

8 April 2013

Dr Malcolm Roberts
Chairman
Queensland Competition Authority
GPO Box 2257
Brisbane QLD 4001

Dear Dr Roberts,

Queensland Rails' 2013 Draft Access Undertaking (February 2013)

Aurizon welcomes the opportunity to comment on Queensland Rail's (QRail) new draft undertaking (the 2013 DAU), and makes this submission to the Queensland Competition Authority (QCA) in response to the information provided on 25 January 2013 and 28 March 2013. Aurizon is available for further discussion on the issues raised and can provide more information to the QCA or QRail as required.

Aurizon is Australia's largest rail freight operator, with more than 145 years' experience. Each day, Aurizon moves on average more than 500,000 tonnes of coal, iron ore and other minerals, as well as agricultural and general freight, around the nation.

In regard to QRail's network, Aurizon is the largest operator using the network, after QRail's own integrated passenger business.

Objective

Aurizon's primary aim in making this submission is to contribute towards the development of an access undertaking which ensures open access for third party access seekers on commercially acceptable terms, supports the competitiveness of rail in the provision of land transport solutions and facilitates competition between above rail operators.

Process

QRail submitted to the QCA on 30 March 2012 a voluntary draft access undertaking (the 2012 DAU), for its approval. Aurizon provided two submissions to the QCA on the 2012 DAU, in July 2012 and September 2012. On 25 February 2013, QRail withdrew the 2012 DAU and resubmitted another voluntary draft access undertaking, the 2013 DAU, for approval by the QCA. In developing this third submission on QRail's draft access undertaking, Aurizon has utilised the publicly available information provided by QRail, Aurizon and other stakeholders. Aurizon considers that the arguments presented in its previous submissions remain relevant and should be read in conjunction with this submission.

Aurizon is supportive of the proposed working group meetings¹, hosted by the QCA, to discuss and resolve with QRail issues relating to:

1. Above-rail operational issues;
2. Western System pricing;
3. Aspects of the proposed standard access agreement;
4. Mount Isa pricing; and

¹ E-mail dated 28 March 2013, Queensland Rail's 2013 Draft Access Undertaking – Submission Due Dates and Authority Consultation

5. Investment framework matters.

To support the workshop process, Aurizon has limited its comments to those matters which do not relate to the aforementioned workshops. A further submission will be provided on 8 May 2013 in relation to the topics to be discussed in the workshops.

Structure of this Submission

This submission is structured in two parts:

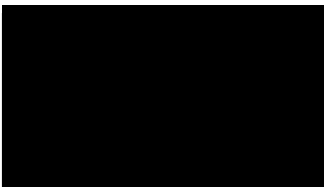
1. Identification of key issues in relation to QRail's 2013 DAU, relevant to this submission.
2. An Issues Table which discusses details of the matters to be addressed in this submission and includes whether this is a new or previously identified issue and a suggested resolution to the issue. In addition, if the issue was previously identified by Aurizon, the extent to which QRail has addressed the issue.

Proposed way forward

Aurizon will be attending each of the QCA facilitated workshops in April and looks forward to the further clarification of QRail's proposal and the ability to constructively discuss and resolve issues with QRail, the QCA and other stakeholders.

To discuss, or for further information on any of the issues raised in this submission, please contact Rachel Martin (Senior Regulatory Strategist) on telephone number

 or by email at rachel.martin@aurizon.com.au.



Mr. Andrew MacDonald
Senior Vice President
Commercial and Marketing

Queensland Rail's 2013 Draft Access Undertaking



1 Key Issues

1.1 Overview

Aurizon considers that regulation should be light-handed and proportional, and give priority where possible to commercially-negotiated outcomes in the first instance. Given that, Aurizon considers that QRail's move towards a more 'light-handed' regulatory approach is broadly appropriate. In the case of QRail's undertaking, this task requires significant nuance, given the diversities in the markets in which QRail's access customers operate, and the need for differing levels of regulatory intervention across the rail system.

Aurizon's key objectives in responding to the 2013 DAU better is to ensure that the Undertaking reflects the legitimate interests of all stakeholders by giving effect to:

1. the primacy of commercial outcomes;
2. greater consideration of freight users;
3. a non-discriminatory and transparent negotiation framework;
4. greater contractual certainty to access holders;
5. planning that is consultative and inclusive;
6. the promotion of freight on rail; and
7. the efficiency (cost and use) of the infrastructure.

Aurizon acknowledges the amendments QRail has made in response to criticism to its first DAU, for example, in providing operating performance information by corridor. However, overall, Aurizon still does not consider that the appropriate balance has been achieved between less upfront prescription and those mechanisms necessary to protect the interests of access seekers, particularly as regards the:

- disclosure of information;
- availability of effective and timely dispute resolution
- transparency regarding QRail's efficiency in negotiating access to and management of the infrastructure; and
- transparency regarding QRail's compliance with its obligations

Further, Aurizon acknowledges the changes that QRail has made in the 2013 DAU to provide a better balance between its vertically integrated passenger operations and its role as the railway manager. Aurizon considers however, that further changes are required to better reflect in the undertaking the distinction between below rail services and passenger train services and protect access seekers from discriminatory conduct.

In addition to the matters raised in the Issues Table the following discussion is provided to clarify Aurizon's concerns in relation to information disclosure and the application of the undertaking to below rail services versus protecting QRail's interests as a provider of passenger train services.

1.2 Information Disclosure

Access seekers need certain information to be able to effectively negotiate with QRail for access to rail infrastructure in accordance with the negotiation and arbitration model proposed. The information allows the access seeker to identify and understand the risks in delivering planned services and an assessment of the reasonableness of QRail's proposal.

Simply, Aurizon can only have confidence in a 'negotiate-arbitrate' model if it also has assurances that it will have access to the information it needs for robust, effective commercial negotiation.

