

3 May 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 recognises the very significant opportunity Queensland Rail's (QRail) next access undertaking provides in accommodating the disparate commercial and operational requirements of passenger, coal, agricultural, intermodal, and bulk freight traffic on QRail's network.

QRail provided a working draft of the 2012 draft access undertaking to stakeholders on the 31st of August 2011 (Working Draft) prior to submitting a voluntary draft access undertaking to the Queensland Competition Authority (QCA) on 30 March 2012 (the 2012 DAU). On 25 February 2013, QRail withdrew the 2012 DAU and resubmitted another voluntary draft access undertaking, the 2013 DAU, for approval by the QCA.

Aurizon commenced formal consultation with QRail in September 2011 by providing written comments on the Working Draft and attending both of the forums on the Working Draft held by QRail in September 2011. Since then, Aurizon has provided submissions to the QCA in July 2012 and September 2012 on the 2012 DAU and April 2013 on the 2013 DAU. In addition, Aurizon has attended each of the five QCA sponsored working group meetings held in April 2013 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
5. Investment framework matters.

Aurizon remains committed to contributing to the development of an access undertaking for QRail 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. To that end, Aurizon welcomes this opportunity to provide further comment on the 2013 DAU and in this fourth submission has focused on the matters that were the subject of the April 2013 working group meetings. This fourth submission should be read in conjunction with the previous three submissions made to the QCA.

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 [REDACTED] or by email at [rachel.martin@aurizon.com.au](mailto:rachel.martin@aurizon.com.au).

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## Queensland Rail's 2013 Draft Access Undertaking



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# 1. Key Issues

## 1.1 Overview

Aurizon acknowledges the amendments made in the 2103 DAU by QRail in response to stakeholder feedback together with QRail's contribution to the QCA sponsored working group meetings. In response to the issues raised by stakeholders in the working group meetings, QRail committed to review a number of items in the 2013 DAU, the standard access agreement (SAA) and the Operating Requirements Manual (ORM).

Two significant key issues for stakeholders, including Aurizon, are the provision of sufficient information to facilitate commercial negotiations and an appropriate balance of risk sharing arrangements between the parties. This submission therefore focuses on the following items:

1. Investment framework and some of the additional information required to provide greater certainty to access seekers and access holders;
2. Pricing, both the generic pricing arrangements and the principles to be considered in the development of a reference tariff for West Moreton coal services;
3. Terms and conditions of contract, including protection for non-coal carrying train services and the detailed review of the SAA.
4. Operational matters that is the key operational issues for Operators including a detailed review of the ORM.

In line with the objective of constructively contributing to the development of an undertaking for QRail that meets the requirements of the QCA Act, Aurizon has provided a discussion of the identified issues and suggested resolutions. For example one of the key pricing issues is the provision of information that allows access seekers to have sufficient information to assess the reasonableness of proposed access charges. Aurizon has proposed a number of suggestions with regard to the valuation of assets, assessment of WACC and reporting of operating expenditure specific to the characteristics of QRail's network.

Aurizon believes that it is in all stakeholders interests for the substantial issues and concerns of operators and other stakeholders (such as miners, suppliers and communities) to be resolved before QRail's proposed 2013 DAU is approved. To achieve this, Aurizon has, and will continue to, invest time and resources to support a process that results in the implementation of an access undertaking that is appropriate and balanced for QRail, operators (including QRail's own passenger services) and other supply chain stakeholders.

## 2 Investment Framework

QRail have made a number of amendments to the funding provisions for extensions to the network in response to stakeholder feedback. Aurizon supports the provision of principles rather than the requirement to negotiate a standard user funding agreement and is aware of a number of different funding arrangements available that have been negotiated in other jurisdictions. In relation to the principles included in the 2013 DAU, further work is required to provide access seekers with greater levels of confidence, including:

- distinguishing between renewal capital expenditure, that is expenditure to maintain the network to current service levels, and expansion capital expenditure, that is to deliver increased capacity or service levels; and
- providing a clear link between the funding of an expansion and access to the expanded infrastructure.

The only current information regarding expansions of the QRail network is the Mount Isa Line Rail Infrastructure Master Plan 2012<sup>1</sup>. However, Aurizon considers further information is required to provide balance in the negotiations in relation to the expansion path. In particular:

- what are the incremental capital expansions required (rather than the group of projects to achieve an assumed level of demand);
- what is the resulting level of capacity delivered by the incremental expansions; and
- what is the cost and expected service levels of the incremental expansions.

### **Recommendation:**

In line with a light handed regulatory framework, information asymmetry is addressed by the provision of information regarding the expansion path for the network, by corridor.

The distinction between the treatment of asset renewals and capacity expansions is made together with a clear link between the funding of an expansion and the capacity allocated as a result of that funding.

## 3 Pricing

### 3.1 Pricing Principles

The 2013DAU includes proposed pricing principles which are largely consistent with those included in most access regimes, codes or undertakings and also reflect broadly accepted economic principles. QRail makes the point that the proposed principles are sufficient on the grounds that, as a below rail service provider with no interests in an upstream or downstream market, it has no incentives to misuse its market power for the purpose of substantially lessening competition in those markets.

A principle advantage of third party access under vertical integration is that an entrant would only be able to enter the market if it was able to provide a service more efficiently than the incumbent. Where the relevant market precludes the integrated service from charging for its above and below rail services at full economic costs the combined prices, and therefore the below rail access charge, would be commensurate with economic conditions prevailing in those markets, including the requirement of

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<sup>1</sup> Available:

<http://www.queenslandrail.com.au/networkservices/downloadsandrailssystemmaps/freight/pages/mountisamasterplan.aspx>

private upstream and downstream parties maintaining commercially viable businesses and supply chains.

Structural separation removes this degree of market intelligence for the below rail service provider. As a consequence cost optimisation of the supply chain becomes more complex in an environment of information asymmetry.

Aurizon supports the proposed negotiate arbitrate model as the appropriate form of regulation and considers the access provider and access seeker are likely to arrive at an efficient price without the need for ex-ante price specification where rail corridors support heterogeneous markets and demand elasticities. Where parties are unable to reach agreement on an efficient price then the matter can be resolved through effective and efficient dispute resolution procedures.

The lower and upper pricing limits provide a large band with which the proposed access charge could be established. These conditions substantially limit the effectiveness of a negotiation as they provide no context as to how these limits will be applied in the practical sense, or how they would be applied in an arbitration process.

Unless the pricing principles proposed by QRail are supplemented with additional information, Aurizon is of the view that the 2013 DAU will not promote efficient investment and utilisation of rail infrastructure. The concerns relate specifically to:

- Revenue adequacy needs to have regard to the interests of access seekers and the public interest,
- Pricing limits are of limited practical application in determining a reasonableness of a proposed access charge, and
- Coordination failure may occur with short term access agreements and common service standards

### **Revenue Adequacy**

As currently drafted the revenue adequacy provisions may constrain an arbitrator from having regard to the efficiency objective in a pricing dispute as it does not provide for consideration of matters relevant to a reasonable return. Clause 3.1.1 specifically requires that:

*“Queensland Rail is entitled to earn revenue from providing Access, including from Access Charges and Transport Service Payments, that is at least enough to:  
(a) fully recover all Efficient Costs; and  
(b) provide a return on the value of assets and investment commensurate with the regulatory and commercial risks involved.”*

Aurizon observes that the drafting of this clause goes beyond the pricing principles in s.168A of the QCA Act which requires that prices 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’*

The principle difference between the two principles is that QRail could potentially be entitled to establish an access charge for an access seeker which substantially reduces the profitability in an upstream or downstream market with sunk costs in order to achieve a return on assets which



conceivably were installed in a period substantially prior to the private sector investment which is dependent on the declared service for its own business operations.

The reference to value of assets is also inherently problematic as it is not clear how this value would be derived. This is particularly relevant where value would be determined in a market through discounted cash flow principles which would themselves need to have regard to the price being charged.

Aurizon strongly supports the rights and ability of QRail to earn a commercial return on its invested capital. This is also necessary to ensure that the rights of shareholders in the declared service obtain an expected return on their investments. In the context of QRail, Aurizon notes that it has been required to operate commercially as a Government Owned Corporation since its corporatisation on 1 July 1995. As a consequence the expectations of shareholders may be different between pre and post corporatisation.

In some circumstances, government shareholders of railway infrastructure which do not recover full economic cost having sought to specifically exclude the value of assets from the rate base which existed prior to a requirement that subsequent investment be required to earn a commercial return.

This is evident with:

- the Victorian Government exclusion of regional freight rail infrastructure existing as at 30 April 1999 from the Victorian rail network pricing order<sup>2</sup>, and
- the exclusion of the existing assets from the rate base for the Darwin to Tarcoola Railway<sup>3</sup>.

Aurizon is not advocating that the Queensland Government not seek to earn a return on assets that existed prior to corporatisation. However, in the context of a negotiation for access rights and an arbitration proceeding this information is relevant to determining whether the proposed access charges represents an appropriate balance of interest between the access provider and the access seeker.

