, the interests of Queensland Rail and access holders and the efficient operation of the network (ss. 138(2)(a), (b), (h)).

⁴¹¹ Queensland Rail, sub. 36: 7–8.

⁴¹² Yancoal, sub. 41: 12; New Hope, sub. 33: 18–19, sub. 24: 19–20; Glencore, sub. 29: 1–2; Pacific National, sub. 34; 2.

⁴¹³ Pacific National, sub. 34: 2.

⁴¹⁴ New Hope, sub. 33: 18.

⁴¹⁵ Yancoal, sub. 41: 12; New Hope, sub. 33: 18; Glencore, sub. 29: 2.

⁴¹⁶ Queensland Rail, sub. 36: 8.

Summary 8.9

The QCA's decision is that it is appropriate for Queensland Rail to amend the 2020 DAU to provide for regional network user groups.

Drafting: cls. 4.4 and 7.1 (definition of 'regional network user groups').

9 REPORTING (PART 5)

The reporting provisions in Part 5 of the 2020 DAU set out how Queensland Rail will inform stakeholders about its performance in negotiating access and operating its track, and the costs of providing access to parts of the network with substantial commercial revenue. Part 5 also provides rules for auditing this information and Queensland Rail's compliance with its undertaking.

In the 2020 DAU, Queensland Rail proposed to retain all of the reporting and audit requirements from the approved 2016 undertaking, with a few changes to deadlines.

Overview of the decision

We require Queensland Rail to make a number of amendments to Part 5 of the 2020 DAU, including to provide more detailed reporting of the timing of planned possessions, but there are many provisions we consider appropriate to be approved.

Reporting (Part 5)—summary

<i>Queensland Rail DAU</i>	<i>Clause</i>	<i>QCA decision</i>
Quarterly network performance report		
Publish by end of month after each quarter, or as agreed with QCA. ⁴¹⁷	5.1.1	The proposal is appropriate to be approved, and is supported by stakeholders. Not discussed further. ⁴¹⁸
Allow 30 minutes' leeway in timing of planned possessions.	5.1.2(a)(x)	The proposal is not appropriate to be approved. Amendments are required to specify that reporting on planned possessions should be subject to 15 minutes' leeway, and provide information in ranges (see section 9.1.1).
No proposal for reporting on use of planned possessions outside the master train plan ('ad hoc planned possessions').	5.1.2(a)(x)	Queensland Rail is required to report on planned possessions outside the master train plan (see sections 9.1.2 and 8.2.1).
No proposal for reporting on use of urgent and emergency possessions.	5.1.2(a)(xi) (added)	Queensland Rail is required to report on use of urgent and emergency possessions (see section 9.1.3)
No proposal for reporting on use of congestion-related delays.	5.1.2(a)(ii)(D) (added)	Queensland Rail is required to report on use of congestion-related delays (see section 9.1.4 and 0)
Specify types of service covered, for example: coal, bulk minerals, freight; exclude metropolitan system. ⁴¹⁹	5.1.2(b)	The proposal is appropriate to be approved, and is supported by stakeholders. Not discussed further. ⁴²⁰

⁴¹⁷ Queensland Rail, sub. 2: 58, 62.

⁴¹⁸ New Hope, sub. 15: 13, sub. 24: 32; Yancoal, sub. 27: 21.

⁴¹⁹ Queensland Rail, sub. 2: 58, 62.

⁴²⁰ New Hope, sub. 15: 14, sub. 24: 32; Aurizon Bulk, sub. 11: 9; Yancoal, sub. 27: 21.

<i>Queensland Rail DAU</i>	<i>Clause</i>	<i>QCA decision</i>
Annual network performance report		
Publish within six months after end of each year. ⁴²¹	5.2.1(a)	The proposal is appropriate to be approved and is supported by stakeholders. Not discussed further. ⁴²²
Commentary required only for 'material' changes.	5.2.2(k)	The proposal is not appropriate to be approved. Amendments are required to specify 'material' (see section 9.2.1).
Costs for non-reference-tariff systems	5.2.2(j)	The proposal is appropriate to be approved (see section 9.2.2)
Format of annual network performance report unchanged.	5.2, 5.3	The proposal is appropriate to be approved. (see section 9.2.3).
Other matters		
Incorrect clause number	5.2.2(i)(vi)	Clause 5.2.2(i)(vi) should be numbered 5.2.2(i)(v)(B).

9.1 Quarterly network performance report (cl. 5.1)

9.1.1 Planned possessions

Planned possessions are times set aside for Queensland Rail to maintain its network or undertake capital works. Train services are stopped during those times, which affects capacity available to access holders. A late start or early finish is inefficient, as it means the network is closed and services are most likely deferred or cancelled at a time when they could have been operating. In general, discipline in keeping to scheduled times for possessions is a sign of a well-run, efficient network.

Planned possessions are governed by rules in the network management principles (see sch. F of the 2020 DAU and section 8.2 of this decision). Reporting on Queensland Rail's planned possessions is included in the quarterly network performance report.

Queensland Rail proposed in the 2020 DAU to distinguish between planned possessions that take place on a consistent schedule from week to week, and are therefore suitable to be included in the master train plan (MTP), and planned possessions that are at irregular times. We require (see section 8.2.1) that these be divided into:

- (a) regular planned possessions, which are recorded in the MTP
- (b) ad hoc planned possessions, which are recorded in the supply chain calendar (see section 9.1.2 below for specific reporting required for this type of planned possession).

30-minute leeway for reporting

Queensland Rail said that the reporting in the 2016 undertaking covered planned possessions that started one second early or finished one second late. It proposed in the 2020 DAU that its reporting of planned possessions only cover instances where they started and finished more than 30 minutes outside the scheduled time (cl. 5.1.2(a)(x)).⁴²³

⁴²¹ Queensland Rail, sub. 2: 58, 62.

⁴²² Aurizon Bulk, sub. 11: 11; New Hope, sub. 15: 14; Yancoal, sub. 27: 21.

⁴²³ Queensland Rail, sub. 2: 62.

We consider that it is appropriate for the reporting of 'on time' planned possessions to provide some leeway. Aurizon Bulk and Yancoal said the threshold should be 15 minutes.⁴²⁴ New Hope and Aurizon Coal supported a 15-minute threshold, subject to it being reviewed for the next undertaking period.⁴²⁵

We consider 15 minutes to be an appropriate threshold. This is because on the West Moreton system, for example, the longest section run time is 26 minutes. A 15-minute variance is unlikely to affect a path before or after the possession; however, a 30-minute variance would almost certainly consume (or make available) an extra path.

Therefore, weighing up the interests of Queensland Rail, access seekers and access holders (ss. 138(2)(a), (b), (e), (h)), our decision is not to approve Queensland Rail's proposal concerning reporting on regular planned possessions.

Reporting in ranges

In finding that 15 minutes is an appropriate amount of leeway for reporting of regular planned possessions, we have also formed a view that a simple late/early threshold is too simplistic. We consider that both access holders/seekers and Queensland Rail will benefit from a more nuanced reporting approach, which indicates how material unscheduled periods of track closure are.

The way to achieve this is to report the timing variances in ranges—similar to the approach used for indicative access proposals and negotiation periods in the annual network performance report (see cls. 5.2.2(d), (h)). So, in addition to applying 15 minutes' leeway, the reporting should cover a two-hour variance, which would have a material effect on the capacity of the network. Based on the same 26-minute section run time discussed above in relation to the 15-minute threshold, a two-hour additional closure would affect four or more available paths.

Therefore, we consider that the overall reporting regime for regular planned possessions should include:

- the total number of regular planned possessions during the quarter
- for the start and finish of each possession, the number and percentage that were:
 - within 15 minutes of the scheduled time
 - 15 minutes to two hours early
 - 15 minutes to two hours late
 - more than two hours early
 - more than two hours late (see cl. 5.1.2(a)(x)).

Stakeholders supported reporting in ranges.⁴²⁶ It may be also be in Queensland Rail's interest as it will have an opportunity to demonstrate the number of possessions that were either on schedule, or within a 15-minute tolerance (s. 138(2)(b)). At the same time, it will promote the efficient operation and use of the network by giving access seekers and access holders a clearer understanding of how many possessions are starting or finishing either somewhat or substantially outside the scheduled time (ss. 138(2)(a), (e), (h)).

⁴²⁴ Aurizon Bulk, sub. 11: 9, sub. 22: 6; Yancoal, sub. 27: 21

⁴²⁵ New Hope, sub. 15: 14, sub. 24: 32, 33; Aurizon Coal, sub. 23: 3.

⁴²⁶ New Hope, sub. 24: 32; Yancoal, sub. 27: 21.

Summary 9.1

The QCA's decision is that the appropriate way for Queensland Rail to amend the 2020 DAU is to provide information about the total number of regular planned possessions during the quarter and the start and finish times of regular planned possessions in ranges, as set out in section 9.1.1 of this decision.

Drafting: cl. 5.1.2(a)(x)

9.1.2 Ad hoc planned possessions

Queensland Rail proposed a new category of planned possessions, which would allow it to schedule maintenance work that had not been included in the MTP. As discussed above and in section 8.2.1, we broadly accept the proposed change, but require that the possessions outside the MTP be called ad hoc planned possessions, while those included in the MTP be called 'regular' planned possessions.

Given this is a changed approach to scheduling, it is appropriate that access holders/seekers and other interested parties be informed on how the new category of 'ad hoc' possessions is being used by Queensland Rail. This will enable them to understand how access is provided, and make informed comments on whether the changes should be retained in future undertakings. Stakeholders supported this approach.⁴²⁷ New Hope said:

If anything, reporting on these more 'ad hoc' possessions is even more important to assist supply chain participants in understanding the impact these possessions are having on capacity and supply chain performance.⁴²⁸

Weighing up the interests of Queensland Rail, access seekers and access holders (ss. 138(2)(b), (e), (h)), our decision is that it is not appropriate to approve Queensland Rail's proposal as it does not include separate reporting on ad hoc planned possessions. We consider it appropriate for Queensland Rail to amend its 2020 DAU to provide for quarterly reporting of:

- how many ad hoc planned possessions it has used
- the average duration of those possessions
- how many train paths have been cancelled or rescheduled for those ad hoc planned possessions.

The ad hoc planned possessions should also be subject to the reporting for on-time performance that is discussed above in relation to regular (MTP) planned possessions. This reporting, covering 15-minute and two-hour variances, will address New Hope's concern that 'all material variations from the Alignment Calendar should be reported on'.⁴²⁹

⁴²⁷ New Hope, sub. 24: 32, 33; Yancoal, sub. 27: 21.

⁴²⁸ New Hope, sub. 24: 33.

⁴²⁹ New Hope, sub. 24: 33.

Summary 9.2

The QCA's decision is that the appropriate way for Queensland Rail to amend the 2020 DAU is to provide transparency about how often ad hoc planned possessions are used, the times they start and finish, and the consequences of those possessions, as set out in sections 9.1.1 and 9.1.2 of this decision.

Drafting: cl. 5.1.2(a)(x).

9.1.3 Urgent and emergency possessions

Queensland Rail did not propose any reporting on urgent or emergency possessions in the 2020 DAU. Stakeholders said these should be included in the reporting requirements.⁴³⁰ Yancoal said:

[If] the number of unplanned possessions of this type are rising, that will assist in identifying issues with asset condition or maintenance practices.⁴³¹

We consider that reporting on possessions that happen on short notice will promote efficient use and operation of the rail systems (s. 138(2)(a)). It will be in the interest of access seekers and access holders as it will, when combined with the reporting on regular and ad hoc planned possessions, provide a more complete understanding of the standard of the network, and how maintenance and capital investment is being completed (ss. 138(2)(e), (h)).

This reporting should, for each of urgent and emergency possessions in each quarter, specify:

- (a) how many possessions have been used
- (b) the average duration of those possessions
- (c) how many train services have been cancelled or rescheduled for those possessions.

Aurizon Coal said the reporting should also cover temporary speed restrictions.⁴³² We note that Queensland Rail has proposed to report on the proportion of the track and average kilometres subject to temporary speed restrictions in each quarter (cl. 5.1.2(vi)). This requirement is the same as in the 2016 undertaking.

Summary 9.3

The QCA's decision is that the appropriate way for Queensland Rail to amend the 2020 DAU is to provide transparency about the use of urgent and emergency possessions, as set out in section 9.1.3 of this decision.

Drafting: cl. 5.1.2(a)(xi).