In the current drafting of the 2013 DAU, QRail has committed to providing the following information to access seekers:

- information regarding the negotiation process and some performance reporting in relation to this process
- terms and conditions of access (either via the Standard Coal Carrying Access Agreement or the access principles contained in the undertaking)

- the principles that will apply in relation to pricing below rail services in the undertaking. However the only price or cost information that is available to access seekers to assess the reasonableness of QRail's proposal is:
 - o QRail's Annual Report, which is for the integrated passenger and network business;
 - o Below Rail Financial Statements which is only disaggregated between the West Moreton system and the rest of the Network.
 - o The West Moreton coal reference tariff;
- The process for capacity allocation and management are provided for in the undertaking, and some information is available on QRail's performance. A capacity analysis is only provided in response to an access application. Any other capacity information is only provided if QRail considers it reasonably required, freely and ordinarily available and not subject to a confidentiality agreement.
- Other information may be available on request by access seekers (ie Preliminary Information or additional information in the negotiation period) but this is only available to the extent QRail considers it reasonably required, it is freely and ordinarily available and not subject to a confidentiality agreement.
- The Operating Requirements Manual provides information on the obligations that an Operator must meet but does not include reference to all of the standards and protocols that an Operator will be required to meet and does not include the process by which an Operator can gain access to those standards and protocols.
- There is no obligation on QRail to provide any strategy or expansion options publicly available.

In response to any concern that this information is inadequate, QRail have argued that it does not have an incentive to inhibit Access² and that QRail provides considerable information on its website and customer portal to assist access seekers and access holders³. Aurizon does not accept this explanation, and considers that more information should be made available by QRail. In particular:

- First, even a natural monopoly that is not vertically integrated has an incentive to hinder access, where it is able to extract improved returns from doing so. That QRail is not integrated into freight, does not mean that it has no ability or incentive to charge monopoly rents, particularly when it faces competing operators and may be able to improve its returns at the expense of one over the other. Further, QRail is in fact vertically-integrated into passenger, suggesting that it has an added incentive to hinder access where it compromises its commercial or other objectives for the passenger business.
- Secondly, voluntary provision of information is subject to management discretion – in the event management change at QRail, there needs to be legal protection for access seekers or access holders that the required information will still be available.
- Thirdly, the information that is publicly available does not sufficiently address the needs of access seekers.

The diversity of traffic across QRail's network is a source of complexity for all stakeholders involved in the development of QRail's undertaking. It is the role of QRail to strike a balance that will accommodate all of its various stakeholders in obtaining Access that meets their commercial requirements. The Mount Isa line, for instance, is primarily used for bulk minerals traffic and is whereas the North Coast line carries agricultural products, intermodal traffic and passenger services. Where coal traffic is predominant on QRail's network, it is significantly constrained by passenger priority and preservation of path legislation. This results in the need to proactively manage the disparate commercial and operational requirements of passenger, coal, agricultural, intermodal, and bulk freight traffic at a corridor level⁴.

The diagram below (Figure 1) identifies the type of information required by access seekers, the purpose of the information required and examples of specific information that will meet the needs of access seekers. Aurizon maintains⁵ that given the nature of the competitive environment in which QRail operates, information is required at a corridor level.

² Attachment 1: Item 8, page 1.

³ Explanatory Submission – Queensland Rail's Draft Access Undertaking 1 (February 2013), page 13.

⁴ Please refer to the discussion on QRail's market in QR National's 13 July 2012 submission to the QCA, page 4.

⁵ As discussed in the 13 July 2012 QR National submission at page 4.

Information needs to be freely available to access seekers and aggregated at a corridor level

	Type of Information	Purpose of Information	Specific information
Promote Rail Industry	Technical, standards and protocols	<ul style="list-style-type: none"> Design operating solution 	<ul style="list-style-type: none"> - Technical characteristics of infrastructure - Standards and Protocols - Below Rail Performance - Planning information (Long to short time horizons) - Forecast and Actual Capital Expenditure - Unit Maintenance Costs - Capacity Assessments - Above and Below rail trade offs - Expansion Paths, including triggers and estimated costs - Floor & ceiling price - DORC/ RAB - WACC - Standard Operator agreement (Coal) acknowledged as precedent for other traffic - Requirement to negotiate SUFA, Connection Agreements, End User agreements - Compliance reports (negotiation timeframes, number of complaints/ disputes)
	Service Quality	<ul style="list-style-type: none"> Assess service level standards and risk to above rail service design (below rail versus supply chain performance) Need to balance commercial confidentiality with value to access seekers 	
	Planning	<ul style="list-style-type: none"> High level assessment of project viability Assess risks to above rail investment Assess efficiency in investment Manage "tyre kickers" 	
Facilitate Negotiation	Pricing transparency	<ul style="list-style-type: none"> Address information asymmetries Assess risk to above rail investment over time Assess reasonableness of charges 	
	Terms & conditions	<ul style="list-style-type: none"> Design commercial solution Certainty of contractual rights 	
Confidence in Regime	Compliance	<ul style="list-style-type: none"> Monitoring effectiveness of regime 	

Figure 1: Information needs of access seekers

In contrast to the information that QRail has available or has proposed, in the 2013 DAU, to make available on its website, ARTC provides a significant amount of publicly available information for access seekers (as per the table below). Aurizon maintains⁶ that ARTC is an appropriate benchmark for QRail and considers that the specific information required by access seekers and identified in (Figure 1) has not been adequately addressed by QRail.

Table 1: Comparison ARTC and QRail, publicly available information

Type of information	ARTC publicly available information for interstate access seekers	QRail publicly available information for access seekers
Technical, standards and protocols	ARTC configuration maps TOC manual (including route standards) Indicative section running times Network interface coordination plan Infrastructure standards Wayside devices – network map Safeworking forms Safe notices	Line diagrams. Whilst information packs, last reviewed in 2007, are not readily found and were discovered after searching the QRail website.
Service Quality	Performance indicators by corridor including graphical representation of historical trends	Available in tabular format.
Planning	Committed capacity – customer commitment chart MTP Network transit management principles Investment strategies and capital expenditure	Not available.
Pricing Transparency	Floor and ceiling revenue limits Unit costs	Western system tariffs. Below rail financial statements.