In calculating the maximum revenue limit in clause 3.2.3(a) the value of asset will be determined using the Depreciated Optimised Replacement Cost (DORC). This approach is generally considered appropriate in determining the stand-alone cost and theoretical bypass price for the relevant combination of train services. However, DORC is an information intensive process and highly subjective when it is sought to be applied to assets which are substantially different from a modern engineering equivalent. Establishing the value of DORC would also appear to have limited practical application in an access charge dispute where revenue from the current combination of train services is materially below a conceptual replacement cost.

### **Recommendation:**

Aurizon considers negotiations would be more effective and efficient if the undertaking also required QRail to publish and maintain a rate base for major corridors which represented the Depreciated Actual Cost (DAC) of investment in rail transport infrastructure made following corporatisation in 1995.

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<sup>2</sup> See [http://www.transport.vic.gov.au/\\_data/assets/pdf\\_file/0004/30757/Rail-Network-Pricing-Order-2005.pdf](http://www.transport.vic.gov.au/_data/assets/pdf_file/0004/30757/Rail-Network-Pricing-Order-2005.pdf)

<sup>3</sup> See Tarcoola-Darwin Rail Guideline No 2 – Arbitrator Pricing Requirements. <http://www.escosa.sa.gov.au/sa-rail-overview/codes-guidelines.aspx>

## Pricing Limits

As previously discussed, the pricing limits represent a broad range within which prices can be set. In addition, the access seeker is unlikely to possess sufficient information in relation to the pricing of other access holders and the volumes in order to assess with the proposed access charge is within those limits.

Similarly in the absence of an overarching railway manager strategic objectives an arbitrator would have limited guidance as to whether the disputed proposed access charge is an efficient price and commensurate with the businesses stated objectives. This issue was considered extensively by the ACCC in approval of the 2008 ARTC Interstate Access Undertaking (ISAU). The ACCC noted that the:

*ACCC is not obliged to conclude that a disputed price is acceptable just because it complies with the Undertaking and is below the ceiling and notes that ARTC has stated that it agrees with this interpretation of the scope of arbitration....*

*ARTC's capacity to set prices for non-indicative services is constrained because:*

- *ARTC must have regard to indicative prices in setting non-indicative prices, meaning that there should be an identifiable link between these prices and that indicative prices should provide a benchmark for non-indicative prices;*
- *the 'like with like' provisions limit ARTC's capacity to exercise unconstrained price discrimination. Price discrimination is constrained to differentiating between services that have different characteristics and supply different markets, such as inter-modal freight, bulk freight (grain steel and minerals) and passenger services;*
- *operators are protected by the dispute resolution provisions in the Undertaking. The ACCC noted that it could arbitrate on prices for non-indicative services, even if the disputed price is below the regulatory ceiling;*

In relation to the dispute resolution provisions the ACCC also determined that in hearing a dispute it would also have regard to not just the objects clause but also the objects of the undertaking. In this respect the ISAU also states:

*Clause 4.1. ARTC will develop its charges with a view to achieving the objective set out in clause 1.2(d)*

*Clause 1.2(d). As the manager of a significant part of the Interstate Rail Network, ARTC has adopted the concepts of equity and transparency as key elements of its pricing policies. ARTC will not discriminate price on the basis of the identity of the customer. By doing so, ARTC seeks to stimulate customer confidence, competition and market growth in the rail industry in an evolving environment in which government owned vertically integrated railways have largely been replaced by privately owned operators with access to shared track infrastructure.*

Aurizon considers the ARTC approach to be an appropriate benchmark for providing improved confidence in the access regime and establishing the commercial basis for which the interests of the access provider can be properly and reasonably assessed.

The proposed QRail 2013 DAU excludes key aspects which the ACCC relied on for determining the pricing principles were not inconsistent with s.44ZZA(3) of the Competition and Consumer Act. These are:

- there is no published indicative access charges to assess relativity or reasonableness; and
- there are no higher level pricing objectives with which to apply the pricing principles.



The preamble refers to:

*Much of Queensland Rail's network is supported by Transport Service Payments from the Queensland Government. The absence of these Transport Service Payments would result in large parts of the rail network being commercially unviable.*

This is certainly not the context on the Mt Isa Line corridor and a large part of the Western System. It is also not clear how QRail defines commercially viable as there is not transparency to how transport service payments are calculated or the implicit service quality outcomes those payments are intended to fund.

**Recommendation:**

Aurizon considers that the objective of a comparative access charge and commercial viability be substantially addressed by QRail publishing, on an annual basis, the following metrics for a five year horizon:

- the gross access revenue less the direct avoidable costs should no services operate that corridor (the least cost maintenance, train control and depreciation of avoided renewals associated with maintaining the performance standard for that combination of train services) divided by the both the projected gross tonne kilometres and net tonne kilometres for those combination of services;
- the gross access revenue less the direct avoidable costs should no services operate that corridor (the least cost maintenance, train control and depreciation avoided renewals associated with maintaining the performance standard for that combination of train services) and depreciation of assets for the post corporatisation rate base divided by the both the projected gross tonne kilometres and net tonne kilometres for those combination of services; and
- where a corridor is capacity constrained the current maximum access charge applicable to that corridor.

The publication of these figures is consistent with the information requirements access seekers would require to assess the indicative access charge against the pricing principles. The information should also be readily available from management accounts and therefore should not represent an excess administrative or regulatory burden on QRail. Given the benefits are likely to substantially exceed the compliance costs to QRail, the recommendations are consistent with s.138 of the QCA Act.

**Ceiling Revenue Limit**

In assessment of the ceiling revenue limit in clause 3.2.3(a) QRail has applied a WACC constant to apply to all corridors to which it applies. Aurizon considers that the drafting of these provisions is inherently flawed in their application to railways and can only be effectively applied where the rail corridor provides services to a predominant service type under common and identical contractual terms. As can be shown from the following table the asset beta and gearing levels are highly dependent on the nature of the traffics being supported.

**Table 1: Regulatory Rates of Return for Predominant Services**

Entity	Debt %	Equity Beta	Tax Rate	Gamma	Asset Beta <sup>1</sup>
Public Transport Authority (WA) <sup>4</sup>	35%	0.46	0.30	0.50	0.35
West Net Rail (Freight)	35%	1.00	0.30	0.50	0.72
The Pilbara Infrastructure Company (Iron Ore) <sup>5</sup>	30%	1.43	0.30	0.50	1.08
Australian Rail Track Corporation (Intermodal) <sup>6</sup>	50%	1.29	0.30	0.50	0.75

Note 1: Asset betas delivered using the Conine approach with a debt beta of 0.12

Aurizon considers that QRail is entitled to earn a commercial rate of return on its investments commensurate with the relevant regulatory and commercial risks. However, it is not clear that QRail has given proper regard to s.168(a) of the QCA Act in the drafting of the ceiling limit. Consistent with the discussion above on the upper pricing limit for an individual train service the application of this clause to the majority of the rail network is of limited consequence unless QRail is of the view that some corridors may approach this limit during the term.

To the extent that QRail submits a reference tariff for the nominated service then the appropriate weighted average cost of capital would be determined as part of that approval process. Alternatively, if an access seeker considers that QRail may breach the revenue limit with the proposed access charge then the appropriate WACC would be determined in the arbitration process. Consistent with the previous recommendations this would require information to be made available with respect to the gross mark-up of the combination of train services using the relevant rail infrastructure.

### **Recommendation:**

Aurizon recommends that the WACC relevant to the determination of the ceiling limit should be as determined by the QCA having regard to the relevant regulatory and commercial risks.

### **Efficient Investment and Utilisation of Rail Infrastructure**

In contrast to the highly prescriptive regulatory arrangements prevailing in the Hunter Valley and Central Queensland Coal Networks the markets which utilise QRail Infrastructure are subject to a higher degree of contestability and potential substitution. This is particularly relevant for intermodal services. As a consequence the duration of contracts tend to be for a substantially shorter term than those prevailing in coal networks.

Due to the shorter term of the access agreements there is an economic incentive for the access provider to improve its profitability if it reduces routine maintenance expenditure if it can foresee that it may obtain the funding for renewals investment either directly from a user or access seeker who has

<sup>4</sup> <http://www.erawa.com.au/cproot/6671/2/20080623%20Final%20Determination%20-%202008%20Weighted%20Average%20Cost%20of%20Capital%20for%20the%20Freight%20and%20Urban%20Railway%20Networks.pdf>

<sup>5</sup> [http://www.erawa.com.au/cproot/7695/2/20090623%20The%20Pilbara%20Infrastructure%20\(TPI\)%20-%20Final%20Determination%20on%20the%202009%20Weighted%20Average%20Cost%20of%20Capital%20for%20TPIs%20Railway%20Network.pdf](http://www.erawa.com.au/cproot/7695/2/20090623%20The%20Pilbara%20Infrastructure%20(TPI)%20-%20Final%20Determination%20on%20the%202009%20Weighted%20Average%20Cost%20of%20Capital%20for%20TPIs%20Railway%20Network.pdf)

<sup>6</sup> [http://transition.accc.gov.au/content/item\\_phtml?itemId=837579&nodeId=3f518aeaac1751aac80d538994c38a6c&fn=ACCC%20final%20decision%20on%20the%20ARTC%20Interstate%20Rail%20Access%20undertaking.pdf](http://transition.accc.gov.au/content/item_phtml?itemId=837579&nodeId=3f518aeaac1751aac80d538994c38a6c&fn=ACCC%20final%20decision%20on%20the%20ARTC%20Interstate%20Rail%20Access%20undertaking.pdf)

considerable sunk investment and may be seeking to renew or contract for new access rights, or from its own shareholders through transport service payments.