9.1.4 Congestion-related delays and train priority

Queensland Rail has proposed that it can, 'if it is reasonably necessary', give a train service priority over other train services, to avoid train services 'being congested, prevented or otherwise materially affected' (sch. F, cl. 3(i)(i)(B)).

⁴³⁰ New Hope, sub. 24: 33; Yancoal, sub. 27: 21; Aurizon Coal, sub. 23: 3.

⁴³¹ Yancoal, sub. 27: 21.

⁴³² Aurizon Coal, sub. 23: 3–4.

This matter is discussed in more detail in section 8.2.2, in which we accept the proposal, subject to Queensland Rail reporting on the number of instances where it has exercised discretion in managing deviations from the daily train plan (DTP).

Aurizon Bulk said it was concerned was about the transparency of Queensland Rail's decision-making, particularly when discretion was involved.⁴³³

We consider that Queensland Rail can best provide this transparency by reporting each quarter on the number of times its train controllers have favoured an 'unhealthy' train to avoid congestion. This will promote efficient use and operation of the network, and be in the interests of access seekers, access holders and train operators (ss. 138(2)(a), (e), (h)). And, to the extent it enables Queensland Rail to demonstrate it is exercising its discretion reasonably, it may be in Queensland Rail's interest as well (s. 138(2)(b)).

Summary 9.4

The QCA's decision is that the appropriate way for Queensland Rail to amend the 2020 DAU is to provide for reporting on its use of discretion when rescheduling trains to avoid congestion, as set out in section 9.1.4 of this decision.

Drafting: cl. 5.1.2(a)(ii)(D).

9.2 Annual network performance report (cl. 5.2)

9.2.1 Material changes

Queensland Rail proposed that it only be required to provide commentary on variances between its forecast and actual maintenance and operating spending in its annual network performance report where the difference was 'material' (cl. 5.2.2(k)).⁴³⁴

New Hope said there should be a transparent threshold for materiality, set as a dollar value, a percentage of the forecast expenditure category or change in any relevant reference tariff.⁴³⁵ Other stakeholders supported this approach.⁴³⁶

While the proposal to introduce a materiality consideration does not appear to be unreasonable, weighing up the interests of Queensland Rail and access seekers (ss. 138(2)(b), (e)), our decision is not to approve the proposed change.

We consider it appropriate for Queensland Rail to amend its proposal to specify that the threshold for materiality should be either \$500,000, or 10 per cent of the forecast amount, whichever is greater. New Hope said it supported these thresholds, subject to their effectiveness being reviewed for the next undertaking period.⁴³⁷

This reporting threshold should relieve Queensland Rail from explaining trivial variances, and changes in categories with low expected spending. However, Queensland Rail's reporting will provide commentary in cases where spending has varied substantially from the forecasts used to assess tariffs.

⁴³³ Aurizon Bulk, sub. 22: 6.

⁴³⁴ Queensland Rail proposed in the 2020 DAU to include 'material' but did not provide an explanation.

⁴³⁵ New Hope, sub. 15: 14; sub. 24: 34.

⁴³⁶ Yancoal, sub. 27: 22.

⁴³⁷ New Hope, sub. 24: 34.

Summary 9.5

The QCA's decision is that the appropriate way for Queensland Rail to amend the 2020 DAU is to specify that a material change for the purposes of reporting on maintenance and operating spending in its annual network performance report is the greater of \$500,000 or 10 per cent of the estimated amount.

Drafting: cl. 5.2.2(k).

9.2.2 Transparency of expenditure

Queensland Rail's 2020 DAU proposed, for each regional network not subject to a reference tariff, that it be required report on, among other things:

- maintenance cost and scope (cl. 5.2.2(j)(i))
- capital investment for the previous financial year, and forecasts for the next one and four years (cl. 5.2.2(j)(iii)).

These requirements, which applied to both the Mount Isa and North Coast Line systems, were unchanged from those in the 2016 undertaking.⁴³⁸

Glencore said, in its collaborative submission after our draft decision, that information asymmetry presented a 'real difficulty' in access negotiations on non-reference-tariff systems. It said that for major systems such as the Mount Isa Line, Queensland Rail should be required to publish actual capital and maintenance spending for the past five years, and indicative spending for the next 10 years.⁴³⁹

The 2016 undertaking introduced system-specific reporting for both the Mount Isa and North Coast lines. Our decision on Queensland Rail's 2015 DAU (which became the 2016 undertaking) also foreshadowed amendments to Queensland Rail's costing manual that would provide for system-specific information in Queensland Rail's annual below-rail financial statements.⁴⁴⁰

As a result, Queensland Rail has published three years of annual network performance reports including actual cost information specific to each of the Mount Isa and North Coast Line systems. The below-rail financial statements provide four years of regulatory accounting for both systems.⁴⁴¹

We consider that there may be some benefits in further reporting on costs for non-reference-tariff systems. However, stakeholders have not had an opportunity to comment on the merits of Glencore's proposal, which was received late in the review process. At this time, we consider there is insufficient evidence to conclude that the provisions proposed by Queensland Rail for reporting on actual and forecast expenditure are insufficient, such that it is necessary to add additional requirements. Further, access seekers can seek information, including forecast costs,

⁴³⁸ 'Regional network' is defined in cl. 7.1 to include the Mount Isa and North Coast Line systems, as well as the West Moreton and Metropolitan systems. In this discussion, we have focused on the reporting requirement as it applies to the first two of those systems.

⁴³⁹ Glencore, sub. 29: 2.

⁴⁴⁰ QCA, June 2016: 84–85, 86–87. The QCA published an amended costing manual in June 2017 that provided for separate reporting on the Mount Isa and North Coast Line systems.

⁴⁴¹ Queensland Rail published below-rail financial statements for 2016–17 that included prior-year information for 2015–16. It has since published statements each year up to and including 2018–19. See the 'Compliance and reporting' section at <https://www.queenslandrail.com.au/forbusiness/access/access-undertaking>.

under the QCA Act (s. 101), which provides that Queensland Rail 'must make all reasonable efforts to try to satisfy the reasonable requirements of the access seeker'. The access seeker or Queensland Rail may ask the QCA for advice or directions about Queensland Rail's obligation to satisfy the access seeker's requirements (s. 101(5)) and can raise a dispute with the QCA if they consider the information provided is not sufficient.

In forming our view, we have had regard to Queensland Rail's legitimate business interest in minimising its regulatory burden, and to the interests of access seekers and access holders (ss. 138(2)(b), (e), (h)).

Summary 9.6

The QCA's decision is to approve Queensland Rail's proposed reporting for non-reference-tariff systems in the 2020 DAU.

9.2.3 Annual performance and financial reporting

Queensland Rail proposed that it be required to publish both:

- (a) an annual performance report (cl. 5.2)
- (b) an annual financial report (below rail financial statements) (cl. 5.3)⁴⁴²

for the previous financial year, by 31 December.

We said in our draft decision that Queensland Rail should be able to streamline its annual reporting required in the 2020 DAU, by providing it all in a single document. Combining the two reports into one annual document will reduce the regulatory burden, and provide a more effective single source of information about Queensland Rail's performance.

Queensland Rail said that the below-rail financial statements needed to be produced separately, for external audit reasons. However, it supported publishing the financial statements and annual performance report as one document.⁴⁴³ Stakeholders agreed with this approach.⁴⁴⁴

Publishing the two reports as a single document would benefit both Queensland Rail and access holders/seekers (ss. 138(2)(b), (e), (h)). However, we do not consider the 2020 DAU needs to be amended to enable Queensland Rail to do so.

⁴⁴² The annual regulatory financial statements are guided by the cost allocation manual, which in turn is prescribed in the QCA Act (ss. 159–163).

⁴⁴³ Queensland Rail, sub. 26: 16.

⁴⁴⁴ New Hope, sub. 33: 39; Yancoal, sub. 41: 13.

10 ADMINISTRATIVE PROVISIONS (PART 6)

Part 6 of the 2020 DAU contains a number of administrative provisions, including a mechanism for resolving disputes, rules that apply to the QCA when making decisions under the undertaking, and provisions to address the transition from one undertaking to another. While the provisions are largely unchanged from the 2016 undertaking, Queensland Rail proposed some changes to the dispute resolution process and transitional provisions.

Overview of the decision

We require Queensland Rail to make some amendments to Part 6 of the 2020 DAU—primarily the dispute resolution provisions—but there are many provisions in Part 6 we consider appropriate to be approved.

Administrative provisions (Part 6)—summary

<i>Queensland Rail DAU</i>	<i>Clause</i>	<i>QCA decision</i>
Parties that can access dispute resolution		
Dispute resolution is only available to access seekers.	6.1.2	The proposal is not appropriate to be approved. Amendments are required to enable other parties to access the dispute resolution mechanism if they receive the benefit of an obligation in the undertaking (see section 10.1).
Disputes referred to the QCA for resolution		
The QCA must obtain advice from a rail safety expert when arbitrating certain disputes.	6.1.4	The proposal is not appropriate to be approved. Amendments are required, so that cl. 6.1.4(b) is deleted, to enable the QCA to determine an appropriate approach to resolving safety disputes, depending on the nature of the dispute (see section 10.2.1).
The process for the QCA to resolve disputes may differ depending on the nature of the dispute.	6.1.4	The proposal is not appropriate to be approved. Amendments are required to provide certainty as to the binding nature of QCA determinations (see section 10.2.2).
Other matters		
Other provisions in Part 6 have been identified for further consideration.	Various	Our decision on each provision is provided in Table 18 in section 10.3.

10.1 Parties that can access dispute resolution (cl. 6.1.2)

Under Queensland Rail's proposal, the dispute resolution mechanism would apply to disputes between access seekers and Queensland Rail (cl. 6.1.2). Queensland Rail did not propose to make the mechanism available to other parties, including access holders.

Yancoal and New Hope considered that access holders should retain the right to dispute proposed changes to master train plans and the accuracy of line diagrams (cl. 6.1.2(b) of the 2016 undertaking).⁴⁴⁵ In the 2020 DAU, the right of access holders to dispute the accuracy of line diagrams is still referred to in cl. 1.2.3(f), even though there is no longer a corresponding right in

⁴⁴⁵ Yancoal, sub. 16: 20–21; New Hope, sub. 15: 7.

Part 6. Pacific National argued that dispute resolution should be equally available to access seekers and access holders.⁴⁴⁶

Where parties other than access seekers receive the benefit of an obligation in an undertaking—for example, access holders or train operators—it is appropriate that they have the ability to resolve a dispute in relation to that obligation. While access holders and train operators have recourse to dispute resolution in access agreements, this mechanism may only apply to disputes arising under those agreements. Our decision is that Queensland Rail's proposal is not appropriate to be approved, because it does not adequately balance the rights and interests of Queensland Rail, access seekers, access holders and other parties (ss. 138(2)(b), (e), (h)).

We consider that cl. 6.1.2 of the 2020 DAU should be amended so that the scope of the dispute resolution mechanism is broader, allowing parties that receive the benefit of an obligation in the undertaking to access the dispute resolution mechanism in relation to that obligation.⁴⁴⁷

Consequential amendments should also be made, including adding new definitions for 'dispute' and 'relevant person'.

Summary 10.1

The QCA's decision is that the appropriate way for Queensland Rail to amend the scope of the dispute resolution mechanism in the 2020 DAU is to enable all parties who receive the benefit of an obligation in the undertaking to access the dispute resolution mechanism in relation to that obligation, and to make consequential amendments.

Drafting: cls. 6.1.2, 1.2.1(b)(i)(B) and 7.1 (definitions of 'dispute' and 'relevant person').

10.2 Disputes referred to the QCA for resolution (cl. 6.1.4)

Under Queensland Rail's proposal, the process in cl. 6.1.4 applies to disputes that are referred to the QCA for resolution. The key change to this clause from the 2016 undertaking relates to the process for resolving disputes about rail safety matters.

10.2.1 Disputes about rail safety matters

Under cl. 6.1.4(b) of the 2020 DAU, we are required to seek and have regard to the opinion of a rail safety expert (approved by the disputing parties) when arbitrating particular disputes (i.e. access disputes, as defined in s. 112 of the QCA Act). Queensland Rail advised that its proposed approach differed from the approach in the 2016 undertaking, to reflect:

- the start of the national rail safety laws and establishment of the national safety regulator as the body responsible for rail safety regulation in Queensland
- that the national rail safety regulator does not have the power to make a decision on rail safety aspects of disputes.⁴⁴⁸

Our draft decision was that Queensland Rail's proposal was not appropriate to be approved because there were problems with the workability and clarity of the clause.⁴⁴⁹ In particular, we

⁴⁴⁶ Pacific National, sub. 17: 11–12.