⁶ Please refer QR National's 13 July 2012 submission, page 3.

Type of information	ARTC publicly available information for interstate access seekers	QRail publicly available information for access seekers
	DORC value by segment Published indicative access charges Investment strategies and capital expenditure ARTC annual reports	QRail annual reports.
Terms and conditions	Indicative access agreement	Coal carrying standard access agreement.
Compliance	Not available	Available.

1.3 QRail as Rail Manager and Passenger Operator

Aurizon supports the passenger priority legislation and recognises that it supports Queensland businesses and industries by transporting staff to and from work. In addition Aurizon acknowledges the amendments that QRail have included in the 2013 DAU to address stakeholders concerns in relation to the prioritisation of QRail's interests as an operator of passenger services with those as the manager of the railway including:

- the clarification of in the preamble that the provision of access to the network for freight trains is also a significant activity for QRail; and
- improved definition of the provision in relation to rail safety and other considerations for passengers.

Notwithstanding these amendments, Aurizon considers that further protections are required to ensure that the provisions of the Undertaking reflect the obligation of QRail as the manager of the railway to provide non-discriminatory access to both passenger and freight services. In particular, Aurizon considers the following protections are required:

- Amend the undertaking to remove references where it is QRail's interests that is relevant, rather than the interests of QRail as the owner or operator of the declared infrastructure. For example, cl.2.7.2(b)(v) allows QRail when assessing competing access requests, to give consideration to any matter that may have an impact on QRail's financial and risk position. This assessment should be limited to the financial and risk position of QRail as the railway manager not to QRail as the vertically integrated railway manager and operator of passenger train services;
- With the removal of the requirements for internal access agreements, provide certainty that the Network Management Principles, standards, protocols and other operating requirements will apply equally to QRail's passenger business and to parties who have contracted access agreements. For example it is inappropriate that the internal passenger services would have a higher priority then external freight (or passenger) services when planning possessions and providing alternative paths;
- Publish on QRail's website, ministerial directives under passenger priority legislation and the related MTP;
- Include an exhaustive list in the Operator Requirements Manual of the standards and protocols that Operators are required to comply with;
- Notify Operators, together with bonafide consultation, of any changes to operating requirements, maintenance programmes and possession management with access to dispute resolution if parties cannot agree to the changes;
- Amend the Network Management Principles to reflect the legislative obligation to endeavour to bring a delayed passenger service back to its scheduled running time and take into consideration the impact on all train services. For example it is not in line with Passenger Priority Legislation if returning a passenger service that is delayed by 10 minutes to scheduled running time results in more than one freight service becoming unhealthy.
- Include the ability to request information about traffic management decisions; and
- Include in the quarterly performance reporting information the number of complaints in relation to operational matters, such as the operating requirements manual and the network management principles.
- Ensure access holders are able to dispute changes to standards and protocols particularly where the proposal, even if addressing a safety issue, unreasonably favours passenger operations above freight.
- Amend the rail safety and other considerations for passengers to reflect to apply to any adverse impact on any train service and provide greater transparency on the adverse affects on the safety of any person that a freight train service will have compared with a passenger service.
- Include a requirement for QRail to have its performance in relation to the non-discriminatory provision of below rail services to passenger and freight services.
- Include a statement in the preamble that the objective of the access undertaking is to meet the objectives and governing principles of the Queensland Government's rail freight strategies.

2 Issues Table

Item	Issue	Clause	Has QRail changed from AU1	Description	Suggested Resolution
1.	Competitive position of QRail contained in Preamble.	N/a	Partly	<p>Aurizon acknowledges the significant amendments QRail has made to address Aurizon's concerns regarding the drafting of the preamble in the 2012 DAU.</p> <p>Aurizon has some concerns regarding the accuracy and relevance of information included in the following statement:</p> <p><i>"the rail network previously managed by Aurizon Network (formerly QR Network Pty Ltd) (now part of the Aurizon corporate group) was divided between Aurizon Network and Queensland Rail";</i></p> <p>and would seek for this to be amended as follows:</p> <p><i>"the declared rail infrastructure in Queensland managed by QR Network Pty Ltd (now Aurizon Network Pty Ltd) was divided between Aurizon Network and Queensland Rail."</i></p> <p>Given QRail has included in the preamble the historical context for QRail and reference to Aurizon Network, Aurizon considers that it should be clearly stated in the preamble that <i>"this Undertaking therefore does not relate to the provision of Access to the Central Queensland Coal Region."</i> Aurizon also considers that inclusion of the paragraph regarding QRail's current undertaking will be</p>	<p>Change second dot point in preamble to: <i>"the declared rail infrastructure in Queensland managed by QR Network Pty Ltd (now Aurizon Network Pty Ltd) was divided between Aurizon Network and Queensland Rail."</i></p> <p>Include the following sentence at the end of the third paragraph: <i>"this Undertaking therefore does not relate to the provision of Access to the Central Queensland Coal Region."</i></p> <p>Delete the ninth paragraph in the preamble.</p> <p>Either clarify the markets with which QRail competes including supporting evidence or delete the eighth paragraph of the preamble to ensure that it is not perceived as a substantiated fact once the undertaking is approved by the QCA⁹.</p> <p>QRail to confirm whether its objective as a railway manager is only to <i>"provide a safe and efficient rail based transport option"</i> or whether it, like ARTC, seeks <i>"to stimulate customer confidence, competition and market growth in the rail industry."</i>¹⁰</p>

⁷ Queensland Rail's Draft Access Undertaking 1, February 2013, page 2.

⁸ For further discussion on the preamble please refer to page 14 of QR National's 13 July 2012 submission to the QCA.