Where a reference tariff prevails and services are reasonably homogeneous this issue is addressed directly through long term access rights with multiple users where there are clear contractual obligations in relation to speed restrictions and transit times.

Where a rail corridor is characterised by a substantial number of diverse services it is difficult for an access seeker to negotiate and agree a common service standard if the access provider is unable to reflect the differences in cost or risk in access charges for existing access holders where the performance of the asset is common to all users of those assets. In addition, an access seeker may also seek to negotiate an access charge and service which is otherwise inconsistent with optimising the above and below rail life cycle costs for the foreseeable demand.

The ACCC observed these incentives and coordination problems and noted in the draft decision on the 2008 ARTC Interstate Access Undertaking that:

*ARTC is a monopoly provider of essential infrastructure and that performance indicator reporting is one means of curtailing the potential for ARTC to compromise its service quality in lieu of profit.*

Aurizon considers that the periodic reporting should occur against target overall track condition index and speed restriction minutes. These key performance indicators should also be used in determining the relevant costs the revenue to cost metrics recommended above.

This will ensure that access charges and asset management is commensurate with long run efficiency and protect the interests of future access seekers. Due to the complexity of seeking to negotiate variations to these performance standards with multiple parties during negotiations which may occur at different points in time, QRail should also be required to periodically consult with current access holders and access seekers on whether those standards remain appropriate and what the renewal and maintenance costs are associated with maintaining those standards over a ten year horizon.

As users in upstream and downstream markets also require a reasonable degree of price certainty over a period commensurate with their own investment horizons, but may not have sufficient demand certainty to enter longer term take or pay contracts, the publication of this information is necessary to ensure that access charges and asset management practices are commensurate with technical and dynamic efficiency in both the short and long run.

**Recommendation:**

QRail should develop performance indicators relevant to individual rail corridors and establish long term maintenance and renewal programs necessary to sustain those performance levels and to allow access seekers to incorporate adequately accountability arrangements in their access agreements.

### **3.2 Reference Tariffs**

Aurizon welcomes QRail's commitment to maintain a reference tariff for coal carrying train services operating in the Western System. However, there are a number of issues in how this commitment has been reflected in the proposed DAU.

Firstly, the commitment in clause 3.4.2(b)(i) would not appear to have any binding effect where:

- the date for lodgement of the proposed tariff of 30 June 2013 is likely to expire prior to the approval of the access undertaking; and
- if this deadline is not met then QRail is deemed to have lodged the current tariff in performance of that commitment.

This gives QRail substantial leverage in its engagements with stakeholders on the proposed tariff as unless those parties agree to a higher tariff rate then it can seemingly not submit a new tariff and roll-forward the current tariff.

Aurizon does not consider that the current tariff represents an efficient price and notes that it was approved in the extension of the 2008 Access Undertaking in June 2010 in order to facilitate separation of the Central Queensland Coal Network. The expectation of stakeholders was also that the tariff would only apply for the relevant period of time necessary for QRail to prepare and lodge its own undertaking. QRail has not provided explanation as to why it has not prepared and consulted on a tariff methodology between 30 June 2010 and 30 June 2013.

It is essential that QRail prepare and lodge its proposed methodology for the Western System Reference Tariff by 30 June 2013. Should QRail not satisfy this requirement the QCA should release a position paper outlining the methodology and issues relevant to the determination of a reference tariff by the QCA.

The Western System Reference Tariff should be included in the approved access undertaking. As a consequence, the provisions relating to the development of the Western System reference tariff would appear unnecessary.

### **Maintenance of the Regulatory Asset Base**

The accompanying explanatory submission notes that provisions regarding the maintenance of the regulatory asset base (RAB) have not been included as no RAB has been approved. The position is contradictory to the commitments made by QRail to establish a Western System Reference Tariff based on a regulatory approved value. It is not clear how consequential amendments could be made to the undertaking following approval of this tariff.

As discussed in previous sections, the maintenance of the RAB provisions should be included in the approved DAAU. These provisions should detail how the RAB will be rolled forward and how additional capital expenditure will be included. The provisions should require that the rate base for each major rail corridor be maintained and include the following information:

- the DORC value of rail infrastructure where such a valuation has been performed and accepted by the QCA;
- the DAC value for investments made after 1 July 1995; and
- the value of assets for which QRail has agreements in place to rebate the return on and of capital of those assets to an access holder or end user.

### **Western System Reference Tariff Methodology**

The proposed QRail draft access undertaking does not include a proposed methodology for how the Western System Reference Tariff will be developed. At the pricing workshop facilitated by the QCA, QRail indicated that it was seeking to apply a transparent and repeatable methodology based on a building block approach.

As the capacity of the western system is constrained by both the technical and economic limitations of expanding the Toowoomba range crossing and the metropolitan network increases in throughput on this system will require investment and innovation in the above rail market. Similarly, coal producers need to increase their own levels of investment at the same time as the marginal extraction costs increase as more economic seams are exploited.

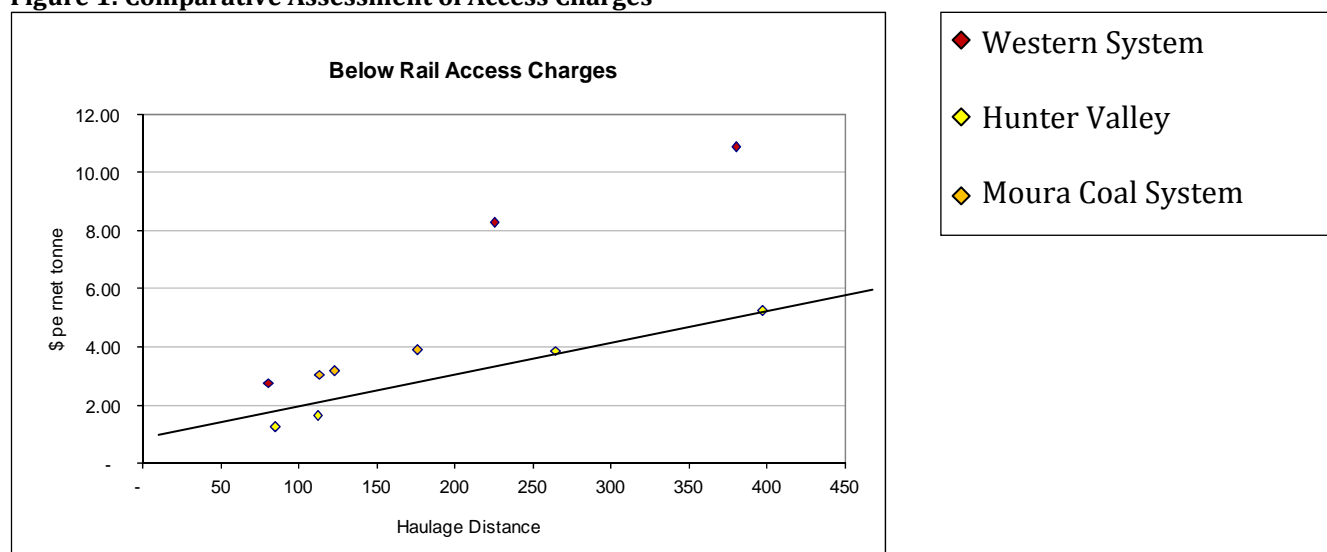
As a consequence, Aurizon supports a pricing framework which provides sufficient predictability to allow for investment to occur in the relevant upstream and downstream markets.

QRail has indicated that it intends to submit a tariff proposal based on the DORC valuation included in the QCA's December 2009 draft decision on the QR Network undertaking with adjustments. The nature of these adjustments has not been disclosed.

Aurizon is therefore unable to comment on the reasonableness of the Western System Reference Tariff and will consider the proposal once it is developed. However, Aurizon does make the following comments which may be relevant to the determination of the proposal.

Firstly, the development of a transparent and repeatable methodology does not require a building blocks framework. In this regard, a reference tariff could also be benchmarked relative to a range of relevant comparators. The following graph shows the current FY13 Western System Reference Tariff relative to the Moura System and Hunter Valley pricing zone 3. These systems are comparable as they are lower volumes and similar infrastructure standards. It is also probable that the below rail transit times would demonstrate a similar variance from the mean of the Moura System and Hunter Valley zones which also increases the above rail costs per net tonne.