⁴⁴⁷ This position, which is consistent with our draft decision, was supported by Yancoal (sub. 27: 22) and New Hope (sub. 24: 34–35, sub. 33: 40).

⁴⁴⁸ Queensland Rail, sub. 2: 59, 63.

⁴⁴⁹ Yancoal (sub. 27: 22) and New Hope (sub. 24: 34–35) supported our draft decision.

considered that it was not clear how an expert would be selected if the disputing parties could not agree on an expert, and the requirement to seek rail safety advice had not been limited to disputes involving rail safety matters. However, we said it was appropriate to accommodate changes to rail safety legislation, as proposed by Queensland Rail, and noted that stakeholders generally supported Queensland Rail's proposal to require us to have regard to the advice of a rail safety expert on safety matters.⁴⁵⁰

After the release of our draft decision, Queensland Rail consulted with stakeholders about possible revisions to its initial proposal. However, Queensland Rail advised that it could not reach a resolution with stakeholders, so it proposed to delete cl. 6.1.4(b), which it said would mean we had no power to resolve safety disputes.⁴⁵¹ Stakeholders indicated that a key point of contention was the potential for the dispute regime to become unworkable if Queensland Rail could reject a QCA determination that was inconsistent with its view of safety.⁴⁵²

We maintain our draft decision that Queensland Rail's initial proposal is not appropriate to be approved and consider it is in the interests of all parties that the clauses are workable and clear (ss. 138(2)(b), (d), (e), (h)).

While our draft decision was that amendments to cl. 6.1.4(b) would address these issues, we consider that Queensland Rail's revised proposal to delete cl. 6.1.4(b) is reasonable and appropriate, because it also provides a workable solution. We do not accept Queensland Rail's view that deleting the clause would mean we cannot resolve safety disputes. Rather, we consider that removing that specific provision would enable us to determine an appropriate approach to resolving such disputes, depending on the nature of the dispute.

We acknowledge Queensland Rail's concerns about the importance of meeting safety requirements but consider there are appropriate safeguards to deal with safety-related matters in the event of a dispute. For instance, we are required to have regard to various matters when making a dispute determination under cl. 6.1.4(a)(i)⁴⁵³, including the operational and technical requirements necessary for the safe and reliable operation of the facility (s. 120(1)(i) of the QCA Act). Safety would also be relevant to other matters we are required to have regard to, including the public interest, and the interests of Queensland Rail and other parties (ss. 120(1)(b), (c), (d) of the QCA Act).

These matters would also likely be relevant considerations when we are required to make a determination under cl. 6.1.4(a)(ii). Under a current memorandum of understanding (MOU), we may also seek advice from the Queensland Department of Transport and Main Roads (TMR) on rail safety matters. Under that MOU, TMR may seek information from the national safety regulator or another party to inform its advice.

To the extent Queensland Rail considers there are insufficient safeguards to deal with safety-related matters in disputes, it may ask us to reconsider this decision through a DAAU process.

⁴⁵⁰ Aurizon Bulk, sub. 11; Pacific National, sub. 17: 12.

⁴⁵¹ Queensland Rail, sub. 36: 6.

⁴⁵² New Hope, sub. 33: 40–42; Glencore, sub. 29: 1, sub. 30; Yancoal, sub. 41: 11–12. While Aurizon Coal (sub. 28: 1) said it supported Queensland Rail's proposed drafting with one exception, Aurizon Coal may have been referring to an earlier proposal that was not ultimately submitted to us.

⁴⁵³ That is, an 'access dispute' as defined in s. 112 of the QCA Act.

Summary 10.2

The QCA's decision is that the appropriate way for Queensland Rail to amend the provisions in the 2020 DAU relating to disputes resolved by the QCA that involve rail safety matters is to delete cl. 6.1.4(b), as per Queensland Rail's revised proposal.

Drafting: cl. 6.1.4.

10.2.2 Process improvements

Where disputes are referred to us for resolution, there should be certainty as to the binding nature of our determinations, including orders as to the payment of costs. This is in the interests of all potential disputing parties, namely Queensland Rail, access seekers, access holders and train operators (ss. 138(2)(b), (e), (h)). As Queensland Rail's proposal on the process applying to our determinations does not include provisions to provide this certainty, we consider that it is not appropriate to approve.

Our decision is that it is appropriate for Queensland Rail to amend the 2020 DAU to include an obligation for the disputing parties to be bound by our determination of a dispute described in cl. 6.1.4(a)(ii).⁴⁵⁴ This should include any order we make as to the payment of costs relating to the dispute (otherwise, there may be further disputes regarding liability for costs).

To give effect to this decision, amendments to the 2020 DAU are also necessary to include requirements for:

- Queensland Rail to be bound by a QCA determination
- any other party to the dispute to execute a deed poll (in favour of the QCA and Queensland Rail) agreeing to be bound by a determination.

The requirements differ between the parties, because Queensland Rail must comply with the undertaking (s. 150A of the QCA Act), while no such obligation applies to other parties. In the draft decision, we suggested that the parties should be required to agree (in a legally binding way) to be bound by the determination. However, the amendments we now require appropriately address the concerns raised by some stakeholders that our proposal would have enabled Queensland Rail to delay or frustrate the process by not providing agreement or providing agreement on inappropriate conditions.⁴⁵⁵

We also consider that Queensland Rail should clarify that a dispute may be referred directly to us if a party fails to comply with the requirements to use reasonable endeavours to resolve the dispute according to the resolution by escalation procedures in cl. 6.1.3. And, for multi-party disputes where one or more of the parties refuses to sign the deed poll, we should still be able to hear the dispute, but only involving the parties that have signed the deed poll. We consider that amendments to implement these provisions are necessary to prevent the dispute resolution process from stalling, which is likely to be in the interests of all parties (ss. 138(2)(b), (e), (h)).

⁴⁵⁴ It is not necessary to include this requirement in relation to 'access disputes' described in cl. 6.1.4(a)(i), because the QCA Act already deals with this matter.

⁴⁵⁵ Yancoal, sub. 27: 22–23; New Hope, sub. 24: 34–36, sub. 33: 42.

Summary 10.3

The QCA's decision is that the appropriate way for Queensland Rail to amend the process in the 2020 DAU that applies when the QCA is responsible for resolving disputes is to:

- (1) include the following requirements on the parties to a dispute as described in cl. 6.1.4(a)(ii):
 - (a) Queensland Rail should be bound by a determination of the QCA, including orders made by the QCA as to the payment of costs
 - (b) Any other party to the dispute should execute a deed poll (in favour of the QCA and Queensland Rail) agreeing to be bound by a determination of the QCA, including orders made by the QCA as to the payment of costs
- (2) make clarifying amendments (cls. 6.1.3(d) and 6.1.4(e)) to prevent the process from stalling.

Drafting: cls. 6.1.3(d), 6.1.4 and 7.1 (definition of 'dispute procedure').

10.3 Other matters

The following table provides our decision on other terms in Part 6 that were identified for further consideration.

Table 18 Other Part 6 matters—decision

<i>Issue</i>	<i>Clause</i>	<i>QCA analysis and decision</i>
Queensland Rail proposed to update the transitional provisions so that references to 'the 2008 Undertaking' become 'AU1'.	6.4	The proposal is appropriate to be approved. ⁴⁵⁶
Cl. 6.4(f) of the 2016 undertaking— Queensland Rail proposed to remove a requirement for tariff reports for the West Moreton system, which cover the period before the undertaking commences.	6.4(f) of the 2016 undertaking	The proposal is appropriate to be approved if the 2020 DAU commences on 1 July 2020. However, it is appropriate to include a similar clause to cl. 6.4(f) of the 2016 undertaking (as cl. 6.5(f)), extended to cover other reporting requirements in Part 5, that would only be triggered if the 2020 DAU commences after 1 July 2020. This requirement would prevent any gaps in reporting and reduce information asymmetry between access seekers/holders and Queensland Rail (ss. 138(2)(b), (e), (h)).

⁴⁵⁶ Yancoal (sub. 27: 23) and New Hope (sub. 24: 34, sub. 33: 42) supported Queensland Rail's proposed amendments, and Aurizon Bulk (sub. 11) said it did not object to the proposed amendments.

11 STANDARD ACCESS AGREEMENT (SCHEDULE H)

Queensland Rail's proposed standard access agreement (SAA) is schedule H of the 2020 DAU—it sets out the standard terms and conditions for access to Queensland Rail's network.⁴⁵⁷ An access agreement must be consistent with the terms of the SAA, unless the parties agree otherwise (cl. 2.9.4 of the 2020 DAU).

Queensland Rail did not propose to significantly change the current SAA (as approved under the 2016 undertaking). Of the changes proposed, Queensland Rail said some reflected stakeholder feedback and others related to changes to rail safety legislation.^{458,459}

Overview of the decision

We require a number of amendments to the proposed SAA, but there are many provisions we consider are appropriate to be approved.

Standard access agreement (schedule H)—summary

<i>Queensland Rail proposed SAA</i>	<i>SAA clause</i>	<i>QCA decision</i>
Variations for efficiency and productivity improvements		
Access holders or train operators can seek a variation to the access agreement to promote or accommodate a demonstrable efficiency or productivity improvement for the supply chain.	1.3	The proposal is not appropriate to be approved. Amendments are required to enable any party to the agreement to propose, or be obliged to consider, a variation to the agreement to promote or accommodate a demonstrable efficiency or productivity improvement, as per Queensland Rail's revised proposal (see section 11.1).
Granting operational rights to train operators		
There is a process for granting operational rights to train operators and nominating subsequent train operators.	3 and 4	The proposal is not appropriate to be approved. Amendments are required to clarify that the initial train operator is appointed at the time of entering the agreement, and to distinguish and clarify the processes that apply to the appointment of the subsequent operator and variations to the nominations of access rights (see section 11.2).
Liability in relation to performance levels		
Queensland Rail is not liable for failing to meet performance levels, except as set out in agreed performance levels.	13.4(a)	The proposal is not appropriate to be approved. We accept the intent of this clause, but amendments are required to clarify the drafting (see section 11.3).

⁴⁵⁷ References to clauses and schedules in this chapter are to clauses and schedules of the proposed SAA in schedule H of the 2020 DAU, unless otherwise specified.

⁴⁵⁸ Queensland Rail, sub. 2: 47, 59.

⁴⁵⁹ New Hope (sub. 14: 6, sub. 15: 23) commended Queensland Rail's approach of making minimal changes to the current SAA, particularly given the rigorous review undertaken as part of the process for approving the 2016 undertaking. Yancoal (sub. 16: 22) and New Hope (sub. 14: 6, sub. 15: 23) generally supported Queensland Rail's proposal, but raised concerns about specific matters.

Queensland Rail proposed SAA	SAA clause	QCA decision
Security deposits		
Access holders must, in appropriate cases and having regard to the access holder's financial capability, provide a security deposit of at least six months of access charges.	17.1 and sch. 1	The proposal is not appropriate to be approved. Amendments are required to set the level of security as a maximum amount rather than a minimum amount, as per Queensland Rail's revised proposal, and to make expected payment obligations under the agreement a factor to be considered when determining the security amount (see section 11.4).
Relinquishment fees		
Access holders must pay a fee for relinquishing their access rights, which is 80 per cent of the present value of take-or-pay charges for the remainder of the agreement (unless the contracting parties agree otherwise).	21.2(c)	The proposal is not appropriate to be approved. Amendments are required to provide for relinquishment fees for services that are not required to be consistent with the reference tariff to be negotiated between the parties (see section 11.5).
Requirements to negotiate or consult in good faith		
Various obligations to negotiate or consult in 'good faith' in the current SAA no longer apply.	Various	The proposal is not appropriate to be approved. Amendments are required to reinstate the requirements to negotiate or consult in good faith that apply in the current SAA (see section 11.6).
Dispute resolution		
The parties must first use reasonable endeavours to resolve the disputes themselves. If this process fails, generally the dispute would be referred to a court, unless the parties agreed on resolution by expert determination, or the relevant clause specifically called for expert determination.	19 (and others)	Queensland Rail's proposal is not appropriate to be approved. Amendments are required to refer to specified technical disputes to an expert, rather than a court, unless the parties agree otherwise (see section 11.7).
Other terms of the proposed SAA		
Other terms of the proposed SAA have been identified for further consideration.	Various	Our decision on each matter is provided in Table 19 (see section 11.8).