⁹ For further discussion on market complexities please refer to page 4 of QR National's 13 July 2012 submission to the QCA.

¹⁰ For further discussion on the preamble please refer to page 14 of QR National's 13 July 2012 submission to the QCA.

Item	Issue	Clause	Has QRail changed from AU1	Description	Suggested Resolution
				<p>irrelevant to their undertaking once approved and should be deleted to remove any potential for confusion between QRail's undertaking and that of Aurizon Network.</p> <p>Aurizon is supportive of clarifying the competitive environment in which QRail operates, however Aurizon considers the conclusion "<i>that QRail is not truly a monopolistic provider of infrastructure</i>" is based on examples that are not sufficiently nuanced to provide the appropriate context and does not recognise the dynamics associated with identifying each of the markets and the impact on competition of services. As an example, air transport has been identified by QRail as a competitive service to rail. Air transport does not compete with the transportation of bulk freight on rail and intermodal rail services are not competing against air transport for the time sensitive (next day) small freight packages mostly transported by air. Aurizon considers that the competitive market in which QRail operates should inform and support the approach taken by QRail in developing the regime and does not consider that sufficient information has been provided by QRail to explain the competitive market to justify the inclusion of this paragraph in the preamble as currently drafted.</p> <p>Aurizon considers that whilst QRail has clarified its role in the provision of passenger services versus that of managing the rail network, the sentence "<i>the provision of Access to the Network for freight Trains is also a significant activity</i>" is inwardly focused on QRail. Aurizon seeks clarification from QRail whether its objective as a railway manager is only to "<i>provide a safe and efficient rail based transport option</i>" or whether it, like ARTC, seeks "<i>to stimulate customer confidence, competition and market growth in the rail industry.</i>"¹³</p>	
2.	Duration of the proposed Access Undertaking	1.1	No	Given this is QRail's first undertaking and the significant changes that have been sought in moving to a light handed regime, Aurizon is of the view that it would be	Change the duration of QRail's undertaking to three years.

Item	Issue	Clause	Has QRail changed from AU1	Description	Suggested Resolution
				prudent for this initial term to remain at three years.	
3.	Definition of Access Rights	1.2.1	No	Aurizon has reviewed QRail's discussion in response to Aurizon's concerns regarding the definition of Access. Aurizon does not believe QRail has addressed Aurizon's specific concerns in relation to potential for current below rail services to be considered ancillary services and priced in addition to the access charge as a result of the change in definition. ¹¹	Reinstate definition of access as included in the current undertaking.
4.	Line Diagrams	1.2.3	No	<p>Compared to the February 2012 AU1, QRail have introduced a new clause 1.2.1(b)(i)(C) which clarifies that the Undertaking does not apply to any rail infrastructure that QRail is the Railway Manager but which is not owned by QRail or QRail is not entitled to grant rights of access.</p> <p>In addition, the definition of Access still excludes stations and platforms and yards and depots used predominantly for passenger services.</p> <p>Aurizon sought in its September 2012 submission to the QCA for QRail to provide transparency in the line diagrams regarding the rail infrastructure to which the Undertaking applies and rail infrastructure that is declared but not included within the scope of the undertaking. QRail have not addressed this issue.</p> <p>QRail have also not addressed stakeholder concerns with regard to amendments to the line diagrams.¹²</p> <p>Aurizon considers provision of certain information in the line diagrams would address concerns of stakeholders in relation to concerns regarding uncertainty resulting from each of the aforementioned provisions.</p>	<p>Aurizon supports the following amendments in relation to line diagrams:</p> <ul style="list-style-type: none"> • The inclusion of a dispute resolution mechanism in relation to amendments to the line diagrams and the related changes to the infrastructure. • Line diagrams to clearly indicate QRail infrastructure available included within the scope of the Undertaking, declared infrastructure outside the scope of the Undertaking (including that "predominantly passenger" infrastructure excluded from the definition of Access), infrastructure to which 1.2.1(b)(i)(C) applies and private infrastructure.

¹¹ Please refer to QR National submission 13 July 2012, pp 7-8.

¹² Please refer QR National submission 25 September 2012, pp 6-7.

Item	Issue	Clause	Has QRail changed from AU1	Description	Suggested Resolution
5.	Consistency and differentiation	1.3(a), (b)	No	<p><u>Consistency and Differentiation</u> The 2013 DAU states that it will be applied consistently to all access seekers in the same circumstances. QRail have not addressed the concerns expressed in stakeholder submissions.</p> <p>Under the proposed section, QRail may by differentiate between access seekers and impact their ability to compete effectively. This would be in conflict with the QCA Act cl.1.3(b) which obliges QRail to comply with legislative requirements to not unfairly differentiate between access seekers where that differentiation may have a material adverse impact on the ability of access seekers to compete effectively.¹³</p>	<p>Clause 1.3(b) be amended to state the undertaking will be applied in a manner that is consistent between access seekers. This will allow QRail to satisfy the obligation in the QCA Act to not unfairly differentiate between access seekers where that differentiation may have a material adverse impact on the ability of access seekers to compete effectively.</p> <p>Aurizon acknowledges that the references to s100 in the QCA Act obligate the parties to negotiate in good faith. Aurizon believes that AU1 would benefit, from a transparency perspective, if the obligation was explicitly stated (with or without reference to the legislation).</p> <p>Further, the access undertaking should include independent confirmation as part of the annual compliance audit that consistent arrangements have been offered to access seekers.</p>
6.	Access Application	2.1.1(a)	N/a	<p>By removing the schedule that outlines the information an access seeker must complete when applying for access and creating a form that is published on QRail's website, QRail can amend the information required without approval by the QCA as is the current position. Given clause 2.1.1(c) requires an access seeker to "unconditionally and irrevocably" comply with the requirements under the undertaking, QRail may amend the form to require information that is not relevant to the access application and then refuse to provide access on the basis that the information has not been provided. Whilst QRail would argue that they are not incentivised to do so, given clause 2.7.2 allows QRail to assess competing access requests on the basis what is most favourable to QRail, in its absolute discretion and without any reference to the provision of below rail services, it is difficult to argue that there will never be a situation in the</p>	<p>Include in the provisions of the Undertaking protection for access seekers regarding the information required to be included in an access application.</p>

¹³

Please refer QR National submission 13 July 2012, pp 15-16.