**Figure 1: Comparative Assessment of Access Charges**



Second, Aurizon also anticipates that QRail will provide the target transit times associated with its proposed maintenance and asset renewals costs. In order to allow stakeholders to assess the reasonableness of the proposed DORC valuation and that the proposed asset lives are commensurate with asset condition, it is necessary for QRail to provide data for the previous three years on the following metrics:

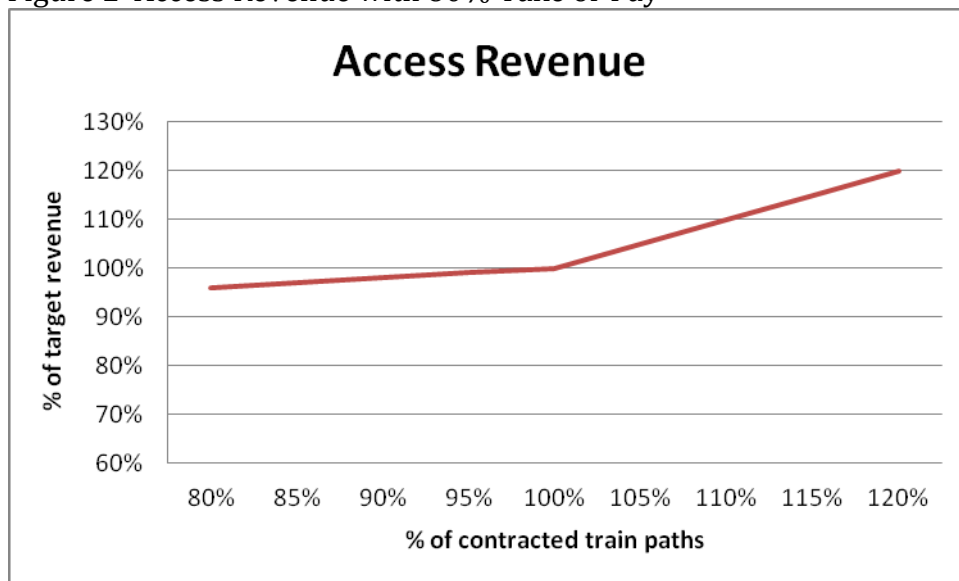
- overall track condition index by line section
- nominated speed limits for each relevant line section
- temporary speed restriction minutes against the nominated speed limit for that section
- number of broken rails

- number of points failures as a percentage of total points
- number of signal faults as a percentage of signals for the relevant sections
- location and results of all percentage void contamination tests
- results of any ground penetrating radar tests
- the number of cancellations attributable to track faults
- the percentage of available train paths possessed for maintenance.

Three years is considered necessary to exclude periods which may be associated with extreme weather events.

Finally, Aurizon network considers the current take or pay obligations do not represent an appropriate balance of interest between the access holder and the access provider under a price cap form of regulation. As demonstrated above the current access charges are materially in excess those prevailing in other networks and will also exceed the costs associated with achieving revenue adequacy on post corporatisation investment. In addition, if the access holder underperforms against contract levels QRail obtains substantial revenue protection and if the access holder rails services in excess of its contractual entitlements it retains the full amount of this additional revenue. As a consequence the take or pay arrangements are highly asymmetric as demonstrated in the figure below.

Figure 2 Access Revenue with 80% Take or Pay



**Recommendation:**

Aurizon considers that the take or pay arrangements for the western system will represent a more appropriate the balance of interests between the access provider and the access seeker under any of the following alternatives:

- take or pay amounts are limited to the return on of and on capital on amounts invested since corporatisation (and therefore consistent with QRail earning a commercial return on its invested capital);
- under a price cap form of regulation access revenue for services in excess of contractual entitlements is carried forward for offset against future take or pay liabilities; or
- a revenue cap form of regulation is implemented and take or pay is capped at achieving the target revenue.



## 4 Terms and conditions of access

### 4.1 Terms and Conditions for non coal train services

#### Transactional efficiency for non coal train services

The 2013 DAU proposes that for non coal carrying traffic, an access agreement must be consistent with the access agreement principles in Schedule C. This provision is consistent with the 2008 Undertaking that currently applies to QRail. The broad access agreement principles were included in the 2001 Undertaking that applied to the combined Queensland Rail and Aurizon Network rail infrastructure. It was intended that these principles would be the guideline to which the QCA would refer in the event of a dispute between an access seeker and the network provider in the negotiation of terms and conditions for access<sup>7</sup>. Specifically the QCA stated:

*“the role of Schedule E [the access agreement principles] is as follows:*

- *prior to the establishment of a standard access agreement, to provide a basis against which an arbitrator can assess the fairness and reasonableness of an access agreement in the context of an arbitration; and*
- *to guide the process of establishing a standard access agreement.*

*Once the standard access agreement for coal and minerals’ traffics has been finalised, Schedule E will no longer be relevant for coal contracts. However, its first role will persist for non-coal traffics.”*

A standard access agreement for coal carrying train services has been in place since 2001. In practice it is used as the precedent for non coal train services with a limited number of provisions amended for the differences in cost and risk. In line with this practice, the coal carrying access agreement is the safety net for all traffic given the transparency it provides on the way in which the access agreement principles will be converted to terms and conditions. Unlike the central Queensland coal network, approximately 80% of QRail’s access revenue is for other than coal train services<sup>8</sup>. As such, the maintenance of the historical approach to the terms and conditions for non coal train services does not adequately address the transactional efficiency<sup>9</sup> objective of the QCA Act.

Aurizon continues to support QRail’s maintenance of the ability to develop new standard access agreements in the 2013 DAU, but considers that greater transactional efficiency for non coal services could be achieved by, at a minimum, the identification and development of access agreement principles for non coal train services and specific reference to the role of the coal carrying standard access agreement as the safety net for non coal services subject to specific provisions being negotiated for changes in cost and risk.

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<sup>7</sup> QCA, Final Decision, Queensland Rail’s (QR) 1999 Draft Undertaking, p272. available <http://www.qca.org.au/rail/2001-agreement-development/dau-final-decision-1999.php>, downloaded 1 May 2013

<sup>8</sup> Coal access charges comprised 22% and 17% of access revenue for QRail in 2012 and 2011 respectively and for Aurizon Network, in the same period, coal access charges accounted for greater than 98% of access revenue. See:

1. QRail, Financial Statements for the Year Ended 30 June 2012 Below Rail Services Provided by Queensland Rail, Available <http://www.queenslandrail.com.au/NetworkServices/AccessandRegulation/Documents>, downloaded 2 May 2013; and

2. Aurizon Network, Below Rail Services provided by Aurizon Network Financial Statements for the year ended 30 June 2012 available <http://www.aurizon.com.au/OurBusiness/Documents/> downloaded 2 May 2013

<sup>9</sup> The efficiency objective of the QCA Act in relation to third party access to services (s.69E of the *Queensland Competition Authority Act 1997*) is a multi-faceted concept with transactional efficiency being one element described as the minimisation of transaction costs, including costs of providing information, and the reduction in opportunistic behaviour and hold-ups. See: QR National (2012). Submission on QR Networks Electric Traction Draft Amending Access Undertaking, September, p. 33. Citing *Re Fortescue Metals Group* ([2010] ACompT 2 at [798]-[803].

Aurizon acknowledges that the different risk reward tradeoffs cannot always be provided to individual access holders, for example any trade-off in relation to below rail service levels, such as any variation in sectional run times due to below rail cause, must be at a corridor level. Therefore the non coal specific principles need to be sufficiently detailed to address negotiable provisions at an individual access holder level and the base obligation at a corridor level.

To support this outcome, Aurizon provides the following list of provisions that could be developed:

- (a) for individual access seekers
  - (i) Mutual liability caps
  - (ii) Liability in relation to dangerous goods
- (b) At a corridor level
  - (i) Infrastructure standard and service levels
  - (ii) Take or pay obligations and relinquishment fee
- (c) For non coal services, by commodity, across the network
  - (i) Resumption threshold

#### *Mutual liability caps*

In the 2012 DAU, QRail proposed a non-reciprocal cap on the aggregate liability of QRail at \$20 million per year. In the July 2012 submission<sup>10</sup> Aurizon suggested that the liability for both parties should be uncapped or alternatively if a cap is to be introduced a methodology should be adopted, rather than a fixed value, to allow for a commercially appropriate allocation of risk. Given a cap on liability will limit the quantum of liability and therefore reduce the access charge, it is Aurizon's view that it is reasonable that a methodology for the calculation of a liability cap could be introduced for individual access holders and would be inline with QRail's ability to differentiate between access seekers in the same market for cost and risk.

#### *Dangerous Goods Liability*

Liability in relation to dangerous goods should be a negotiable position taking into consideration the information asymmetry of both parties and the risk applicable to the class of dangerous good. Aurizon acknowledges the amendments QRail have made in relation to dangerous goods, but considers that the different risk profile of the different classes of dangerous goods for example, hazardous versus dangerous, is not adequately provided for. Aurizon notes the PWC paper on dangerous goods<sup>11</sup> highlights the significant problem for access seekers in relation to dangerous goods - that is what is the risk associated with the standard of infrastructure? In response to QRail concerns, Aurizon considers that mechanisms are available for QRail to determine the portion of dangerous goods on a mixed train for example by nominating a maximum volume that could be carried relative to QRail's liability.

#### *Infrastructure standard and service levels*

As noted in Aurizon's July 2012 submission<sup>12</sup> QRail's network is made up of a number of different corridors with different operating characteristics. Aurizon considers it is reasonable for the access agreement principles to address the different risk profiles in relation to the service levels available for the different corridors. For example the North Coast Line as a government supported line has a different risk profile to the Mt Isa line which is not a government supported line. As an example, the performance of the Mt Isa line is operating well below targeted performance, with current delays attributable to speed restrictions at more than 1.5 times the target delay.