11.1 Variations for productivity and efficiency improvements (cl. 1.3)

Queensland Rail initially proposed that access holders or train operators could seek a variation to the access agreement to promote or accommodate a demonstrable efficiency or productivity improvement for the supply chain. Queensland Rail would be required to reasonably consider the proposed variations, having regard to a non-exhaustive list of factors. Having regard to s. 138(2) of the QCA Act, our decision is that Queensland Rail's initial proposal is not appropriate to be approved.

Consistent with the views of several stakeholders⁴⁶⁰, we consider the proposal is not sufficiently flexible to require Queensland Rail to consider variations that may deliver a broader range of

⁴⁶⁰ Aurizon Bulk, sub. 11; Aurizon Coal, sub. 12: 2, sub. 23: 1–2; New Hope, sub. 15: 24, sub. 24: 37; Yancoal, sub. 16: 22, sub. 27: 24; Pacific National, sub. 17: 17, sub. 25: 10.

improvements. We are also concerned there is no requirement for Queensland Rail to consider the proposal and negotiate variations in good faith.

In response to stakeholders' concerns, Queensland Rail submitted a revised proposal for our consideration.⁴⁶¹ Under the revised proposal, which Queensland Rail said had widespread support from stakeholders, any party to the agreement could propose, or would be obliged to consider, a variation to the agreement to promote or accommodate a demonstrable efficiency or productivity improvement. The proposed variation must be considered in good faith, having regard to any relevant factors, including the costs and benefits to each party. Aurizon Coal, Glencore, Yancoal and New Hope confirmed their support for Queensland Rail's revised proposal.⁴⁶² Queensland Rail's revised proposal addresses stakeholders' concerns that the initial proposal narrowed the scope of potential variations to be considered and did not include a requirement to consider proposals in good faith. Queensland Rail also said the revised proposal was designed to work in conjunction with its proposal to establish user groups on the major systems to identify and implement productivity and efficiency improvements (considered in section 8.3).⁴⁶³

Our decision is that Queensland Rail's revised proposal is appropriate to be approved. Taking into account stakeholder support, we consider that Queensland Rail's revised proposal is consistent with the interests of Queensland Rail, access seekers, access holders and train operators; provides incentives to improve productivity; and promotes the efficient operation and use of rail infrastructure (ss. 138(2)(a), (b), (e), (g), (h), 168A(d)).

Summary 11.1

The QCA's decision is that the appropriate way for Queensland Rail to amend the provisions on productivity and efficiency variations in the proposed SAA is to apply Queensland Rail's revised drafting, which:

- (1) enables any party to the agreement to propose, or be obliged to consider, a variation to the agreement to promote or accommodate a demonstrable efficiency or productivity improvement
- (2) includes a requirement for proposals to be considered in good faith, having regard to any relevant factors (including the costs and benefits to each party).

Drafting: cls. 1.3 and 28.1 (definition of 'productivity proposal').

11.2 Granting operational rights to train operators (cls. 3 and 4)

Queensland Rail proposed a process for granting operational rights to train operators and nominating subsequent train operators (cl. 3). Queensland Rail restructured the clause so that, in its view, the clause was clearer and the process of allocating access rights from one train operator to another was clarified.⁴⁶⁴ Consequential amendments were also proposed (cls. 4.2(a)(ii), (iv)).

⁴⁶¹ Queensland Rail, sub. 36: 2, 5, sub. 37.

⁴⁶² Aurizon Coal, sub. 28: 2; Glencore, sub. 29: 1, sub. 30; New Hope, sub. 33: 21; Yancoal, sub. 41: 13.

⁴⁶³ Queensland Rail, sub. 36: 7–8, sub. 37.

⁴⁶⁴ Queensland Rail, sub. 2: 47.

While Queensland Rail's proposal simplifies the process for appointing subsequent operators, it also removes:

- the process for nominating, assessing or rejecting the initial operator
- the flexibility for appointing an initial operator after the execution of the agreement.

The proposed changes also affect the clarity of cl. 2.2(a)(i), because this clause indicates that the initial train operator is nominated to operate some or all services in accordance with the agreement. The changes are also inconsistent with cl. 2.2(a)(ii).⁴⁶⁵

In the draft decision, we considered that Queensland Rail's proposal created uncertainty about the appointment of the initial train operator, particularly if a dispute arose as to the appointment of that operator.⁴⁶⁶

Queensland Rail responded that it was not our role to provide legal advice or impose drafting on commercial parties⁴⁶⁷, but Yancoal and New Hope said that amendments were required to clarify the process for appointing the initial operator.⁴⁶⁸ We maintain our view that Queensland Rail's proposal is not appropriate to be approved because it is unclear and it fails to provide for the appointment of the initial train operator. It is in the interests of all parties that the SAA is clearly drafted and workable (ss. 138(2)(b), (e), (h)).

It is appropriate for Queensland Rail to amend the proposed SAA to clarify that the initial train operator is appointed at the time of entering the agreement (new cl. 3.3). If the initial train operator is appointed at the time the agreement is entered into, it is not necessary or appropriate to provide a specific process for nominating the initial train operator in the agreement. The SAA cannot regulate what the parties must or must not do prior to the date the agreement is entered into. We do not consider that specific assessment criteria are required in respect of the initial train operator, given that the agreement requires that the train operator holds the necessary accreditation (see cl. 5(a)) and, as a practical matter, Queensland Rail would be able to apply the assessment criteria in determining whether to sign an agreement with the initial train operator.

While we noted in our draft decision that the drafting proposed by Queensland Rail removed the flexibility to appoint an initial train operator after the execution of the access agreement, no stakeholders raised any concerns about this issue. We consider that there is an advantage of removing such flexibility as it provides for the identity of the initial train operator to be known at the time the agreement is signed. It would remain open to the parties to negotiate how to amend or simplify the terms to better suit their circumstances. Queensland Rail indicated that this was the approach it had taken when negotiating and signing recent access agreements.⁴⁶⁹

Amendments are also appropriate to clarify the processes for nominating any subsequent train operators and varying access rights (cls. 3.4 and 4.1). It is appropriate for Queensland Rail to amend cl. 3.4 so that it only applies to the situation involving the nomination of a subsequent train operator. To the extent that the clause was also seeking to deal with the situation involving a variation of access rights under clause 4.1, it is appropriate for Queensland Rail to insert a new provision (new cl. 4.1(b)) to achieve this. From a drafting perspective this is more appropriate,

⁴⁶⁵ Clause 2.2(a)(ii) provides that the access holder can only utilise access rights by nominating an accredited rolling stock operator from time to time in accordance with the agreement.

⁴⁶⁶ We also noted Aurizon Bulk's comment (sub. 11) that the proposed changes were not necessary or warranted.

⁴⁶⁷ Queensland Rail, sub. 26: 13.

⁴⁶⁸ New Hope, sub. 24: 37, sub. 33: 21; Yancoal, sub. 27: 24.

⁴⁶⁹ Queensland Rail, sub. 2: 47.

and clearer, particularly as cl. 3.4(c) only applies to the subsequent train operator, whereas a variation under cl. 4.1(a) could apply to the initial train operator as well.

It is appropriate for Queensland Rail to make consequential amendments to the proposed SAA to amend cl. 27.11 to provide that the agreement becomes binding once executed by all parties and to update cross references (see cls. 4.1(a)(ii), 4.3(b), 8.5(c)(v) and 14.4(e)).

Summary 11.2

The QCA's decision is that the appropriate way for Queensland Rail to amend the provisions that grant operational rights to train operators in the proposed SAA is to clarify that the initial train operator is appointed at the time of entering the agreement, and to distinguish and clarify the processes that apply to the appointment of the subsequent operator and variations to the nominations of access rights.

Drafting: cls. 3, 4.1, 4.2, 4.3(b), 8.5(c)(v), 14.4(e), 27.11 and 28.1 (definitions of 'initial operator', 'operator' and 'subsequent operator').

11.3 Liability in relation to performance levels (cls. 6.7 and 13.4)

Queensland Rail proposed not to be liable for failing to meet performance levels, except as set out in agreed performance levels (cl. 13.4(a)(iv)). Queensland Rail argued this was appropriate because performance levels were subject to negotiation between the parties and were thus unknown.⁴⁷⁰

Stakeholders did not support Queensland Rail's proposal.⁴⁷¹ Pacific National argued that the risk of not meeting performance targets should not be shifted to customers, because it would result in inefficient outcomes.⁴⁷² Aurizon Bulk stressed the importance of network performance levels to access holders.⁴⁷³

In our view, Queensland Rail's proposal is consistent with the requirement to report against the performance indicators listed in schedule 5, rather than to meet certain performance obligations (see cls. 6.7(a)–(b)). The purpose of reporting against the indicators is to establish a level of baseline performance that can inform the contracting parties' negotiations to set performance levels and associated financial incentives and penalties (see cls. 6.7(c)–(f)).

We acknowledge that negotiating performance levels and incentives may be difficult.⁴⁷⁴ However, we consider the contracting parties are best placed to negotiate and agree appropriate performance levels and incentives and/or sanctions relevant to their circumstances, taking into account matters such as the customer's willingness to pay for a particular standard of service and the cost of operating the network to that standard. We also consider that a certain threshold of baseline reporting is required to give the parties meaningful data upon which to base their negotiations.

⁴⁷⁰ Queensland Rail, sub. 2: 48.

⁴⁷¹ Pacific National, sub. 17: 18–19, sub. 25: 9–10, sub. 34: 3; Aurizon Bulk, sub. 11; New Hope, sub. 15: 25; Yancoal, sub. 16: 23, sub. 27: 24.

⁴⁷² Pacific National, sub. 17: 18–19, sub. 25: 9–10, sub. 34: 3.

⁴⁷³ Aurizon Bulk, sub. 11.

⁴⁷⁴ New Hope, sub. 15: 25, sub. 24: 37; Yancoal, sub. 16: 23, sub. 27: 24; Pacific National, sub. 25: 7, 10.

Pacific National said the timeframe for the parties to reach agreement should be specified⁴⁷⁵, but we consider this is appropriately a matter for the negotiating parties, taking into account the relevant circumstances of each negotiation. To the extent the parties fail to reach agreement, the dispute resolution mechanism is available (cl. 19).

Nevertheless, we maintain our draft decision is that it is appropriate to amend the proposed SAA to improve the clarity and workability of the provisions relating to performance levels as follows:

- The SAA should clearly distinguish between the performance levels listed in schedule 5 and the performance levels to be agreed (see cls. 6.7(c)–(d)) to reflect their different purposes. As currently drafted, the distinction is not clear; so the former should refer to 'performance indicators' and the latter to 'agreed performance levels'.
- Based on the revised terminology
 - cl. 6.7(d) should clearly state that incentives or sanctions may apply in respect of the 'agreed performance levels'
 - the clarity of cl. 13.4(a)(iv) should be improved by replacing the proposed clause with the following drafting: 'failure to meet Performance Indicators (but not including payments due for failure to meet the Agreed Performance Levels)'.
- Clause 6.7(e) should be amended so that disputes about a failure to agree performance levels and incentives/sanctions are directly referred to an expert to be resolved under cl. 19.3 (unless the parties agree otherwise), because disputes of this nature would likely be more appropriately dealt with by an expert than by a court.

While Queensland Rail considered these drafting changes were unnecessary and of a minor and inconsequential nature⁴⁷⁶, New Hope supported the drafting changes.⁴⁷⁷ We remain of the view that the amendments are appropriate, to improve the clarity and workability of the provisions, which is in the interests of all parties (ss. 138(2)(b), (d), (e), (h)).

We also consider that amendments should be made to remove items 1.2 and 1.3 of schedule 5, because cl. 6.7(c) contemplates that the performance levels would be agreed after the access agreement is signed.

Summary 11.3

The QCA's decision is that the appropriate way for Queensland Rail to amend the provisions relating to performance levels in the proposed SAA is to make changes to improve the clarity and workability of the relevant clauses, as explained in section 11.3 of this decision.

Drafting: cls. 6.7, 13.4(a) and 28.1 (definitions of 'performance indicators', 'agreed performance levels' and 'performance level reporting regime'); and sch. 5.

11.4 Security deposits (cl. 17.1 and sch. 1)

Queensland Rail initially proposed that access holders must, in appropriate cases and having regard to the access holder's financial capability, provide a security deposit of at least six months of access charges (cl. 17.1 and sch. 1, item 11), which is higher than the amount in the current

⁴⁷⁵ Pacific National, sub. 25: 7, 10, sub. 34: 2.