Item	Issue	Clause	Has QRail changed from AU1	Description	Suggested Resolution
				future where QRail will be incentivised to use its ability to amend the information requirements and therefore refuse to negotiate access. This is particularly so, given the lack of clarity regarding QRail's objectives as noted in item 1 above.	
7.	Ability to depart from access undertaking	2.1.1(c)	No	QRail can reject an access application if requirements have not irrevocably been complied with.	This clause should be qualified by a materiality threshold, to ensure access seekers have the opportunity to address any minor departures from process.
8.	Preliminary information	2.1.3	No	<p>Rail access undertakings, on the whole, include a list of preliminary information that the access provider will make available to access seekers to address the information asymmetry issue when negotiating with monopoly infrastructure owners. QRail have committed in the 2013 DAU to providing preliminary information if the access seeker can demonstrate it is reasonably required and it is ordinarily and freely available to QRail.</p> <p>This is unacceptable as access seekers need information to assess the risks and opportunities to be able to competitively negotiate with QRail and what would be ordinarily and freely available to a government owned organisation could be very different to that of a public listed organisation facing competitive pressure.</p> <p>In addition QRail will not provide preliminary information if it will breach a confidentiality obligation binding on QRail. Aurizon is not seeking for QRail to breach confidentiality agreements, however Aurizon does consider it reasonable that QRail should take reasonable steps to provide confidential information that an access seeker reasonably requires in order to gain access to the infrastructure and fully understand the risks associated with that access.</p>	<p>Include an obligation on QRail to provide preliminary information and for the type of information to include include operational, capacity and pricing information (e.g. reference tariffs for coal traffic and floor and ceiling prices for the Mt. Isa and North Coast lines).</p> <p>Include an obligation on QRail to take reasonable steps to provide confidential information eg seek permission from the owner of the confidential information.</p> <p>The requirement for information is discussed in 1.2 of this submission.</p>
9.	Removal of Ringfencing	2.2	No	QRN concurs with the concerns raised by stakeholders ¹⁴	<ul style="list-style-type: none"> QCA consider reinstating the ringfencing requirements

¹⁴See Asciano, July 2012, Asciano Submission to the Queensland Competition Authority in relation to the Queensland Rail Ltd Draft Access Undertaking, page 5; AMEC, 1 June 2012, Queensland Rail 2012 Draft Access Undertaking (DAU), page 5; Peabody Energy Australia Pty Ltd, 13 July 2012, Peabody Energy Australia Pty Ltd Submission to the Queensland Competition Authority – Queensland Rail Draft Access Undertaking 1, page 4; Xstrata Copper, Xstrata Zinc, Submission on Queensland Rail's Draft Access Undertaking 1, page 6.

Item	Issue	Clause	Has QRail changed from AU1	Description	Suggested Resolution
	requirements			with regard to the limited protections for access seekers of QRail unfairly favouring its above rail passenger business. Whilst the prescriptive ringfencing arrangements of the current Undertaking are not necessarily required, mechanisms are required to ensure access charges reflect efficient costs of providing the below rail service only. This will provide stakeholders with confidence that there is no cost shifting between the above rail passenger and network businesses. In addition, QRN considers it reasonable to have in place a number of mechanisms that restrict the ability of QRail to make operational decisions in favour of the above rail passenger business.	in the event sufficient provisions, such as those outlined in 1.3, are not included to address the issues associated with QRail's vertically integrated nature
10.	Confidentiality provisions	2.2	No	The definition of confidential information has been amended from the current undertaking with no reference to the commercial impact if disclosed.	A reference to commercial impact included in the definition of confidential information.
11.	Timing of provision of IAP	2.4.1	No	Whilst the drafting of the 2013 DAU, on the face of it, is seeking to provide the same obligations in relation to the timing for the provision of an IAP. Aurizon remains concerned that in effect, by not clarifying the circumstances in which QRail may take longer than 20 business days it creates a situation where QRail has limited obligations to meet the 20 business day timeframe. This is reinforced by QRail's obligation to only report the <u>number</u> of IAP's provided within the timeframe referred to in this clause 2.4.1.	The time period for which QRail should provide an IAP is 20 business days, and any longer timeframe should only be in relation to the requirement for an extension of the infrastructure or as agreed by the parties. In addition compliance reporting should include the number of IAP's provided outside of the 20 business day timeframe and the average time for completion when not provided within 20 business days. Aurizon acknowledges that where possible QRail does provide IAP's in a shorter timeframe than the obligated 20 business days and considers there value in providing information regarding the timeframes for issuing of IAP's similar to what QRail has proposed for the