<sup>10</sup> Aurizon, Queensland Rail's Draft Access Undertaking 1, Public Submission to the Queensland Competition Authority 13 July 2012, Item 36, page 44

<sup>11</sup> PWC, Queensland Rail Treatment of dangerous goods, 10 July 2012, Attachment A: Queensland Rail's Draft Access Undertaking 1 – Response to QCA Issues Paper, April 2012

<sup>12</sup> Aurizon, Queensland Rail's Draft Access Undertaking 1, Public Submission to the Queensland Competition Authority 13 July 2012, page 4

### *Take or pay obligations & relinquishment fee*

In addition to the discussion in the section on Reference Tariffs, where rail services are highly competitive with road, for example intermodal services, a pricing structure with a high take or pay component, can disincentivise the use of rail over road. ARTC, with an objective of incentivising growth in the rail industry, has a low fixed component of access charges compared with that of QRail.

### *Resumption threshold*

In the Final Decision of QR Network's 2010 DAU, the QCA identified that the two main considerations in relation to the resumption provisions are to limit capacity hoarding and reduce the financial risks of the railway manager<sup>13</sup>. To address the variability associated with each type of traffic, Aurizon Network's 2010 Undertaking identified different thresholds for cyclic traffic and timetabled traffic. Whilst traffic on QRail's network is timetabled traffic, Aurizon considers that for different commodities, it may be appropriate to have different resumption thresholds. For example, coal whilst operating as timetabled traffic given the nature of QRail's service, are generally cyclic in nature as distinct from intermodal services and seasonal traffic. It is Aurizon's view that the resumption threshold could be specific to the commodity.

### **Recommendation:**

Aurizon supports mechanisms in the 2013 DAU to reduce the transactional efficiency for the non-coal carrying access agreements. To achieve this Aurizon recommends the explicit reference in the 2013 DAU of the role of the standard operator coal access agreement as the safety net for non coal traffic and the development of non-coal access agreement principles that better reflect the commercial and operational variability of the majority of access revenue for QRail.

## **4.2 Standard Operator Access Agreement Coal**

### **Definition of Access**

In the July 2012 submission<sup>14</sup>, Aurizon raised concerns regarding how clearly the 2012 DAU defined the rail infrastructure and services to which 'Access' may be sought, and the activities that may be undertaken on that rail infrastructure as part of 'Access'. In the September 2012 submission in response to the QCA Issues Paper<sup>15</sup>, QRail stated that upon review of the definition of 'Access', the definition was applicable for all of the declared service. Under s.250(1)(b) of the QCA Act, the declared infrastructure 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 manager."*

Of concern to Aurizon is that the Undertaking seems to infer that there are services other than Access that QRail may provide but to which the undertaking does not apply. For example, 1.2.1(b)(i)(A) *"this Undertaking does not apply to the negotiation or provision of services other than Access"* combined with the inclusion at 1.2.2 *"Unless Queensland Rail otherwise agrees"* which raise the question of what services QRail may provide other than Access. Given Aurizon's experience in recent years where QRail has sought to charge for "ancillary" services that have traditionally been included as part of the access charge, without clarification of QRail's intent and the services that QRail may provide that are in addition to the provision of Access, Aurizon remains concerned with the definition of Access.

<sup>13</sup> Queensland Competition Authority, September 2010, *Final Decision, QR Network's 2010 DAU* (page 132)

<sup>14</sup> QR National, Queensland Rail's Draft Access Undertaking 1 - Public Submission to the Queensland Competition Authority, 13 July 2012, page 7

<sup>15</sup> QRail, Attachment 1: Queensland Rail's response to stakeholder submissions relating to AU1, September 2012, item 38, page 7 available <http://www.qca.org.au/files/R-QRail-QRail2013DAU-SubmissionDocuments-0213.pdf>, downloaded 2 May 2013

## **Recommendation:**

Aurizon supports the defining of services that are ancillary to the provision of access to which the undertaking does not apply and that are in addition to what is incorporated in an access charge.

## **Infrastructure standard and service levels**

Aurizon seeks greater clarity and accountability around the rights and obligations of parties to the standard access agreement and considers the issues identified in the July 2012 submission remain valid for the 2013 DAU<sup>16</sup>. As an augmentation to those matters, the infrastructure standard and service levels was identified as a significant issue during the QCA sponsored working group meetings.

Prior to the separation of the Queensland Rail network and the central Queensland coal network, QR National as a vertically integrated business, was incentivised to coordinate the above and below rail trade offs in relation to maintenance of the rail infrastructure relative to the net impact on above and below rail service levels. In addition, the regulatory regime focused primarily on the Central Queensland Coal Network with the remaining network suffering from “a lack of scrutiny”<sup>17</sup>. As a result of separation, QRail’s incentives as a government owned monopoly railway manager and operator of passenger train services are different. It is an economically rational response for QRail to reduce costs on predominantly freight corridors to the detriment of maintaining service levels when there are limited obligations or consequences in the standard access agreement and no other incentives on QRail to maintain the network to a certain standard for example government funding.

Access holders generally have two means of remedy where the network is not available for the contracted train services:

- (a) reduction in take or pay liability; or
- (b) making a claim against QRail for either the non provision of access or for delays in the provision of train services.

In the proposed QRail SAA, QRail must simply maintain the network in a condition such that the operator can operate train services in accordance with their Access Agreement. QRail has maintained the ability to impose Operational Constraints without operator consent<sup>18</sup>, QRail can perform Rail Infrastructure Operations at any time, and can issue any Train Control Direction without any liability for any disruption or damage caused as a result these actions. In addition, QRail have maintained the requirement for the Operator to warrant that it has assessed the quality and standard of infrastructure and has satisfied itself that the standard of infrastructure is suitable for the Train Services.

The ability for access holders to have a reduction in their take or pay liability in the event the rail infrastructure is not available has now widened to being not attributable:

- to QRail complying with the access agreement or undertaking (rather than just the train schedule);
- to a derailment that is not solely caused by an act or omission of QRail (new clause) ; or
- to any other person (so may include a trespasser on the network regardless of the fact that QRail as the railway manager is responsible for the security of the corridor).

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<sup>16</sup> QR National, Queensland Rail’s Draft Access Undertaking 1 - Public Submission to the Queensland Competition Authority, 13 July 2012, page 8

<sup>17</sup> Juturna Consulting, Mitez 50-Year Freight Infrastructure Plan / Final Report / May 2012, page 57, “A lack of scrutiny over these monopolies has been claimed to have caused inefficiencies and inequities in the provision and operation of the supply chain’s infrastructure”

<sup>18</sup> Whilst in the 2013 SAA, QRail have deleted clause the previously numbered 5.2 Operational Constraints, the Network Management Principles have been amended to give the same affect, which is that QRail can impose an operational constraint without the consent of Operators.

Whilst QRail have reinstated the ability to make claims in respect to delays to Train Movements<sup>19</sup>, the extent to which an Operator may have a claim is restricted to (amongst other things) not being attributable to any action taken by QRail in response to an emergency or genuine safety risk. Therefore access holders have no redress in relation to the most significant reason for train delays, being the imposition of speed restrictions to ensure the safety of those using the infrastructure in the event the infrastructure is not maintained to a standard required to provide the contracted train services.

**Recommendation:**

Aurizon recommends a greater transparency on the standard of infrastructure and service levels and terms of contract that reflect QRail's control of risk factors as the railway manager.

### Standard Access Agreement issues in detail

The table in section 5 below provides a detailed review of the standard access agreement. Aurizon has used as a base the detailed review completed in its July 2012 submission and reviewed specific amendments in the 2013 DAU. The table is structured to provide discussion on the issue identified and a proposed resolution.

## 5 Operational Matters

### 5.1 Timetabled traffic versus cyclic paths

QRail's network, and consequently the 2013 DAU, does not include the ability to differentiate between timetabled and cyclic paths. Cyclic paths were included in the 2001 undertaking to account for the circumstance that the network can be used more efficiently by providing a certain number of train paths in a given period and allowing the access holder to manage the variability of supply. Traditionally, coal traffic on the Central Queensland Coal Network has been the only cyclic traffic. Aurizon considers that bulk commodities are generally more in the nature of cyclic traffic than timetabled traffic and that the efficiency of the network would be enhanced if the different types of traffic were provided for.

**Recommendation:**

Include ability to operate cyclic train paths on QRail's network.

### 5.2 Through running trains

Aurizon maintains that through running trains are not adequately dealt with in the SAA<sup>20</sup>. Aurizon agrees that it is the access seekers responsibility to negotiate agreements with adjacent railway managers in relation to the entry and exit of the rail infrastructure. However without some transparency on the interface between railway managers during the life of the contract, access seekers can not adequately assess the risk they are exposed to in relation to through running train issues.

**Recommendation:**

Aurizon seeks assurance that:

- If QRail wants to effect an amendment to the Operating Requirements (the renamed system wide requirements) applying to rail infrastructure containing a network interface point, it would need to consult with the rail manager of the adjoining network (namely Aurizon Network) to

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<sup>19</sup> Refer 2013 SAA, clause 11.3

<sup>20</sup> QR National, Queensland Rail's Draft Access Undertaking 1 - Public Submission to the Queensland Competition Authority, 13 July 2012, page 27



ensure that the amendment didn't leave an operator of through running trains unable to comply with 'System Wide Requirements' on that adjoining network.