⁴⁷⁶ Queensland Rail, sub. 26: 14.

⁴⁷⁷ New Hope, sub. 33: 21.

SAA (12 weeks of access charges). However, in response to stakeholder opposition to its initial proposal⁴⁷⁸, Queensland Rail submitted a revised proposal to make the security deposit apply as a maximum amount.⁴⁷⁹

The key issues around the security deposits are the amount of the deposit and the criteria that Queensland Rail must consider when determining that amount.

Security amount

The level of security initially proposed by Queensland Rail was not necessarily unreasonable, when weighing up the interests of Queensland Rail, access seekers and access holders (ss. 138(2)(b), (e), (h)). However, as in the draft decision, we do not consider it appropriate to approve Queensland Rail's initial proposal to apply the level of security as a minimum amount.⁴⁸⁰

Queensland Rail said its revised proposal to set the level of security as a maximum of six months of access charges had broad stakeholder support.⁴⁸¹ Yancoal, New Hope, Glencore and Aurizon Coal confirmed their support in collaborative submissions.⁴⁸²

Our decision is that it is appropriate to approve Queensland Rail's revised proposal to set a maximum amount of security. Noting stakeholder support, we consider it appropriately balances the interests of Queensland Rail, access seekers, access holders and train operators (ss. 138(2)(b), (e), (h)). It also appears to be consistent with Queensland Rail's stated practice of setting a lower amount of security, or no security, if customers have a demonstrated track record of meeting their financial obligations.⁴⁸³

However, to the extent that a potential customer does not meet the financial capacity requirements in the 2020 DAU (cl. 2.8.3), setting a higher level of security would likely generate greater benefits (including to the customer and Queensland Rail) than a refusal by Queensland Rail to enter into an access agreement. In such an instance, we consider it should be open to the customer and Queensland Rail to negotiate an appropriate amount of security. We also consider that decisions by Queensland Rail to increase or decrease the security amount (after conducting a review under cl. 17.3) should not be subject to the maximum security amount because, as part of that review, the past financial performance of the customer would be a factor to consider.

We consider our decision is appropriate having regard to Queensland Rail's legitimate business interests and the interests of access seekers, access holders and train operators (ss. 138(2)(b), (e), (h)).

⁴⁷⁸ Aurizon Bulk, sub. 11; Yancoal, sub. 16: 23; New Hope, sub. 15: 24–25; Pacific National, sub. 17: 19–20.

⁴⁷⁹ Queensland Rail, sub. 36: 5; sub. 37.

⁴⁸⁰ New Hope (sub. 24: 37) and Yancoal (sub. 27: 24–25) supported our draft decision.

⁴⁸¹ Queensland Rail, sub. 36: 2, 5.

⁴⁸² Yancoal, sub. 41: 13; New Hope, sub. 33: 22; Glencore, sub. 29: 1, sub. 30; Aurizon Coal, sub. 28: 2.

⁴⁸³ Queensland Rail, sub. 18: 19.

Summary 11.4

The QCA's decision is that the appropriate way for Queensland Rail to amend the provisions relating to security in the proposed SAA is to:

- (1) apply the proposed level of security as a maximum amount, rather than a minimum amount (as per Queensland Rail's revised proposal)
- (2) not prescribe a maximum security amount to apply
 - (a) when the customer does not satisfy the prudential requirements in cl. 2.8.3
 - (b) after a review of security under cl. 17.3.

Drafting: cls. 17.1 and 28.1 (definition of 'security amount'); and sch. 1.

Criteria to consider when determining security amount

Some stakeholders argued that the criteria for determining the security amount should be specified⁴⁸⁴, including the creditworthiness of the customer.⁴⁸⁵ While Queensland Rail's proposal already includes a requirement to consider the customer's financial capability (cl. 17.1), we consider that Queensland Rail should also be required to consider the expected payment obligations under the agreement. This would be consistent with the criteria that apply when the amount of security is reviewed (cl. 17.3(a)(i)) and would provide appropriate flexibility to amend the security amount to reflect, for instance, the length of the access agreement. As pointed out by New Hope, the level of security proposed by Queensland Rail may be a large proportion of total contract liability for short-term agreements.⁴⁸⁶

Our decision appropriately balances Queensland Rail's legitimate business interests with the interests of access seekers, access holders and train operators (ss. 138(2)(b), (e), (h)).

Summary 11.5

The QCA's decision is that the appropriate way for Queensland Rail to amend the criteria for determining the security amount in the proposed SAA is to include expected payment obligations under the agreement as a factor to be considered.

Drafting: cl. 28.1 (definition of 'security amount').

11.5 Relinquishment fee (cl. 21.2(c))

Queensland Rail proposed to require access holders to pay a fee to Queensland Rail if they relinquish all or part of their access rights (cl. 21.2(c)). Unless the parties agree otherwise, the relinquishment fee is 80 per cent of the present value of take-or-pay charges for the remainder of the term of the agreement. The fee may be reduced if the relinquished access rights are granted to a new access holder. These provisions are unchanged from the provisions in the current SAA.

⁴⁸⁴ New Hope, sub. 15: 25.

⁴⁸⁵ Yancoal, sub. 16: 23; Pacific National, sub. 17: 19–20.

⁴⁸⁶ New Hope, sub. 15: 25.

Some stakeholders argued the relinquishment fee should be reduced:

- Aurizon Bulk said the relinquishment fee should be reduced if Queensland Rail could reasonably reduce its losses by reducing costs or securing additional volumes. Aurizon Bulk argued this would provide flexibility to current and future customers, encourage customers to contract only for those paths required and provide certainty to Queensland Rail to consider other access applications and its annual maintenance and capital works. It suggested that limiting relinquishment fees to cover take-or-pay charges for a shorter period of time, such as one year, would be reasonable.⁴⁸⁷
- Pacific National considered that the approach to relinquishment fees did not provide incentives for long-term contracting for some freight operators and said the fee was excessive compared to other networks. It argued that the current approach did not promote the most efficient utilisation of the network and considered the fee should also be reduced.⁴⁸⁸

Queensland Rail said its proposal was consistent with its legitimate business interests in respect of revenue certainty and noted that access seekers could choose the contract length. Queensland Rail considered that a 12-month cap on take-or-pay obligations should not apply, as it would make the contract term meaningless.⁴⁸⁹

Application of prescribed relinquishment fee arrangements

Our decision is that it is appropriate to prescribe relinquishment fee arrangements for services to which the reference tariff applies, but not for other services.

Consistent with our view on prescribing take-or-pay arrangements, we consider that prescribing relinquishment fee arrangements is appropriate for services to which the reference tariff applies. This is because the allocation of risks, costs and entitlements has been considered when determining the approach to set the reference tariff (see Chapters 2 to 4).

However, having regard to the factors in s. 138(2), it is not appropriate to approve Queensland Rail's proposal because we do not consider that relinquishment fee arrangements should be prescribed for non-reference-tariff services. Pacific National and Incitec Pivot supported this view⁴⁹⁰, but Queensland Rail said it would lead to anti-competitive practices by encouraging capacity hoarding and disadvantaging potential new entrants.⁴⁹¹ We are not suggesting that relinquishment fees should not apply. Rather, we reiterate that in the absence of a reference tariff, the commercial negotiation of an agreement between Queensland Rail and the access seeker is the appropriate way to consider the best package of risks, costs and entitlements, which may include relinquishment fees and take-or-pay requirements.⁴⁹²

We consider our approach appropriately balances the interests of Queensland Rail, access seekers and access holders (ss. 138(2)(b), (e), (h)).

⁴⁸⁷ Aurizon Bulk, sub. 11.

⁴⁸⁸ Pacific National, sub. 17: 3, 6, 20, sub. 25: 8, sub. 34: 3.

⁴⁸⁹ Queensland Rail, sub. 18: 25–26.

⁴⁹⁰ Pacific National, sub. 25: 8, sub. 34: 3; Incitec Pivot, sub. 32: 5.

⁴⁹¹ Queensland Rail, sub. 26: 14.

⁴⁹² Incitec Pivot (sub. 32: 4–5) said take-or-pay arrangements on the Mount Isa Line were not aligned to customers' specific requirements and that it was open to considering modified take-or-pay arrangements. However, it was not clear whether Incitec Pivot was seeking changes to the 2020 DAU to address these concerns or whether it considered they should be addressed as part of contract negotiations with Queensland Rail.

Summary 11.6

The QCA's decision is that the appropriate way for Queensland Rail to amend the provisions relating to the application of the prescribed relinquishment fee arrangements in the proposed SAA is to provide for relinquishment fees for non-reference-tariff services to be negotiated between the parties.

Drafting: cl. 28.1 (definition of 'relinquishment fee') and sch. 6 (new schedule).

Relinquishment fees for reference tariff services

We consider that Queensland Rail's proposal on relinquishment fees for reference tariff services is appropriate to be approved. In our view, a relinquishment fee set at 80 per cent of the present value of remaining take-or-pay charges sufficiently reduces access holders' remaining take-or-pay obligations to:

- recognise the lower maintenance and operating costs to Queensland Rail of unused capacity (but noting that Queensland Rail has limited ability to vary planned maintenance tasks to respond to temporary fluctuations in usage)
- encourage Queensland Rail to re-contract the relinquished paths.

At the same time, we consider the fee is high enough to incentivise access holders to contract for capacity they expect to use, and to relinquish unused paths quickly to make them available for access seekers to contract.

While the proposed clause is an appropriate default contract provision, the parties may negotiate a higher or lower relinquishment fee, possibly in conjunction with a variation to the reference tariff (cls. 3.0(b) and 3.3(c) of the 2020 DAU set out how the reference tariff can be varied). There are also provisions for the relinquishment fee to be reduced if the relinquished access rights are transferred or granted to an existing or prospective access holder before the date of relinquishment (cl. 21.3).

In making our decision, we had regard to the factors in s. 138(2), including promoting the efficient use of, and investment in, the rail network and balancing the interests of Queensland Rail, access seekers and access holders (ss. 138(2)(a), (b), (e), (h)).⁴⁹³

Summary 11.7

The QCA's decision is that it is appropriate to approve the provisions in the proposed SAA to set relinquishment fees—for services to which a reference tariff applies—at 80 per cent of the present value of take-or-pay charges for the remainder of the relevant access agreement.

11.6 Requirements to negotiate or consult in good faith (various clauses)

Queensland Rail initially proposed to remove various obligations to negotiate or consult in 'good faith' that were in the current SAA⁴⁹⁴ because the good faith concept was ambiguous and

⁴⁹³ New Hope (sub. 24: 37, sub. 33: 22) supported our position, which is consistent with our draft decision.

⁴⁹⁴ The clauses affected by this change were cls. 1.3, 6.7(c), 8.8(b), 18.2(c); sch. 3, cls. 2.2(d), 5.4(a). Queensland Rail's proposed revised drafting for cl. 1.3 included a good faith requirement (see section 11.1 above).

uncertain,⁴⁹⁵ but this proposal was not supported by stakeholders.⁴⁹⁶ Queensland Rail subsequently agreed to reinstate the obligations⁴⁹⁷ and stakeholders endorsed this approach.⁴⁹⁸

We acknowledge there is widespread support from Queensland Rail and stakeholders to reinstate the obligations to negotiate in good faith and consider this is appropriate and consistent with the negotiation principle in s. 100(1) of the QCA Act, particularly where there may be an imbalance in negotiating power. Our decision to retain these obligations balances the factors in s. 138(2), including the rights and interests of Queensland Rail, access seekers and access holders (ss. 138(2)(b), (e), (h)).

Summary 11.8

The QCA's decision is that the appropriate way for Queensland Rail to amend the proposed SAA is to include the requirements to negotiate or consult in good faith that apply in the current SAA.

Drafting: cls. 6.7(c), 8.8(b) and 18.2(c); and sch. 3, cls. 1.2(d) and 4.4(a).

11.7 Dispute resolution (cl. 19)

Under Queensland Rail's proposed dispute resolution mechanism, the parties must first use reasonable endeavours to resolve the disputes themselves (cl. 19.2). If this process fails, generally the dispute would be referred to a court, unless the parties agreed on resolution by expert determination or the relevant clause specifically called for expert determination.