Item	Issue	Clause	Has QRail changed from AU1	Description	Suggested Resolution
					negotiation of access agreements in 5.2.2(j).
12.	Inclusions in Indicative Access Proposal	2.4.2	No	<p>To ensure that the IAP is consistent with the access application, the IAP should also outline the rollingstock and rollingstock configuration and relevant operating characteristics used to develop the IAP.</p> <p>Particularly for non-coal freight, in order to provide access seekers with an understanding of the alignment between risk and price, the IAP should also identify material divergences from the Standard Access Agreement (SAA). Aurizon considers that in providing an indicative access charge, that QRail would have consideration to the terms and conditions of the service. Given in practice the non-coal freight access agreements reflect the standard coal carrying access agreement, Aurizon does not agree with QRail's position¹⁵ that being able to provide <u>material</u> divergences from the SAA is dependent on knowing all of the characteristics of the haul.</p>	<p>The clause should be amended to allow for the notification of non-coal access applications material divergences from the Standard Access Agreement to be stated in the IAP.</p> <p>In addition, the IAP should outline the rollingstock and rollingstock configuration and relevant operating characteristics used to provide the IAP.</p>
13.	Cessation of Negotiation Period	2.6.1(c)	No	<p>The current undertaking provides clarity in the circumstances where QRail and the access seeker are still negotiating an access agreement after the defined negotiation period by noting that the negotiation period can be extended by agreement between the parties. This provision is favourable to access seekers, not detrimental to QRail and is "consistent with provisions of rail access undertakings in Queensland over the past 12 years"¹⁶ and therefore should be reinstated.</p>	<p>Include provision for QRail and the access seeker to continue negotiations where the parties agree to extend the negotiation period.</p>
14.	Issues to be addressed in negotiations – Additional Information	2.6.2(b)	Partly	<p>Aurizon remains concerned about the obligations on QRail to provide additional information, given QRail have retained in the 2013 DAU that the information will only be provided to extent that it is not subject to a confidentiality agreement and is freely and ordinarily available. As the</p>	<p>Include an obligation on QRail to provide additional information and for the type of information to include capacity and land tenure information where QRail is not the owner or leasee of the land.</p>

¹⁵ Response to QCA Issues Paper on Queensland Rail's Draft Access Undertaking 1, Attachment 1: Queensland Rail's response to stakeholder submissions relating to AU1 (Sept 2012), item 10, page 2

¹⁶ Queensland Rail in response to QR National's 12 July 2012 submission at item 9, page 2 of Attachment 1: Queensland Rail's response to stakeholder submissions to AU1 (Sept 2012) stated that the provisions in the draft AU1 were "consistent with provisions of rail access undertakings in Queensland over the past 12 years.

Item	Issue	Clause	Has QRail changed from AU1	Description	Suggested Resolution
				provisions in relation to additional information are the same as those for preliminary information, please refer to item 8 in this table for further discussion on this matter.	<p>Include an obligation on QRail to take reasonable steps to provide confidential information eg seek permission from the owner of the confidential information.</p> <p>The requirement for information is discussed in 1.2 of this submission.</p>
15.	Issues to be addressed in negotiations – Operating Plan	2.6.2(a)(ii)	n/a	<p>QRail have removed the protection in the undertaking for access seekers that QRail will not seek unreasonable information to be included in the operating plan. In addition the definition of operating plan in the undertaking refers to more than the proforma which QRail have submitted as part of the associated documents and is not included as a defined term in the Operating Requirements Manual.</p> <p>Access seekers therefore have no ability to refer to the dispute resolution mechanism in relation to the information required to be included in an operating plan during the negotiation period and QRail have the ability to cease negotiations under 2.6.3(a)(i) if the requested information is not provided.</p>	Amendments to the proforma operating plan must only be made after consultation with stakeholders. QRail should give consideration to the views of stakeholders prior to making any amendments and stakeholders should have the ability to access a dispute resolution mechanism if they consider QRail have not adequately addressed their concerns.
16.	Recovery of QRail's costs	2.6.3(c)		In response to stakeholders concerns that this provision is too broad, QRail have stated that the recovery of costs is only in the circumstance that an access seeker is not a genuine access seeker ¹⁷ . In the current undertaking, the ability of QRail to recover costs is limited to a provision similar to 2.6.3(a)(ii)(B) in the 2013 DAU, which is that there is no genuine intention of obtaining or reasonable likelihood of using the access rights requested. The drafting of 2.6.3(c) in the 2013 DAU allows QRail to recover its costs in any circumstances where QRail provides a negotiation cessation notice under clause 2.6.3. Aurizon therefore retains the view that this provision 2.6.3(c) is too broad.	Retain current undertaking provisions, where costs are recoverable only in the event that the access seeker has no genuine intention of obtaining or using the access sought under clause 2.6.3(a)(ii)(B).

¹⁷

Attachment 1: Queensland Rail's response to stakeholder submissions relating to AU1, item 14, page 3

Item	Issue	Clause	Has QRail changed from AU1	Description	Suggested Resolution
17.	Frivolous Access Requests	2.6.3(a)(ii)(C) and 2.6.4		<p>QRail can end an access application where they determine that the application is frivolous, but no definition of 'frivolous' is provided.</p> <p>Aurizon recognises QRail's legitimate business interests¹⁸ as the railway manager, however remains concerned that the legitimate business interests of access seekers are not sufficiently protected as a result of the inclusion of this clause. Aurizon considers that QRail's intentions with regard to frivolous access applications could be made clearer by including criteria regarding what is frivolous and by providing sufficient publicly available information to reduce the need for parties to make an access application as a means of seeking information.</p>	Include criteria to define 'frivolous' access request.
18.	Rail safety and other consideration for passenger services	2.6.5	Partly	<p>Aurizon acknowledges the amendments QRail have made to this provision as a result of stakeholder concerns. Aurizon remains concerned that QRail is seeking to protect its legitimate business interests as the operator of passenger trains as opposed to the legitimate business interests of the owner or operator of the declared service which is the matter to which the QCA must have consideration for under s.138(2)(b) of the QCA Act when approving an access undertaking.</p> <p>It is Aurizon's view that as the railway manager, QRail should be concerned with the safety of all users of the rail infrastructure and if any identified risks cannot be adequately mitigated, than QRail should be able to refuse to enter into an Access Agreement.</p> <p>Under the current undertaking this protection is provided through the interface risk assessment and the interface risk management plan. By isolating the provisions in relation to passenger services to this clause 2.6.5, QRail have removed the protection afforded to access seekers under the current undertaking that where the parties do not agree with the proposed mitigations there is access to</p>	<p>Amend clause 2.6.5 to address the safety and disruption to not only passenger but freight train services.</p> <p>As the QCA is not an expert in relation to operational matters, allow for expert determination in the event the parties dispute whether the safety risks are adequately addressed.</p> <p>Remove from the provision that it is QRail's consideration, to ensure that any assessment is a matter of fact.</p> <p>QRail to provide clarification on how the safety of any person using or intending to use a passenger train service may be adversely impacted by the operation of non passenger service and what is intended to be addressed by this provision 2.6.5(a)(i). In particular, how might a non passenger train service have an adverse affect on any person that a passenger train service will not.</p>