- Both rail managers will coordinate to ensure an uninterrupted train path is scheduled for a through running train across a network interface point. This coordination will be necessary when a Train Schedule is initially prepared for a through running train, as well as at any time a network manager proposes to change the MTP or DTP affecting a through running train. There is also a need for coordination and alignment of planning and scheduling for maintenance and possessions planning across the Aurizon network and the QRail network where through running train operate.
- Recognition of communication processes necessary between the network providers themselves and the network providers and the operators regarding the status of through running train to ensure that the appropriate cause of any cancellations and/or delays affecting those services anywhere on their journey is agreed and recorded by both network providers.
- Interface risk assessments relating to a network interface point need to include both network managers.
- Recognition that the operator of a through running train has a reasonable excuse to withhold its consent to a request from a network manager to make a long-term change to the times at which a through running train operates if they are unable to get the agreement of the adjoining network manager to provide an uninterrupted train path for the affected train services over the network interface point.

### 5.3 Possession protocols and maintenance

A significant issue for Operators and their Customers is the lost capacity associated with when the network is not available due to a temporary closure or occupation (Possessions) to complete construction, management, maintenance or operational activities or due to inspections or investigations of the Network. The potential impact depends on:

- how far in advanced operators are provided notification of the Possessions,
- the ability to mitigate the impact of the Possession (by both QRail and the operator), and
- whether the objectives of the Possession are met or whether there will be additional disruptions to services.

#### **Recommendation:**

Aurizon considers that the following principles should be included in the SAA, as opposed to the Operating Requirements Manual or any related protocols to provide greater certainty to operators:

- Possessions outside the MTP should be limited to Urgent or Emergency Possessions. Any other possession should be resolved as part of a variation to the MTP.
- Urgent and Emergency Possessions should, other than for exceptional circumstances, be undertaken within the relevant timeframes. That is, an Urgent Possession should be undertaken within 3 months after the detection of the problem and an Emergency Possession should be undertaken within 5 business days after the detection of the problem.
- A notice with regard to a change to the scheduled possessions or possessions in addition to the MTP must be provided to Operators in a timeframe that is inline with the time horizon for the planned works. Consultation should then commence with Operators once the notice is given. For example, where QRail is contemplating a change in Maintenance Strategies that will have a significant impact on the operations, consultation may be required to commence as far as 18 months out from the anticipated commencement.
- the notice should include the extent and exact impact (within reason, for example, Aurizon acknowledges that consultation around a conceptual change to maintenance strategies will by



its nature not be exact) on the Train Service Entitlements, the intent of the possession and what alternative arrangements are proposed.

- In the event the timeframes for the activity are not achievable, QRail must notify Operators as soon as practicable and provide a revised and continuing estimate of the anticipated completion of the works. In addition, the Operator should be notified where the objectives of a possession are not met which may require additional possessions.
- QRail should have an obligation to mitigate the impact on Operators and use reasonable endeavours to provide a useable path. Decisions should be made in the context of achieving an optimal result for the railway manager and Operators (including the requirements of the Operator's customers) by having regard to the flow on effects on the train schedule and the respective costs incurred. This is directly related to the objective of maximising the efficient use of the network.
- No one operator should be impacted to a greater extent than another operator. For example should not be scheduled such that they always adversely impact on third party freight services rather than QRail's internal passenger services.

## 5.4 Operating requirements manual and associated documents

### General comments

In general, Aurizon supports the provision in the 2013 DAU of operating requirements manual and associated documents as a mechanism to provide transparency to access seekers and access holders of the both the process and obligations during the term of the contract, providing it does not impact on obligations in existing access agreements. Any changes to the obligations in the operating requirements manual may result in significant cost. As such, adequate protection is required to provide certainty that a range of options have been considered and the full impact on the supply chain has been assessed. This is discussed further below.

The operating requirements manual and associated documents include out of date references, uses terms inconsistent with those in the access agreement and mixes legal terms with other terms, for example the use of inverted commas rather than capitalisation for a defined term . In addition, some of the obligations included in the operating requirements manual seek to push QRail obligations as a railway manager to operators. For example in the Operating Requirements Manual at clause 2.2(ii)(D) the operator is required to provide the location of waterways.

Aurizon has included in section 6 a table of issues in relation to the operating requirements manual and associated documents. Each issue identified includes a suggested resolution.

### Dispute resolution and amendments

In the 2013 DAU, QRail have introduced provisions similar to the System Wide Requirements provisions in the 2008 SAA in response to stakeholder concerns regarding future amendments to the Operating Requirements Manual. Aurizon supports the amendments but considers that the following matters still need to be addressed:

- Aurizon considers that not all of the “practices, standards, systems, protocols requirements rules, policies and other information in relation to Train Control and the access to and use of the Network by Rail Transport Operators”<sup>21</sup> are covered by the dispute resolution and amendment provisions for the Operating Requirements Manual as a result of the removal of the definition of Operating Requirements.

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<sup>21</sup> Definition of Operating Requirements 2012 SAA

- Clarification is required that access seekers and access holders are able to dispute whether an amendment is for “safety grounds” and therefore disputable.
- QRail’s ability to make “changes to assets, equipment, facilities, infrastructure, processes, procedures or systems used for the purposes of any train management system”<sup>22</sup> without consultation and without consultation or able to be disputed is too broad.
- The ability to dispute only on the basis that the amendment “unfairly differentiates”<sup>23</sup> does not adequately address that access holders have contracted on the basis of terms and conditions of the Operating Requirements Manual at the time the contract is entered into and can lead to inefficient outcomes for the supply chain over time. In making amendments to the Operating Requirements Manual, QRail should have consideration to whether the amendment provides a net benefit to the supply chain, and provide compensation to access holders where QRail receives a benefit at a cost to the access holder.
- QRail should be liable for its negligence or breach in relation to making amendments to the Operating Requirements Manual or the associated documents to which an operator must comply with under the terms and conditions of access.

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<sup>22</sup> Clause 4.2.2(b)(iii) of 2013 DAU

<sup>23</sup> Clause 4.2.3(b) of 2013 DAU

## 6 Standard Access Agreement issues in detail

Item	Issue	Clauses	Has QRail changed from 2012 DAU	Description	Suggested Resolution
1	Access Rights	2, 26.1 6.1	No	<p>Access Rights are narrowly defined in terms of the definition of Rail Transport Infrastructure under the TIA. This could result in increased access charges as activities that would normally be expected to be included (and previously have been included) as part of the service, for which the access charge applies, will in future be considered as “ancillary services”. The only consequence of the definition for Access Rights in AU1 being changed, is for QRail to be able to make unregulated charges for additional services, which Access holders must agree to in order to be able to utilise their contracted access rights.</p> <p>For clarity the definition of Access Rights should be amended to reflect the definition of the Access in the current SAA.</p>	<p>Access is defined in line with current SAA.</p> <p>Activities and services included in Access Rights should be defined in the SAA in line with discussion in section 4.2.</p>
2	Renewal of access rights		Partial	<p>There is no obligation on QRail to negotiate an extension in good faith prior to the expiry of an access agreement. This creates uncertainty for customers in relation to the access rights on the expiry of the existing term. This change to QRail's negotiation obligations increases the commercial risks connected with the access agreement for the Access Holder, the Access Agreement now potentially becoming a short term commitment.</p>	<p>Revert to existing SAA obligation to negotiate in good faith for an extension 12 months prior to expiry QRail has not addressed this issue in the SAA. No extension/renewal provisions have been added to the SAA. However, a renewal clause (cl 2.7.3) has been added to AU1. Whilst this is relevant, a renewal/extension clause is still required for the SAA.</p>
3	Nominated Network		Partial	<p>Aurizon queries why QRail hasn't kept the reference to 'Nominated Network' given that the SAA will have to include a diagrammatic representation of the network to which the access agreement applies (in Schedule 2 presumably). QRail don't specify the advantage (for QRail) in having this obligation removed, but the consequence for Access Holders is the lack of clarity that could arise during the operation of the agreement under the new arrangements.</p> <p>This is separate to the issue of how QRail has proposed to deal with line diagrams under AU1 (and SAA) and how this relates to the definition of 'Network' under the SAA.</p>	<p>Revert to Nominated Network approach under existing SAA. Other comments (in section 2) relating to the treatment of line diagrams in AU1 and SAA are also relevant.</p> <p>Not addressed by QRail. Aurizon has a reasonable expectation that QRail will notify the Operator and QCA of any changes, including ownership. However, Schedule 2, attachment 3, does include reference to applicable network, which remains undefined in the SAA. NB - Line diagrams not dealt with in SAA but still included at cl 1.2.3 in AU1.</p>