The dispute resolution mechanism in the proposed SAA is unchanged from the current SAA, except that Queensland Rail proposed to remove a clause dealing with the resolution of disputes by the Queensland government's rail safety regulator (cl. 19.4 of the current SAA). Queensland Rail advised that it proposed to remove this clause to reflect the commencement of the Rail Safety National Law (Queensland) and the establishment of the Office of the National Rail Safety Regulator, which has no jurisdiction to resolve disputes.⁴⁹⁹

Queensland Rail's proposal is not appropriate to be approved, having regard to the s. 138(2) factors.⁵⁰⁰ While the changes to the safety laws mean that the national regulator has no jurisdiction to resolve disputes under the national law, Queensland Rail should amend its proposal so that disputes relating to safety issues are to be referred to an expert for resolution under cl. 19.3, unless the parties agree otherwise.⁵⁰¹ We expect that safety-related disputes would be more appropriately dealt with by an expert than a court.

Our draft decision also identified that disputes of a technical nature may be more appropriately, and potentially more efficiently, dealt with by a relevant expert than a court.⁵⁰² We sought

⁴⁹⁵ Queensland Rail, sub. 2: 47, 49.

⁴⁹⁶ Aurizon Bulk, sub. 11; Aurizon Coal, sub. 12: 2; New Hope, sub. 15: 23–24; Yancoal, sub. 16: 22; Pacific National, sub. 17: 17.

⁴⁹⁷ Queensland Rail, sub. 36: 2, 4, sub. 37.

⁴⁹⁸ Yancoal, sub. 41: 13; New Hope, sub. 33: 22; Aurizon Coal, sub. 28: 2; Pacific National, sub. 34: 1; Glencore, sub. 29: 1, sub. 30.

⁴⁹⁹ Queensland Rail, sub. 2: 49.

⁵⁰⁰ Aurizon Bulk (sub. 11) did not support the removal of cl. 19.4 of the current SAA.

⁵⁰¹ New Hope (sub. 24: 42, sub. 33: 27) and Yancoal (sub. 27: 30) also supported this position.

⁵⁰² We are not suggesting that drafting be adopted that prevents relevant stakeholders from resolving the dispute between themselves before escalating the dispute to an expert.

comments from stakeholders as to specific circumstances where disputes may be better referred to an expert and suggested clauses for further consideration.

Yancoal and New Hope agreed that noise mitigation, technical and operational disputes would likely be better determined by an expert, although New Hope said that the parties should be able to agree otherwise.⁵⁰³ Queensland Rail said that the contracting parties were best placed to determine the appropriate forum for resolving disputes, but said it had no objection to expert determination, provided there was no restriction on referring matters to a court if any party considered it appropriate.⁵⁰⁴

Taking into account stakeholders' submissions, our decision is that expert determination should apply to disputes that involve technical matters, for example, whether noise mitigation requirements determined by Queensland Rail are reasonable (cl. 10.7). However, where a dispute would likely need to consider both legal and technical matters (e.g. cls. 9.4 and 11), we consider that it should remain open to the parties to agree to refer the dispute to an expert, rather than expert determination applying by default.

Our decision is that disputes under cls. 6.7(e), 8.3(c), 8.6, 8.7(b), 8.8(a), 8.8(c), 8.10, 9.1(a), 9.1(d), 9.2 and 10.7⁵⁰⁵ should be referred to resolution by expert determination. We consider the parties to the dispute should still have the ability to agree to refer such disputes to a court instead (as suggested by New Hope) or any other dispute resolution process instead, because this is likely to be in the interests of all parties (ss. 138(2)(b), (e), (h)). But, we do not consider it appropriate to enable one party to unilaterally decide to refer a dispute to a court (as suggested by Queensland Rail), because this could frustrate the process.

Consequential amendments are also required to clauses referring to disputes that do not require the parties to first seek to resolve the dispute themselves (under cl. 19.2) to make clear that the parties may agree to resolve the dispute through any other process. The clauses that need to be amended are cls. 21.1(c), 27.20(d), 28.1 (definition of 'interest rate') and sch. 3, cl. 1.2(d).

We consider that our decision will improve the efficiency of the dispute resolution process and that it appropriately balances the interests of the various parties (ss. 138(2)(a), (b), (d), (e), (h)).

Summary 11.9

The QCA's decision is that the appropriate way for Queensland Rail to amend the proposed SAA is to include a requirement that, unless the parties agree otherwise, disputes about technical matters that have not been resolved by the parties under cl. 19.2 are to be resolved by expert determination. Consequential amendments are also required.

Drafting: cls. 19.2(d), 19.4 (new clause), 21.1(c), 27.20(d) and 28.1 (definition of 'interest rate'); and sch. 3, cl. 1.2(d).

⁵⁰³ Yancoal, sub. 27: 28, 30; New Hope, sub. 24: 40, 42–43, sub. 33: 26, 28.

⁵⁰⁴ Queensland Rail, sub. 26: 14.

⁵⁰⁵ Pacific National (sub. 17: 18) also argued that the ability to use dispute resolution in relation to noise mitigation requirements under cl. 10.7 should be made explicit. However, this is not necessary, because the dispute resolution mechanism would already apply.

11.8 Other terms of the proposed SAA

The following table provides our decision on other terms in the proposed SAA that were identified for further consideration. It should be read in conjunction with the proposed SAA.

Table 19 Other terms of the proposed SAA—decision

<i>Issue</i>	<i>SAA clause</i>	<i>QCA analysis and decision</i>
Queensland Rail proposed to remove the references to subsequent agreements contained in the current SAA to clarify the drafting. ⁵⁰⁶	4.1(c)(i)	The proposal is appropriate to be approved, as it is a minor procedural change relative to the current SAA. ⁵⁰⁷
Queensland Rail proposed an amendment to the current SAA to clarify that each party to the agreement (including the operator) should provide the relevant representations and warranties. ⁵⁰⁸	4.6(a)	The proposal is not appropriate to be approved. An operator must provide representations and warranties under cl. 23, so there is no need to add an additional requirement in cl. 4.6(a). Therefore, our decision is that amendments are appropriate to reinstate the drafting that applies in cl. 4.6(a) of the current SAA. ⁵⁰⁹
Queensland Rail proposed amendments to the current SAA to reflect changes to rail safety legislation and clarify that only relevant information is to be provided. ⁵¹⁰	5	The proposal, which reflects changes to rail safety legislation, is largely appropriate to be approved, ⁵¹¹ but some changes are required to improve the clarity of the clause.
Pacific National argued that the timeframe of 10 business days for making payments, as proposed by Queensland Rail, should be extended to 45 days in line with rail industry practice. ⁵¹² Yancoal made a similar argument, but did not suggest an alternative timeframe. ⁵¹³	6.2(a)	Queensland Rail's proposed payment timeframe is appropriate to be approved. ⁵¹⁴ Pacific National and Yancoal have not justified their positions that it is appropriate to extend the timeframe and we are not aware of evidence to suggest that 10 business days is out of line with industry practice. A 10-business-day timeframe also applies in Aurizon Network's current SAA. ⁵¹⁵
Under Queensland Rail's proposal, the parties are not required to provide notification of actual or likely failures to comply with the access agreement. These	7.3(f) and 8.4(d) of current SAA	Queensland Rail's proposal is not appropriate to be approved, because it prevents the parties from preparing for likely breaches or mitigating the effects of actual breaches. ⁵¹⁷ It does not appropriately balance the interests of Queensland Rail, access

⁵⁰⁶ Queensland Rail, sub. 2: 47.

⁵⁰⁷ Yancoal (sub. 27: 25) and New Hope (sub. 24: 38, sub. 33: 22) supported this position, which is consistent with our draft decision.

⁵⁰⁸ Queensland Rail, sub. 2: 47.

⁵⁰⁹ Yancoal (sub. 27: 25) and New Hope (sub. 24: 38, sub. 33: 22) supported this position, which is consistent with our draft decision.

⁵¹⁰ Queensland Rail, sub. 2: 48.

⁵¹¹ Yancoal (sub. 27: 26) and New Hope (sub. 24: 38, sub. 33: 23) supported this position, which is consistent with our draft decision.

⁵¹² Pacific National, sub. 17: 17.

⁵¹³ Yancoal, sub. 27: 26.

⁵¹⁴ New Hope (sub. 24: 38, sub. 33: 23) supported this position, which is consistent with our draft decision.

⁵¹⁵ See cl. 5.3(a)(i) of Aurizon Network's 2017 access undertaking SAA.

⁵¹⁷ We also note that Queensland Rail's proposal was not supported by Aurizon Bulk (sub. 11) or Pacific National (sub. 17: 17–18).

<i>Issue</i>	<i>SAA clause</i>	<i>QCA analysis and decision</i>
requirements are in the current SAA, but Queensland Rail said the requirements were inappropriate and not customary in commercial contracts. ⁵¹⁶		seekers, access holders and train operators (ss. 138(2)(b), (e), (h)). Queensland Rail should amend the proposed SAA to reflect the requirements in the current SAA ⁵¹⁸ , except that notification should only be required for material breaches or likely breaches (otherwise the obligation is likely to be too onerous). ⁵¹⁹
Aurizon Bulk considered that additional train services and ad hoc train services were similar and should be consolidated under one request for extra train services that counts towards an access holder's take-or-pay obligations. ⁵²⁰ Incitec Pivot generally supported Aurizon Bulk's submission, arguing that failing to provide take-or-pay relief for certain ad hoc services could be a cost barrier to trialling services that may lead to a productivity or efficiency improvement. ⁵²¹ Queensland Rail argued that the two services were different. It did not support consolidating the definitions or consider there was a case for ad hoc services to be offset against take-or-pay obligations. ⁵²²	8	Queensland Rail's proposal of allowing additional services, but not ad hoc services, to offset an access holder's take-or-pay liability is appropriate to be approved. As noted by Queensland Rail, there are differences between ad hoc and additional services (as those terms are defined in the proposed SAA). An additional service is the same type of service as the contracted service, but an ad hoc service differs from the contracted service (e.g. it could be a service with a different origin and destination). Take-or-pay obligations require an access holder to pay for the paths it has contracted, whether or not those paths are used. We do not consider it appropriate to include a requirement that revenue from different types of services (i.e. ad hoc services) would reduce an access holder's take-or-pay liability. This requirement could also reduce the incentive for Queensland Rail to provide ad hoc services. However, if take-or-pay obligations are negotiated, the parties may agree to alternative arrangements. Our decision to approve Queensland Rail's proposal appropriately balances the interests of Queensland Rail, access seekers and access holders (ss. 138(2)(b), (e), (h)). ⁵²³
Aurizon Bulk submitted that amendments were appropriate to ensure Queensland Rail provided additional and ad hoc train services wherever available, and evidence to support any rejection of the request. ⁵²⁴	8	Queensland Rail's proposal is appropriate to be approved. ⁵²⁵ We consider Queensland Rail has an incentive to provide additional and ad hoc services to increase its revenue. Aurizon Bulk commented that Queensland Rail had been accommodating and reasonable in practice. ⁵²⁶
Pacific National submitted that Queensland Rail should only be	8.4(c), 10.2(c),	Queensland Rail's proposal is not appropriate to be approved. In relation to cls. 8.4(c), 10.2(c) and 11(c), it

⁵¹⁶ Queensland Rail, sub. 2: 48.

⁵¹⁸ However, to resolve a formatting error in the current SAA, cl. 7.3(f) of the current SAA should be inserted as cl. 7.3(d) of the proposed SAA.

⁵¹⁹ Yancoal (sub. 27: 26) and New Hope (sub. 24: 38, sub. 33: 23) supported this position, which is consistent with our draft decision.

⁵²⁰ Aurizon Bulk, sub. 11.

⁵²¹ Incitec Pivot, sub. 32: 6–7.

⁵²² Queensland Rail, sub. 18: 26–27.

⁵²³ Yancoal (sub. 27: 26) and New Hope (sub. 24: 38, sub. 33: 23) accepted this position, which is consistent with our draft decision.

⁵²⁴ Aurizon Bulk, sub. 11.

⁵²⁵ Yancoal (sub. 27: 27) and New Hope (sub. 24: 39, sub. 33: 24) accepted this position, which is consistent with our draft decision.

⁵²⁶ Aurizon Bulk, sub. 11.