¹⁸

Attachment 1: Queensland Rail's response to stakeholder submissions relating to AU1, item 15, page 3

Item	Issue	Clause	Has QRail changed from AU1	Description	Suggested Resolution
				an expert to resolve the dispute.	
19.	Competing access requests	2.7.2.	Mostly	<p>Aurizon acknowledges that significant amendments QRail have made to this provision to address concerns of stakeholders. Aurizon considers that the feedback form developed by QRail is a positive initiative, however does not consider that a checklist is sufficient rather that further details of why the access application was unsuccessful could be provided without breaching confidentiality provisions. For example, include the particular cost or risk that the application imposes on QRail that has resulted in the applicant being unsuccessful.</p> <p>Aurizon considers that the transparency of the assessment would be enhanced if it was explicitly stated that the cost and risk assessment was based on a risk adjusted NPV analysis.</p> <p>Aurizon also considers that it is not the cost to risk to QRail per se that is of relevance but the cost and risk to the provision of the below rail services. Amending the clause in this way would provide greater alignment with the provisions of the QCA Act and ensure that any transport service payments relating to the rail infrastructure are considered when assessing the cost and risk.</p> <p>QRail has stated that the provision of transport service payments is irrelevant to the assessment of cost and risk of an access right. Whilst Aurizon understands that this would be the case when assessing two competing non-coal services, when assessing a competing coal service with a non coal service, Aurizon would consider that the transport service payment would remain relevant as is contemplated in the current undertaking and would like further clarification on this matter.</p> <p>Aurizon considers the reference to 'ready and willing' to execute an Access Agreement in 2.7.2(c)(ii) should be linked to the conditions in 2.6.3(b) to clarify 'ready and</p>	<p>Require QRail to include in the notification to unsuccessful applicants of the details of the elements that have resulted in the application being unsuccessful rather than merely a checklist.</p> <p>Amend the clause to clarify that a cost and risk assessment will be based on a risk adjusted NPV analysis.</p> <p>Remove that it is QRail's assessment to clarify that the assessment will be based on matters of fact.</p> <p>QRail to provide clarification on why the transport service payment is not relevant to an assessment.</p> <p>Amend the clause so that reference to favourability to QRail and QRail's cost and risk are more accurately referred to as favourability to QRail as the railway manager of the network and the provision of below rail services.</p> <p>Include reference to 2.6.3(b) in 2.7.2(c)(ii) to clarify what is meant by ready and willing.</p>

Item	Issue	Clause	Has QRail changed from AU1	Description	Suggested Resolution
				willing'.	
20.	Renewals	2.7.3	Yes	<p>In Aurizon’s view, QRail have substantially addressed stakeholder concerns in relation to the renewal of access rights.</p> <p>However, Aurizon considers that the current drafting does not provide the required level of certainty for renewing access seekers, in that QRail must only use reasonable endeavours to notify the parties in 2.7.3(b) and priority is only afforded to those parties to the extent that QRail has provided a notification 2.7.3(d).</p> <p>Aurizon would like clarification of whether this right of renewal will extend to train services with multiple customers, for example intermodal services.</p>	<p>Remove “use reasonable endeavours” in 2.7.3(b) in relation to the provision of notification to the parties.</p> <p>QRail to clarify whether this right of renewal will extend to train services with multiple customers, for example intermodal services.</p>
21.	Contracting available capacity or additional capacity	2.7.4		<p>QRail does not need to enter into an access agreement where there is insufficient capacity.</p> <p>Aurizon does not seek amendments to this clause, however does think that the provision of publicly available information in relation to expansion options for the Mt Isa line and West Moreton system will be of assistance to access seekers in the timely delivery of capacity.</p>	<p>QRail should make publicly available expansion options as part of the issuance of corridor strategies and the provision of sufficient information for access seekers and access holders.</p>
22.	Capacity Allocation			<p>QRail has removed the principles regarding capacity resumption and relinquishment from the undertaking to be included in the Standard Access Agreement.</p> <p>The standard access agreement only applies to coal carrying services and is no longer acknowledged as a precedent for other services and therefore cannot be relied upon when negotiating access. These principles are integral to operators being able to assess the capacity rights when designing operating solutions.</p>	<p>Include capacity resumption and relinquishment provisions in the undertaking or acknowledge the standard coal carrying access agreement as the precedent for non-coal traffic.</p>
23.	Application of access principles in Schedule C	2.7.5	No	<p>Aurizon acknowledges that the standard access agreement is specific to the transportation of coal. It is, however, in practice a precedent for non-coal traffic. As</p>	<p>Include in 2.7.5 that the standard access agreement is the precedent for non-coal traffic and will be amended to address changes in cost and risk on a case-by-case</p>