Item	Issue	Clauses	Has QRail changed from 2012 DAU	Description	Suggested Resolution
4	Accreditation	3	No	<p>For clarity it is Aurizon's view that the line diagrams should be amended to reflect the infrastructure included within the scope of the Undertaking to which the parties have access.</p> <p>QRail has removed its obligation to maintain and provide evidence of their Accreditation. A Railway Manager's general obligation under their accreditation to maintain the infrastructure to a certain safety standard. Operators reasonably rely on the conditions of Accreditation to give some assurance regarding the safe operation of their services together with the specific terms and conditions included in an access agreement. It is reasonable then to expect that the Accreditation obligations in the access agreement should be mutual. This is a generally accepted principle included in the access agreements in each jurisdiction in which Aurizon operates.</p> <p>In addition QRail have incorporated wording that requires the Operator to "ensure that QRail is and continues to be provided" with material details of the Accreditation and all relevant supplementary material. Clarity is required in terms of what "continues to be provided with" means. Aurizon would like clarity that if the Operator notifies QRail with regard to any amendments and notices received by the Authority and provides documentary evidence of Accreditation when requested in writing, will this meet the "continues to be provided" obligation. If so, this should be clarified in the proposed SAA.</p>	Accreditation obligations be mutual on both parties and the "continues to be provided" obligation be clarified.
5	Payment Obligations – Queensland Rail Cause	4	No	<p>Aurizon's issues in relation to clause 4 relate to definition of QRail Cause and liability in relation to QRail Cause. QRail has changed the definition of QRail Cause from "any other action by QRail which directly resulted in the Infrastructure not being available" to "any other action by Queensland Rail other than Queensland Rail exercising a right or complying with an obligation in accordance with this agreement, the Access Undertaking or any applicable Law". In addition QRail has limited the availability of relief from take or pay under QRail Cause where the infrastructure is unavailable as a result of any other person. Both of these changes result in a reduction</p>	<p>QRail Cause definition to revert to previous position and include a provision for the parties to agree decisions around QRail Cause at least monthly.</p> <p>Remove clause 4.1(c) (I) and see discussion on Indemnities and Liabilities later in this table for more detail.</p> <p>Delete "in any way" and replace with "primarily"</p> <p>Delete following words from paragraph (c) "...other than Queensland Rail exercising a right or complying with an obligation in accordance with this agreement, the Access Undertaking or any applicable Law..."</p> <p>Delete "or any other person" after "(other than Queensland Rail)" insert "or any Related Party".</p>

Item	Issue	Clauses	Has QRail changed from 2012 DAU	Description	Suggested Resolution
				<p>in QRail's obligation as a Railway Manager to make the infrastructure available. For example, under this SAA, QRail is able to impose a speed restriction, and under this definition of Q QRail Cause if that speed restriction results in delays in Train Services such that all contracted Train Services cannot be met by QRail, there is no relief from Take or Pay for the Operator.</p> <p>Aurizon does not understand the need to include in the definition of QRail Cause "complying with any applicable Law". As the railway manager, QRail should clearly state the circumstances in which an existing law may impact on the infrastructure availability. Likewise, the SAA should reflect the specific provisions of the undertaking that will impact on the TSE so that Operator's are able to clearly understand the risk they are contracting.</p> <p>Whilst Aurizon understands the need for QRail to have flexibility in order to manage the network, the concept of balance would require that in an environment where Operators pay 80% of access charges if they are unable to use the contracted services, it is reasonable to expect the railway manager to provide relief if any item in their direct control results in the infrastructure not being available.</p> <p>In line with this, Aurizon believes that the circumstances where any other person may impact on the availability of the infrastructure falls within corridor security issues that are the responsibility of the railway manager.</p> <p>QRail have included in clause 4.1(c) (l) a statement that where the access charges are adjusted for QRail Cause, no other remedy or Claim against QRail in relation to QRail Cause is available. It is Aurizon's view that the right for relief of Take or Pay due to QRail Cause is not mutually exclusive to the right to make a Claim or seek another remedy for breach of the agreement. In the first instance, QRail Cause deals with short term issues, whereas Claims are generally for issues that are sustained over a longer term or result in a significant financial impact. In addition, if the railway manager has breached the agreement or was negligent, the potential</p>	<p>The definition of "Queensland Rail Cause" has been amended by adding a derailment provision but the amendments have not addressed the other issues raised.</p>

Item	Issue	Clauses	Has QRail changed from 2012 DAU	Description	Suggested Resolution
				<p>impact may be greater than the take or pay and, as such, this clause essentially imposes another cap on QRail's liability to what is an even more risk averse position than the current arrangements which are seen as very low risk.</p> <p>See discussion in Section 1 concerning QRail's Access Offering.</p> <p>Also see discussion below in this table on Indemnities and Liabilities.</p>	
5a	Obligations to make payments	4.2	Addressed	4.2(a) (changed) payment from the <b>date of invoice</b> (was after the date on which the party received the invoice)	Slight change. Aurizon considers this to be a reasonable amendment and accepts this change.
6	Payment Obligations – Reciprocity of interest payable for disputed amounts	4.5	Partial	<p>QRail has failed to ensure that 4.5 Interest on Overdue Payments applies equally to QRail and an operator. As worded it does not appear to cover the situation where a dispute is resolved in an operator's favour and QRail must credit the operator.</p> <p>In such a situation QRail should have a reciprocal obligation regarding the payment of interest on the amount in question. QRail have not indicated that they want this provision to apply to Operators only, and therefore we surmise that the wording needs to be amended to clearly apply to both operator and rail manager.</p>	<p>Change heading of 4.5 to "Interest on Overdue and Overpaid Payments" and change the wording to make the obligation to pay interest reciprocal (as in 2008 SAA).</p> <p>Not addressed by QRail.</p> <p>The heading should be amended as per the suggested resolution, which would clarify the intention of the clause to provide that it is a mutual obligation.</p> <p>Would argue that the wording is not that unclear as it applied to 'Parties' and does not distinguish between Operator and QRail. Reference is made to 'amount ... required to pay ... under this agreement' which would include a payment under cl 4.4.</p>
6a	Interim take or pay notices	4.7	New issue	<p>This provides no certainty to Operators as to when a statement may be provided by QRail. Further, 'statement' is not defined so it is unclear as to what information will be included in the 'statement' which the parties will meet to discuss. <i>Suggest changing 'may from time to time' to 'will provide the Operator a statement ... in respect of accrued monthly take or pay charge liability'.</i> Also, 'statement' should be defined.</p> <p>Like the issue above, the clause provides no certainty to Operators with respect to when they can expect to receive a Notice. Is it after the parties have met to agree upon the agreed take or pay liability? Clause should clearly state that the Notice will be issued after the parties have met to agree on the accrued Take or Pay charge as per clause 4.7(a). This is particularly important given the potential impacts of clause 4.7(c).</p>	<p>This is a new provision that has been added. QRail has not commented in the supporting information provided with the amended AU1 and SAA on why this clause has been added. QRail should provide information with respect to the addition of this clause and its intention.</p> <p>Although QRail contracts even railings, the provision of pathing with respect to QRail's maintenance program is not consistent with even railings. While in most cases, but not all, the Operator could agree with QRail (not including pending investigations), Aurizon would not be prepared to agree on a Take or Pay charge liability as part of this proposed process.</p> <p>With respect to how QRail allocates liability whilst an investigation is being completed, it is Aurizon's position that the Below Rail provider, as opposed to the Above Rail provider, should bear the risk and liability, until the</p>



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				<p>Seek clarification that the notice is after consultation between the parties. However, if it is the agreed position, then why would there be a need for dispute resolution at this point? Dispute perhaps better dealt with in (b), (f) Under what circumstances would there be a need for multiple interim notices to be issued for the same period? Would argue that this should be deleted as the notice is the definitive outcome of discussions etc so, if necessary, it should be at the statement stage in (a).</p>	<p>investigation has been completed.  Based on the arguments above, it is unreasonable to have a prescriptive clause to determine Take or Pay liability prior to year end. Clause should be deleted.  4.7 Interim take or pay notices  Queensland Rail may, from time to time, give the Operator a statement of the accrued Take or Pay Charge liability in respect of a particular period. If such a statement is given, Queensland Rail and the Operator will meet, or otherwise discuss, that statement in good faith to seek to agree the accrued Take or Pay Charge liability in respect of that period.  Queensland Rail may, from time to time, give the Operator a notice under this clause 4.7(b) that states the accrued Take or Pay Charge liability in respect of a particular period (Interim Take or Pay Notice).  An Interim Take or Pay Notice is taken to be conclusive evidence of the accrued Take or Pay Charge liability in respect of the relevant period, subject to the resolution of any dispute Notice to be given by the Operator under clause 17 must be given within ten Business Days (or such longer period as agreed by Queensland Rail) after the relevant Interim Take or Pay Notice was given to the Operator. Where the Operator does not give a Dispute Notice within that time period, the Operator is taken to agree that the matters in the relevant Interim Take or Pay Notice are correct.  Where an Interim Take or Pay Notice is disputed under clause 4.7(d) and that dispute has been finally resolved in a way that requires amendments to that Interim Take or Pay Notice, then Queensland Rail will give the Operator an amended Interim Take or Pay Notice (to replace the original Interim Take or Pay Notice) that is consistent with the resolution of the dispute.  Where two or more Interim Take or Pay Notices relate in whole or part to the same period:   (i) if there is any inconsistency between those Interim Take or Pay Notices in respect of that period, then the most recent Interim Take or Pay Notice prevails to the extent of that inconsistency; and</p>