<i>Issue</i>	<i>SAA clause</i>	<i>QCA analysis and decision</i>
allowed to recover 'reasonable' costs and expenses. ⁵²⁷	10.7(a) and 11(c)	is appropriate to include the caveat proposed by Pacific National, to balance the interests of the contracting parties. Queensland Rail should be able to recover reasonable costs, while access holders should not be liable for costs that are excessive (ss. 138(2)(b), (e), (h)). However, we do not consider it is appropriate to add this caveat to cl. 10.7(a), because there are sufficient protections within the clause requiring Queensland Rail to act reasonably. ⁵²⁸
Queensland Rail proposed to clarify that changes to the interface risk management plan (IRMP) could be made by exchanging written notices. Queensland Rail considered the amendment would remove an unnecessary administrative burden and enable safety issues to be dealt with quickly. ⁵²⁹	9.2(d)	Queensland Rail's proposal is appropriate to be approved. We accept the intent of Queensland Rail's proposal to simplify the process of changing the IRMP and consider that the rights of the contracting parties are not adversely affected. In the draft decision, we suggested amendments to cl. 9.2(d) to clarify the drafting, which were supported by Yancoal and New Hope. ⁵³⁰ However, we have considered Queensland Rail's submission that our proposed change is minor and inconsequential ⁵³¹ , and formed the view that Queensland Rail's proposed drafting is sufficiently clear to be approved. It would be open for the parties to negotiate an amendment to the SAA if they considered it necessary.
Queensland Rail proposed a number of amendments to the current SAA to reflect changes to rail safety legislation and the establishment of the Office of the National Rail Safety Regulator. ⁵³²	9.3, 9.10, 10.1 and 28.1	Queensland Rail's proposal is generally appropriate to be approved. However, removing the definition of 'railway operator' requires consequential amendments to schedule 2, where the term 'railway operator' is still used. In the draft decision, we considered that the definition of 'RSNL' should be amended. However, we acknowledge Queensland Rail's submission that the proposed changes are not necessary ⁵³³ and note that the Queensland legislation now replicates the South Australian legislation. Therefore, we consider that Queensland Rail's proposed definition is appropriate. ⁵³⁴
Pacific National submitted that amendments should be made to cl. 10.2(c) to only enable Queensland Rail to do anything it considers 'reasonably' necessary. ⁵³⁵	10.2(c)	Queensland Rail's proposal is not appropriate to be approved. It is appropriate for Queensland Rail to amend cl. 10.2(c) as suggested by Pacific National. In our view, including this caveat is appropriate to guide the actions taken by Queensland Rail and strikes a

⁵²⁷ Pacific National, sub. 17: 17.

⁵²⁸ Yancoal (sub. 27: 27) and New Hope (sub. 24: 39, sub. 33: 24) supported this position, which is consistent with our draft decision.

⁵²⁹ Queensland Rail, sub. 2: 48.

⁵³⁰ Yancoal, sub. 27: 27; New Hope, sub. 24: 39, sub. 33: 25.

⁵³¹ Queensland Rail, sub. 26: 13.

⁵³² Queensland Rail, sub. 2: 48–49.

⁵³³ Queensland Rail, sub. 26: 14.

⁵³⁴ We note that Yancoal (sub. 27: 28) and New Hope (sub. 24: 40, sub. 33: 25) agreed with the amendments we proposed in the draft decision.

⁵³⁵ Pacific National, sub. 17: 18.

<i>Issue</i>	<i>SAA clause</i>	<i>QCA analysis and decision</i>
		<p>reasonable balance between the interests of the contracting parties (ss. 138(2)(b), (h)).⁵³⁶</p> <p>Queensland Rail argued that including this caveat could result in rail safety, engineering, operational or other requirements being watered down, disputed or replaced, and could adversely affect its ability to perform its statutory duties.⁵³⁷ However, if Queensland Rail is required to take steps to comply with a legal obligation or a statutory duty, these steps would be reasonably necessary. If the steps are for compliance with safety, engineering or operational policies or practices, we also expect this would provide a strong argument that the steps are reasonably necessary.⁵³⁸ There are also various other provisions in the undertaking dealing with safety and related matters that Queensland Rail could seek to rely upon.</p>
<p>Pacific National initially argued that cl. 12.2 should be clarified to specify that Queensland Rail would not be indemnified in the event that it was negligent⁵³⁹, but subsequently proposed the clause should be deleted.⁵⁴⁰</p> <p>Pacific National also suggested removing cls. 12.2(c) and 12.2(d).⁵⁴¹</p>	12.2	<p>Queensland Rail's proposal is appropriate to be approved. This clause applies where the operator's customer is not a party to the SAA and is intended to apply the same limitations on the potential liability of Queensland Rail as those that apply to the operator's customer. Queensland Rail's potential liability for negligence is considered in cl. 13.⁵⁴²</p> <p>Pacific National did not provide reasons for deleting cls. 12.2(c) and (d). These clauses are consistent with the intent of cls. 12.2(a) and (b).</p>
<p>Queensland Rail proposed to amend the current SAA by including cl. 15.1 to clarify that cls. 15.2(c), 15.3(c), 15.4(a) and 15.5(a) are subject to relevant legislation and regulations regarding the enforcement of contractual provisions that relate to insolvency events. Queensland Rail advised that these changes were necessary to address the ipso facto legislative amendments.⁵⁴³</p>	15 and 17	<p>Queensland Rail's proposal is largely appropriate to be approved, given the introduction of the new ipso facto regime.⁵⁴⁴ However, we consider that consequential amendments should be made to cls. 15.1 and 17.2, so the ipso facto provisions would be considered in relation to Queensland Rail's powers to call on security.⁵⁴⁵</p>
<p>Pacific National considered the operator should be protected from</p>	15.2(a) and 15.3(a)	<p>We maintain our draft decision that Queensland Rail's proposed cls. 15.2(a) and 15.3(a) are not appropriate</p>

⁵³⁶ Yancoal (sub. 27: 28) and New Hope (sub. 24: 40, sub. 33: 25) supported this position, which is consistent with our draft decision.

⁵³⁷ Queensland Rail, sub. 26: 14.

⁵³⁸ New Hope (sub. 33: 25) also commented that the words 'reasonably necessary' would encompass the broader interests that Queensland Rail refers to.

⁵³⁹ Pacific National, sub. 17: 18.

⁵⁴⁰ Pacific National, sub. 25: 9.

⁵⁴¹ Pacific National, sub. 17: 18

⁵⁴² New Hope (sub. 24: 40, sub. 33: 26) and Yancoal (sub. 27: 28) supported this position, which is consistent with our draft decision.

⁵⁴³ Queensland Rail, sub. 2: 49.

⁵⁴⁴ New Hope (sub. 24: 41, sub. 33: 26) and Yancoal (sub. 27: 29) supported this position.

⁵⁴⁵ In its initial submission, Queensland Rail (sub. 2: 49) advised that consequential amendments should be made to cl. 17.2, but this was not reflected in the proposed SAA.

<i>Issue</i>	<i>SAA clause</i>	<i>QCA analysis and decision</i>
Queensland Rail terminating the agreement, if the operator was not liable for a failure under the agreement. Pacific National proposed similar wording to cl. 15.4(c). ⁵⁴⁶		to be approved. Queensland Rail should amend cls. 15.2(a) and 15.3(a) to reflect the wording in cl. 15.4(c). ⁵⁴⁷ Queensland Rail considered the draft decision did not recognise the distinction between Queensland Rail's role as network operator and its obligations to other network participants. ⁵⁴⁸ We maintain that the amendments are appropriate, because they confirm that Queensland Rail could not terminate an agreement under cl. 15 if another clause in the agreement restricted termination. Providing reciprocal rights and protections in relation to the termination of agreements appropriately balances the interests of Queensland Rail, access seekers, access holders and train operators (ss. 138(2)(b), (e), (h)). It is not clear why Queensland Rail considers its role as network operator means it should not be subject to the restrictions on terminating agreements that apply to access holders and train operators.
Pacific National argued that the operator should be able to terminate an agreement if Queensland Rail fails to comply with safety related obligations in the agreement (consistent with Queensland Rail's rights in cl. 15.2). ⁵⁴⁹	15.4	Queensland Rail's proposal is appropriate to be approved. We do not consider that the amendments proposed by Pacific National are necessary, noting that the operator's rights under cl. 15.4(c) are likely to address Pacific National's concern. ⁵⁵⁰
Pacific National argued that cl. 16.9 appeared to be incorrectly drafted because insurance claims paid were for liability to Queensland Rail, not necessarily damage to the network. ⁵⁵¹	16.9	Queensland Rail's proposal is appropriate to be approved. ⁵⁵² We do not consider that cl. 16.9 implies that all claims are paid in respect of damage to the network. Clause 16.9 covers a specific situation where there is damage to the network, but does not limit other circumstances of liability to Queensland Rail.
Pacific National argued that access holders should not be required to accept the full impact of higher costs due to a change in taxes, law or credit. It said this was an example of Queensland Rail attempting to shift risk on to its customers who were not better placed to manage the risk. ⁵⁵³	18.2	Queensland Rail's proposal, which only applies to non-reference-tariff services, is appropriate to be approved. The clause appropriately addresses how adjustments to access charges are to be made when there is a change in costs due to certain events that are outside Queensland Rail's control. Relevantly, it provides for adjustments that reflect cost decreases, as well as cost increases. While we consider the

⁵⁴⁶ Pacific National, sub. 17: 19, sub. 25: 10, sub. 34: 4.

⁵⁴⁷ New Hope (sub. 24: 41, sub. 33: 26) and Yancoal (sub. 27: 29) supported this position, which is consistent with our draft decision.

⁵⁴⁸ Queensland Rail, sub. 26: 14.

⁵⁴⁹ Pacific National, sub. 17: 19, sub. 25: 10, sub. 34: 4.

⁵⁵⁰ New Hope (sub. 24: 41, sub. 33: 27) and Yancoal (sub. 27: 29) supported this position, which is consistent with our draft decision.

⁵⁵¹ Pacific National, sub. 17: 19, sub. 25: 10.

⁵⁵² Yancoal (sub. 27: 29) and New Hope (sub. 24: 41, sub. 33: 27) supported this position, which is consistent with our draft decision.

⁵⁵³ Pacific National, sub. 17: 20, sub. 25: 10, sub. 34: 4.

<i>Issue</i>	<i>SAA clause</i>	<i>QCA analysis and decision</i>
		<p>proposed clause is an appropriate default contract provision, the parties may negotiate variations.</p> <p>Our decision appropriately balances Queensland Rail's legitimate business interests with the interest of access seekers and access holders (ss. 138(2)(b), (e), (h)).</p>
Pacific National argued that Queensland Rail should reimburse train operators for take-or-pay charges incurred on the Aurizon Network sections of the North Coast Line, when train services are not used on those sections due to a Queensland Rail cause. ⁵⁵⁴	n/a	<p>In the absence of a reference tariff applying on the North Coast Line, and given the limited and specific circumstances to which reimbursement may apply, it would be appropriate for these matters to be negotiated between the contracting parties as part of an overall package of risks, costs and entitlements.⁵⁵⁵ In our view, this approach appropriately balances the interests of Queensland Rail, access seekers and access holders (ss. 138(2)(b), (e), (h)).</p>
Pacific National argued that Queensland Rail should develop a separate SAA for freight and bulk commodities on the North Coast Line and Mount Isa Line. Pacific National said the proposed SAA was more appropriate for coal operations on the West Moreton system. ⁵⁵⁶	n/a	<p>We do not consider it appropriate to require Queensland Rail to develop a separate SAA. Pacific National did not provide any reasoning or justification for its view that the proposed SAA was more appropriate for coal traffic. It was also the only stakeholder to raise this concern and we note the matter was raised late in our review process.</p> <p>Even if Pacific National justified its position, it would need to be established that the benefits of developing separate agreements outweighed the costs. This may be a matter for Queensland Rail and stakeholders to consider as part of the next DAU process.</p>
New Hope said that the SAA should include a mechanism to deal with uncertainty associated with Inland Rail. ⁵⁵⁷	n/a	<p>The SAA sets out standard terms and conditions of access to Queensland Rail's network, not just the West Moreton system. Issues that apply in a more limited and specific set of circumstances should be negotiated between the contracting parties. This approach is appropriate having regard to the interests of Queensland Rail, access seekers and access holders (ss. 138(2)(b), (e), (h)).</p>
Various corrections, updates and clarifications	various	<p>It is appropriate for Queensland Rail to make the following amendments:</p> <ul style="list-style-type: none"> • Clause 14.1(a)(iii)—remove this clause, as it is already included in cl. 15.2(f) and therefore is a repeat of cl. 14.1(a)(i). • Clause 16.2—amend the clause to clarify its meaning. • Clause 19.3(a)(i)(B)⁵⁵⁸—refer to the Chairperson of the Resolution Institute, rather than the President of the Institute of Chartered Accountants in Australia.⁵⁵⁹

⁵⁵⁴ Pacific National, sub. 17: 21.

