

File Ref: 1460447

17 December 2021

The Hon Cameron Dick MP
Treasurer and Minister for Trade and Investment
GPO Box 611
Brisbane Qld 4001

Dear Treasurer

Request for declaration of the service to be provided by the Carmichael Rail Network

We have received a request from Michael Swifte (from the organisation "We Suspect Silence"), on 6 September 2021, seeking a recommendation that the service to be provided by the Carmichael Rail Network (CRN) be declared for access under Part 5 of the *Queensland Competition Authority Act 1997* (Qld) (QCA Act).¹

The CRN is a narrow gauge railway connecting Queensland's Galilee Basin to existing rail infrastructure (operated by Aurizon Network) and the North Queensland Export Terminal (at Abbot Point). The CRN is owned and operated by Adani Australia (Adani), or a related entity, as part of the Carmichael Project. Adani's Carmichael Mine is the railway's foundation user.

We advised Adani of Mr Swifte's request and have consulted with both parties on the request and our assessment process, including the potential applicability of s. 80(3) to the request. Section 80(3) provides that the QCA may recommend that a service not be declared if the QCA considers that 'the request was not made in good faith or is frivolous'.

Our view is that a recommendation may be made under s. 80(3) if we consider that a request was not made in good faith in the sense that it was not made for the predominant purpose of having the service declared (with a view to promoting effective competition in dependant markets in accordance with the object of Part 5 as stated in s. 69E).

Having considered the parties' respective views² and other relevant factors, we recommend that the service not be declared pursuant to s. 80(3).

¹ Unless otherwise stated, reference to statutory parts or sections are to the QCA Act.

² In particular, the communications from Mr Swifte, received on 6 September 2021, 4 October 2021 and 27 October 2021; and the communications from Adani received 15 September 2021 and 5 October 2021.

In making this recommendation, we note Mr Swifte's statements and the context in which they were made. This includes Mr Swifte indicating that:

[m]y chief concern is that Adani may be developing "monopoly infrastructure" without sufficient regulation of development activity.

Mr Swifte's request and subsequent correspondence indicate he has made right to information requests seeking transparency and accountability with respect to the roles of government and Adani in the development of the CRN.

Mr Swifte also said that:

[v]ery few primary sources exist on the public record to confirm the details of Adani's rail corridor.

We provided Mr Swifte with an opportunity to comment on Adani's submissions, including Adani's submission that his request was not made in good faith. That submission was made with reference to various past statements attributed to Mr Swifte which Adani submitted suggested that Mr Swifte's motivation in making the request was to delay or undermine the commercial operation of the CRN.

In response to Adani's submissions concerning good faith, Mr Swifte relied on the fact that we had requested further information to support his request. He also submitted that s. 77 of the QCA Act makes 'no special provisions about which 'person[s]' can make a request.' Mr Swifte went on to submit that:

I am exercising my fiduciary responsibility as a citizen/resident of Queensland to support the development of a political economy that does not damage the rights and interests of those impacted by infrastructure of 'state significance'. Providing the QCA with ample time to investigate an anticipated facility that is to provide a service can help deliver robust regulation and transparency to support competition. As someone who has researched the economic interplay between environmental organisations, governments, mining companies and Traditional Owner groups regarding resource extraction projects in Australia, and particularly in the Galilee Basin for the last 7 years, I have always pursued greater access to information on the public record to support an informed citizenry.

We do not consider that the fact that we requested further information about Mr Swifte's request demonstrates that Mr Swifte's request was made in good faith. Rather, it simply reflects our consultations on this matter.

We agree that Mr Swifte is within the scope of 'person[s]' who can make a request under s. 77. However, it is relevant to our conclusion as to good faith that Mr Swifte is not an access seeker; is not affiliated with an access seeker or entity representing the interests of access seekers (such as an industry organisation); does not operate in a market that is dependent upon access to the service; and does not appear to be in any way reliant on access being provided to the CRN service.

Reading his submissions as a whole, the focus of Mr Swifte's request was lack of information on the public record regarding the CRN and his view that declaration is necessary in the context of prudence and good economic management. The transparency that Mr Swifte seeks is not contrary to the objects of Part 5. That is, increased transparency in relation to the construction and approval of the CRN will not impede the efficient operation of significant infrastructure, nor will it reduce effective competition in dependent markets. However, such transparency is not itself the object of Part 5. There may be other avenues that are better suited to Mr Swifte achieving his objectives, including by way of the information disclosure provisions in the *Right to Information Act 2009* (Qld) and/or the *Freedom of Information Act 1982* (Cth).

Having regard to the above matters, we consider that Mr Swifte's request was not made for the predominant purpose of having the service declared (with a view to promoting effective competition in dependant markets in accordance with the object of Part 5 as stated in s. 69E). We consider that Mr Swifte's request was not made in good faith within the meaning of s. 80(3), and recommend that the service not be declared.

Given our view that s. 80(3) applies, we have not reached a concluded view about whether the CRN service satisfies the access criteria for declaration (as set out in s. 76).

No human rights are relevant to this recommendation for the purposes of s. 58(1)(b) of the *Human Rights Act 2019* (Qld).

As our letter constitutes our recommendation, we will publish it pursuant to s. 79(3) following the publication of your decision.

Enclosed are Mr Swifte's declaration request (received 6 September 2021) and his amended request (received 4 October 2021), pursuant to s. 79(5) which requires us to give a copy of the request to the Minister. For completeness, we also enclose a copy of the other documents referred to in footnote 2 above.

I am available to meet with you if you require more information. Alternatively, your staff can contact Ravi Prasad at ravi.prasad@qca.org.au on 0417 238 934.

Yours sincerely



Professor Flavio Menezes
Chair