Item	Issue	Clause	Has QRail changed from AU1	Description	Suggested Resolution
				such, Aurizon considers that the access agreement principles in practice have little relevance to access seekers.	basis.
24.	Prudential requirements	2.9	No	<p>Aurizon appreciates the clarification made by QRail in relation to this provision¹⁹, but would like further information regarding what would constitute a material default of the undertaking (or the 2008 Undertaking) that would lead to a cessation of negotiations.</p> <p>Aurizon would like clarification on what evidence QRail would seek to satisfy the prudential requirements to determine whether they can be reasonably provided in ten business days.</p>	<p>Further clarification to be provided by QRail regarding:</p> <ol style="list-style-type: none"> 1. What would constitute a material default of the undertaking (or the 2008 Undertaking) that would lead to a cessation of negotiations; and 2. What evidence QRail would seek to satisfy the prudential requirements to determine whether they can be reasonably provided in ten business days.
25.	Dispute resolution process	6.1	No	<p>The current dispute resolution process allows for expert determination as an intermediate step prior to the dispute being referred to the QCA. QRail has removed this step from the proposed dispute process in AU1.</p> <p>QRail have removed the expert determination under for resolution of access disputes.</p> <p>The basis of the removal was the view that in a dispute in relation to AU1, the QCA is the ultimate authority to make a determination and therefore remove what is considered an unnecessary step. In addition that the parties may voluntarily refer a matter to expert if desired.</p> <p>Aurizon considers that the provision of timely and cost effective dispute resolution is of significant importance to access seekers having confidence in a light handed regime and that a number of matters would be more efficiently dealt with if there was binding expert determination available eg whether the information sought by QRail in an operating plan is relevant to the provision of access rights or alternatively whether the risk mitigations proposed in response to s.2.6.5 are</p>	Expert determination be retained, as this is a valuable cost effective option in resolving technical disputes.

¹⁹

Attachment 1: Queensland Rail's response to stakeholder submissions relating to AU1, item 27, page 5

Item	Issue	Clause	Has QRail changed from AU1	Description	Suggested Resolution
				reasonable. Under these circumstances, a voluntary expert determination would not be binding on the parties and resolution by the QCA will require the QCA to engage an expert. The requirements to have QCA, in effect as an intermediate to the resolution of the dispute, will add time and cost to the resolution of disputes.	
26.	Pricing Principles		No	<p>QRail has made some minor changes to the pricing principles. However, one of the key principles included in the QCA Act that is particularly relevant to a Government Owned Corporation is to ensure the organisation is incentivised to reduce costs or otherwise improve productivity.</p> <p>In corridor's where QRail prices below the ceiling, arguably they are incentivised to innovate to reduce costs. The risk to access seekers is that there is a corresponding reduction in service levels. The ARTC interstate undertaking seeks to address this by requiring the production of key monitoring performance indicators as well requiring industry consultation regarding corridor strategies and capital expenditure.</p>	Include in the pricing principles requirement to incentivise for the reduction in costs or otherwise improve productivity.
27.	Structure of access charges		No	Pricing provisions regarding the structure of access charges has been removed.	In accordance with s.168A (b) of the QCA Act, the pricing principles 'should allow for multi-part pricing', and therefore QRail must address the structure of access charges.
28.	Availability of cost/price information for non reference tariff services		No	Pricing for all QRail's network, excluding the West Moreton System, is determined on the pricing principles. There is no publicly available information to assist access seekers in assessing the reasonableness of QRail's proposed access charge or what risks the access holder is exposed to over time in relation to the movement of access charges.	Cost/price information by corridor must be made available by QRail to access seekers to address information asymmetry and allow the negotiation of commercially appropriate prices and the assessment of the risk of changes to access charges over time.
29.	Rate review provisions	3.5	No	<p>Rate reviews may be required to align access charges with the cost and risks to QRail over time.</p> <p>QRail (or the operator) may include a rate review mechanism to review inputs, methodology or rates</p>	<p>Any reviews should be within the material change context of the standard access agreement, and only consider agreements which have terms longer than 5 years.</p> <p>Rate review provisions should not be applicable for</p>

Item	Issue	Clause	Has QRail changed from AU1	Description	Suggested Resolution
				<p>associated with calculating access charges.</p> <p>In the standard access agreement, access charges are able to be adjusted for changes in price indices (e.g. CPI) and material changes events. As such, for shorter contracts the risks that the access provider will be exposed should be limited and within their control. To provide balance between certainty and risk, for contracts less than 5 years it is reasonable that a rate review clause would not be included.</p>	contracts of less than a 5 year term.
30.	Audit	5.3.3	Partly	<p>Aurizon acknowledges the amendments QRail has made in relation to providing greater confidence in the regime for stakeholders. The QCA's ability to request an audit is limited to an audit of the reports provided under part 5 of the 2013 DAU. Aurizon considers greater confidence in the regime would be provided if the QCA is not limited to auditing the reports but rather allowance is made for the QCA to require an audit of QRail's compliance with the undertaking.</p>	Include a provision that allows the QCA to require an audit of QRail's compliance with the undertaking.
31.	Annual and Compliance Reporting	5.2	Mostly	<p>QRail have addressed the majority of issues specifically identified in Aurizon's previous submissions in relation to the annual reports and compliance reports in part 5 of the undertaking. Aurizon considers however that clarification should be provided that the disputes reported in compliance with clause 5.2.2(g) should also relate to any disputes in relation to the operating requirements manual, the network management principles or the other documents associated with the undertaking.</p>	Amend clause 5.2.2(g) to reflect that reporting of disputes should also include those relating to the operating requirements manual, the network management principles or the other documents associated with the undertaking.
32.	Costing Manual (info)		No	<p>QRail have removed the requirements in the current undertaking to produce reports associated with the costing manual. Whilst the costing manual can still be required to be produced under the QCA Act, the reporting of below rail financial statements was required under the undertaking. The benefit to operators of audited below rail financial statements is two fold:</p> <p>(i) they provide a level of certainty that there is no cross subsidisation of costs (relevant to QRail in relation to the</p>	Below rail financial statements are produced with information at a corridor level, specifically, Mt Isa line, North Coast line, West Moreton system and other.

Item	Issue	Clause	Has QRail changed from AU1	Description	Suggested Resolution
------	-------	--------	----------------------------	-------------	----------------------

passenger versus network businesses); and (ii) provide information on actual costs that in the absence of other financial information can be used to assess future access prices and risk regarding service levels.

It is Aurizon's preference that below rail financial statements are required and that the information is disaggregated at a corridor level.