⁵⁵⁵ New Hope (sub. 24: 43, sub. 33: 28) supported this position, which is consistent with our draft decision.

⁵⁵⁶ Pacific National, sub. 25: 8, 10, sub. 34: 2–3.

⁵⁵⁷ New Hope, sub. 24: 43–44.

⁵⁵⁸ This was cl. 19.3(b)(i)(B) in the 2020 DAU.

⁵⁵⁹ These amendments are required because Chartered Accountants Australia and New Zealand (formerly the Institute of Chartered Accountants in Australia) no longer provides nomination services.

<i>Issue</i>	<i>SAA clause</i>	<i>QCA analysis and decision</i>
		<ul style="list-style-type: none">• Clause 28.1—amend the clause to reflect the terms defined in the SAA.• Other clauses—make other amendments to correct identified typographical or cross-referencing errors and to improve clarity and workability, as specified in Appendix B.2. <p>It is in the interests of all parties that the SAA is workable and free from errors (ss. 138(2)(b), (d), (e), (h)).</p>

GLOSSARY

ACCC	Australian Competition and Consumer Commission
AER	Australian Energy Regulator
ARTC	Australian Rail Track Corporation
cl., cls.	clause, clauses
CPI	consumer price index
CQCN	Central Queensland coal network
DAAU	draft amending access undertaking
DAU	draft access undertaking
DBCT	Dalrymple Bay Coal Terminal
DTP	daily train plan
ERA	Economic Regulation Authority (Western Australia)
FFO	funds from operations
Frontier	Frontier Economics
gtk	gross tonne kilometres
HVCN	Hunter Valley Coal Network
Incenta	Incenta Economic Consulting
IPART	Independent Pricing and Regulatory Tribunal (New South Wales)
IRMP	interface risk management plan
MOU	memorandum of understanding
MRP	market risk premium
MTP	master train plan
mtpa	million tonne(s) per annum
NMPs	network management principles
nt	net tonne
ORM	operating requirements manual
QCA	Queensland Competition Authority
QCA Act	<i>Queensland Competition Authority Act 1997</i>
RAB	regulatory asset base
RBA	Reserve Bank of Australia
s., ss.	section, sections
SAA	standard access agreement
sch.	schedule
Systra	Systra Scott Lister
TMR	Queensland Department of Transport and Main Roads

TPI	The Pilbara Infrastructure
TSC	Transport service contract
TSE	train service entitlement
WACC	weighted average cost of capital
2015 DAU	the draft access undertaking submitted by Queensland Rail to the QCA on 5 May 2015
2016 undertaking	Queensland Rail's current access undertaking, which came into effect on 11 October 2016 and terminates on 30 June 2020
2020 DAU	the draft access undertaking submitted by Queensland Rail to the QCA on 14 August 2018

APPENDIX A: LIST OF SUBMISSIONS

We received the following submissions during its investigation of Queensland Rail's 2020 DAU. The submission numbers below are used in this draft decision for referencing purposes. The submissions are available on our website unless otherwise indicated.

Stakeholder	Submission	Number	Date
Aurizon Bulk	Submission on Queensland Rail's 2020 DAU	11	17 Oct 2018
	Submission on the QCA's draft decision on Queensland Rail's 2020 DAU	22	11 July 2019
Aurizon Coal	Submission on Queensland Rail's 2020 DAU	12	17 Oct 2018
	Submission on the QCA's draft decision on Queensland Rail's 2020 DAU	23	11 July 2019
	Collaborative submission on the QCA's draft decision	28	27 Sept 2019
	Submission on the QCA's discussion paper on the West Moreton coal pricing approach	43	19 Dec 2019
Glencore (Mount Isa Mines)	Collaborative submission on the QCA's draft decision	29	27 Sept 2019
	Attachment 1—Collaborative undertaking and SAA drafting	30	27 Sept 2019
	Attachment 2—Regional Network User Group drafting	31	27 Sept 2019
Incitec Pivot	Collaborative submission on the QCA's draft decision	32	27 Sept 2019
New Hope	Submission on Queensland Rail's 2020 DAU—cover letter	13	17 Oct 2018
	Volume 1—Overview and Reference Tariffs	14	17 Oct 2018
	Volume 2—Undertaking and Standard Access Agreement	15	17 Oct 2018
	Submission on the QCA's draft decision on Queensland Rail's 2020 DAU	24	11 July 2019
	Collaborative submission on Queensland Rail's 2020 DAU	33	27 Sept 2019
	Submission on the QCA's discussion paper on the West Moreton coal pricing approach	44	19 Dec 2019
Pacific National	Submission of Queensland Rail's 2020 DAU	17	7 Nov 2018
	Submission on the QCA's draft decision on Queensland Rail's 2020 DAU	25	11 July 2019
	Collaborative submission on the QCA's draft decision	34	27 Sept 2019
Queensland Rail	Submission of Queensland Rail's 2020 DAU	1	14 Aug 2018
	Explanatory document to the submission of Queensland Rail's 2020 DAU	2	14 Aug 2018
	Attachment 1—West Moreton Tonnage Forecasts (not published)	3	14 Aug 2018
	Attachment 2—report by Frontier Economics: Estimates of asset beta and equity beta for Queensland Rail, July 2018	4	14 Aug 2018
	Attachment 3—submission on West Moreton system DAU2 capital expenditure	5	14 Aug 2018
	Attachment 4—report by GHD: Peer Review of Queensland Rail's proposed capital expenditure for DAU2, 13 July 2018	6	14 Aug 2018

Stakeholder	Submission	Number	Date
	Attachment 5—West Moreton System DAU2 maintenance costs 2020–21 to 2024–25	7	14 Aug 2018
	Attachment 6—report by GHD: Peer Review of Queensland Rail's proposed maintenance expenditure for DAU2, July 2018	8	14 Aug 2018
	Attachment 7—report by HoustonKemp: DAU2 Price differentiation, 19 July 2018	9	14 Aug 2018
	Attachment 8—report by HoustonKemp: DAU2 Renewal rights, 19 July 2018	10	14 Aug 2018
	Response to submissions on Queensland Rail's 2020 DAU	18	16 Nov 2018
	Attachment 1—report by Frontier Economics: Response to submissions on low volume scenarios, 14 Nov 2018	19	16 Nov 2018
	Attachment 2—report by Frontier Economics: Response to submissions on the required return for Queensland Rail, 26 Oct 2018	20	16 Nov 2018
	Submission on the QCA's draft decision on Queensland Rail's 2020	26	11 July 2019
	Collaborative submission on the QCA's draft decision	35	27 Sept 2019
	Response to collaborative submissions on the QCA's draft decision	36	27 Sept 2019
	Attachment 1—Drafting changes	37	27 Sept 2019
	Attachment 2—report by HoustonKemp: DAU2 cost allocation for the West Moreton System, 22 September 2019	38	27 Sept 2019
	Attachment 3—report by HoustonKemp: Approaches to the WACC for rail networks, 16 September 2019	39	27 Sept 2019
	Attachment 4—report by HoustonKemp: Evaluation of inflation forecasting methods, 16 September 2019	40	27 Sept 2019
	Further submission on DAU2 West Moreton System low volume coal reference tariff	42	22 Nov 2019
	Submission on the QCA's discussion paper on the West Moreton coal pricing approach	45	19 Dec 2019
	Attachment 1—Proposed DAU2 Loss Capitalisation Drafting	48	19 Dec 2019
	Maintenance cost variation model (MS Excel spreadsheet— not published)	47	10 Dec 2019
Yancoal	Submission on Queensland Rail's 2020 DAU	16	17 Oct 2018
	Collaborative submission on Queensland Rail's 2020 DAU	21	16 Nov 2018
	Submission on the QCA's draft decision on Queensland Rail's 2020 DAU	27	11 July 2019
	Collaborative submission on the QCA's draft decision	41	27 Sept 2019
	Submission on the QCA's discussion paper on the West Moreton coal pricing approach	46	19 Dec 2019

APPENDIX B: AMENDED 2020 DAU

Appendix B sets out the way in which the QCA considers it appropriate for Queensland Rail's 2020 DAU to be amended, subject to the incorporation of any further amendments necessary to correct any demonstrated typographical or cross-referencing errors.

Appendix B incorporates the attached mark-ups to Queensland Rail's 2020 DAU.

- B.1 Parts and Schedules of the 2020 DAU (except schedule H)
- B.2 Standard Access Agreement (schedule H)

REFERENCES

- Australian Competition and Consumer Commission (ACCC), *Australian Rail Track Corporation, Access Undertaking – Interstate Rail Network*, final decision, July 2008.
- Australian Rail Track Corporation's 2017 Hunter Valley Access Undertaking*, draft decision, April 2017.
- 2016 Australian Rail Track Corporation's compliance with the Hunter Valley Coal Access Undertaking*, final determination, December 2019.
- Australian Energy Regulator (AER), *Rate of return instrument*, December 2018.
- Rate of return instrument: Explanatory Statement*, December 2018.
- Australian Office of Financial Management, *Annual Report 2018–19*, September 2019.
- Australian Rail Track Corporation (ARTC), *Hunter Valley Coal Network access undertaking development*, stakeholder consultation paper, March 2015.
- Economic Regulation Authority (ERA) Western Australia, *2018 and 2019 Weighted Average Cost of Capital for the Freight and Urban Railway Networks, and for Pilbara railways*, final determination, August 2019.
- Ernst & Young, *New Acland Coal Mine Stage 3 Project: Financial Impact Study*, prepared for the New Hope Group, September 2017.
- Finlay, R & Wende, S, 'Estimating Inflation Expectations with a Limited Number of Inflation-Indexed Bonds', *International Journal of Central Banking*, vol. 8, no. 2, 2012.
- Grishchenko, OV & Huang, J, *Inflation Risk Premium: Evidence from the TIPS Market*, Finance and Economics Discussion Series, working paper 2012–06, United States Federal Reserve Board, 2012.
- Independent Pricing and Regulatory Tribunal (IPART) New South Wales, *Rate of Return and Remaining Mine Life 2019–2024*, final report, July 2019.
- Incenta Economic Consulting, *Estimating Queensland Rail's WACC for the 2020 DAU—asset beta, benchmark gearing, and credit rating*, prepared for the QCA, April 2019.
- Mathysen, H, *Consideration of best estimates of expected inflation: comparing and ranking approaches*, working paper no. 11, ACCC/AER working paper series, April 2017.
- Productivity Commission, *National Access Regime*, inquiry report no. 66, October 2013.
- Queensland Competition Authority (QCA), *Queensland Rail's Draft Access Undertaking*, decision, June 2016.
- Aurizon Network's 2017 draft access undertaking*, decision, December 2018.
- Declaration reviews: Aurizon Network, Queensland Rail and DBCT*, draft recommendations, December 2018.
- Queensland Rail's Toowoomba Range Slope Stabilisation prudency preapproval*, decision notice, attachment to the QCA's letter to Queensland Rail, 18 March 2019.
- Queensland Rail's 2013–17 capital expenditure claim*, decision notice, attachment to the QCA's letter to Queensland Rail, 21 March 2019.

—*West Moreton coal pricing approach*, discussion paper, October 2019.

—*Queensland Rail Reference train characteristics DAAU*, decision notice, December 2019.

Queensland Government, Department of State Development, Manufacturing, Infrastructure and Planning, *North West Queensland Economic Diversification Strategy 2019*, strategy document, Queensland Government, August 2019.

Queensland Rail, *Operating Requirements Manual*, version 1, 11 October 2015.

—*Annual and financial report for the year ended 30 June 2019*, September 2019.

Reserve Bank of Australia, *Regulatory treatment of inflation—inflation expectations*, letter to the Australian Energy Regulator, 5 July 2017.

Systra Scott Lister, *Queensland Rail West Moreton System: Review of proposed maintenance, capital & operations expenditure*, prepared for the QCA, April 2019.

Systra Scott Lister, *Update to West Moreton System Cost and Investment Forecasts*, prepared for the QCA, February 2020.

Trad, J and Bailey, M, *Mount Isa Line plan puts North West minerals freight on fast track*, media release, Queensland Government, 9 June 2019.

Tulip, P & Wallace, S 2012, *Estimates of uncertainty around the RBA's forecasts*, research discussion paper, RBA, November 2012.

Williamson, OE, *The Economic Institutions of Capitalism: Firms, Markets, Relational Contracting*, The Free Press, New York, 1985.