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					<p>(ii) if there is no inconsistency between those Interim Take or Pay Notices in respect of that period, then the Operator has no right to dispute the accrued Take or Pay Charge liability for that period under any of those Interim Take or Pay Notices except to the extent that the Operator still has a right to dispute the earliest of those Interim Take or Pay Notices under clause 4.7(d) (including where the Operator has already commenced such a dispute).</p> <p>Despite any other provision in this agreement to the contrary and without limitation to clause 4.7(d), the Operator has no right to, and must by the Operator in respect of that Interim Take or Pay Notice.</p> <p>If the Operator wishes to dispute any matter set out in an Interim Take or Pay Notice, then any Dispute not, dispute the calculation of a Take or Pay Charge in respect of a Year to the extent that the Take or Pay Charge has been calculated in a manner consistent with the relevant Interim Take or Pay Notices relating to that Year.</p>
7	Maintenance of the Network – Infrastructure Standard	5.1(a)	Partial	<p>Comments in section 1 on the QRail Access Offering in relation to the maintenance of the network are applicable here. Aurizon has issues with the removal of maintenance obligations on QRail's part that are linked to objective rollingstock standards as well as the ability for the operator to operate in accordance with its Train Service Entitlement.</p> <p>In terms of information provision by QRail, previously the operator had an ability to inspect infrastructure prior to commencing operations to assess Standard of Infrastructure and assess operational, environmental and safety risks. There should be significant information available from QRail to be able to assess this risk and this should not derogate from QRail's obligation to provide and maintain infrastructure for operation of Train Services.</p> <p>In addition, Aurizon's concern regarding the certainty of</p>	<p>Revert to 2008 SAA approach to maintenance of the network obligations upon QRail.</p> <p>Include provisions similar to those in 2008 SAA dealing with "System Wide Requirements".</p> <p>Include key performance indicators in line with ARTC Indicative Access Agreement. QRail has not addressed Aurizon's concerns regarding the maintenance obligations for the Network. However, QRail has partially addressed Aurizon's concerns with respect to inspections prior to the commencement of services with the addition of clauses 21(c) and (d) (refer to item 70 below).</p>

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				<p>“System Wide Requirements” is relevant here. The SAA fails to deal with this critical issue.</p> <p>A separate issue relates to the fact that QRail has no obligation to report on the Infrastructure Standard and associated service levels. Aurizon considers the Key Performance Indicators included in Schedule 5 of ARTC’s Indicative Access Agreement (15 July 2008) to be an appropriate benchmark.</p>	
8	Maintenance of the Network – Rail Infrastructure Operations	5.1(b)	NA	<p>Aurizon considers it unreasonable for QRail to have no obligations to perform Rail Infrastructure Operations (RIO) in accordance with any reference to an Operator’s contractual entitlements. See discussion in section 1 concerning QRail’s Access Offering and the issue of Train Control decisions needing to be made in accordance with to the NMP and the Operating Requirements Manual (ORM).</p> <p>Aurizon considers that the NMP and ORM should ensure that QRail must use reasonable endeavours to plan RIO so as to minimise disruptions to scheduled train services.</p>	<p>Not addressed by QRail.</p> <p>Revert to provisions in 2008 SAA concerning the imposition of Operational Constraints and make publicly available the Operating Requirements.</p>
9	Maintenance of the Network – Third Party Works	5.1(c)	NA	<p>QRail has no liability for any costs, expenses, losses or damages incurred by the Operator in relation to Third Party Works. This provision contracts away QRail’s obligation to provide a safe and reliable network.</p> <p>In permitting Third Party Works, QRail has an obligation to ensure that the Standard of Infrastructure remains appropriate to meet the TSE obligations. In addition, QRail would have an obligation to ensure that Third Party Works do not interfere with the safe operation of the Network under their.</p> <p>5.1(c) does not allow for any Take or Pay relief. Should the third party damage the network, the operator would have no recourse to recovery for damages. This is unreasonable given QRail are solely responsible for the conditions under which they allow access to the Corridor.</p>	<p>Not addressed by QRail.</p> <p>Aurizon would expect to be able to seek reimbursement through QRail with respect to third party works/damage – should be deemed to be a planned possession. Should also include a liability value.</p> <p>Third party works obligations should be subject to QRail’s obligations to Aurizon (and in particular, should act reasonably to mitigate the impact of Third Party Works on Operators) and QRail’s accreditation and their own safe operation standards.</p> <p>Where damages are incurred as a consequence of Third Party Works but contributed to by QRail’s negligence or default/breach of the SAA, then to the extent of the contribution by QRail, the operator should be able to make a claim. In addition, where the Third Party Works requires a possession of the network, the Operator should have relief of take or pay.</p>
10	Operational constraints	5.2	Partial	<p>Whilst Aurizon recognises the need for flexibility to manage the network like wise Operators require certainty with regard to the service they are contracting. In the</p>	<p>Include recourse to QRail in the event Operational Constraint results in TSE not being met.</p> <p>In the definition of Urgent Possession and Emergency</p>

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				<p>example where an operational constraint, such as a speed restriction, results in TSEs not being met, the Operator should have recourse to QRail through both relief of take or pay and where the Operational Constraint is a result of a breach by QRail, QRail should be liable for any Claims in the event QRail was in breach or negligent. Also see item 7 in relation to key performance indicators. The requirement of the Operator and QRail to provide forecast information is now included in the ORM. Aurizon believes the obligation to provide this information should be mutual, that is either both parties “will use reasonable endeavours” or both parties “must provide”. In addition the obligation on QRail should be to provide a forecast of all construction or maintenance work proposed to be carried out, rather than what in QRail’s opinion will materially adversely affect the Operator’s operations. In line with the discussion in 3.8.1.1, the definitions of Urgent Possession and Emergency Possession should be amended to create a greater obligation on QRail in relation to the time allowed to rectify the fault.</p>	<p>Possession, delete “intends to carry out” and replace with “must carry out”. Amend the ORM 7.1(c) to reflect that QRail must provide the Operator with a forecast and delete from”...that may, in QRail’s opinion...”</p> <p>Clause deleted. Comments on deletion from QRail’s supporting information provided to the QCA 5.2 Train Control <b>Clause 5.2</b> specified Queensland Rail’s rights in relation to Operational Constraints. This clause has been deleted and <b>clause 6.2(iv)</b> has been inserted. <b>Clause 6.2(iv)</b> requires the operator to observe and comply with the NMP. This removes the potential for a conflict to occur between an Access</p> <p>Agreement and the NMP contained in any future access undertakings. However, deleting this clause also deletes the obligation on QRail to minimise disruption to train services when imposing Operational Constraints. That obligation was to use reasonable endeavours to minimise disruptions to an Operator’s services which should still remain in this clause or otherwise in the SAA. Aurizon notes that none of the documentation provided for review by QRail allows the Operator to understand what QRail’s possessions protocols will be. Aurizon also notes that the definitions of Emergency Possession and Urgent Possession have not changed and the definition of Operational Constraints remains.</p>
11	Train Control	5.3 Now clause 5.2	No	<p>Clause 5.2 Train Control states that QRail “must” exercise Train Control by issuing a Train Control Direction and QRail must only issue Train Control Directions in accordance with the NMP. Train Control includes “monitoring” and “proper, efficient and safe operation and management of Network”. This appears to be a broadening of scope for Train Control compared to the 2008 SAA wording which was “have regard to safe conduct of rail operations”</p>	<p>Some substantive issues have not been addressed by QRail. 5.3(c)(i)-(ii) should be reflected in the NMP. 5.3(d)(ii)-(iv) need to have an obligation to ‘must ensure’ and ‘must notify’.</p>
12	Communication	5.3(d)(ii)(	No	Requirement to use communication systems that comply	Not addressed by QRail.

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	Systems	A) Renumbered 5.2(d)(ii)(A)		with Operating Requirements. Operating Requirements may change with no protection for Operator under “system wide changes clause”	Reintroduce obligations regarding System Wide Requirements
13	Passenger Priority clause	5.3(e) Renumbered 5.2(e)	No	<p>As discussed in section 1, Aurizon does not consider this clause to be an accurate reflection of the Passenger Priority legislation. In addition, this level of detail is more appropriate in the NMP.</p> <p>Aurizon considers it reasonable that the SAA includes an acknowledgement by the Operator that QRail has an obligation to comply with the passenger priority legislation.</p> <p>Comments on amendment from QRail’s supporting information provided to the QCA</p> <p>5.2(e) Passenger Train Services <b>Clause 5.2(e)(iii)</b> aims to assist with the efficient operation of the Metropolitan Region during the peak period. The efficient running of passenger services in the Metropolitan Region is both in the public interest and Queensland Rail’s legitimate business interests. Queensland Rail has modified this clause so that it better reflects its intended purpose. The revised clause allows Queensland Rail to treat other train services preferentially to the Operator’s Train Services for the purpose of seeking to avoid a passenger train service that is operating, is scheduled to operate, or will be scheduled to operate in the Metropolitan Region during any Peak Period becoming delayed.</p>	<p>5.3(e) should be removed and reflected in the NMP and should reflect the position at law (i.e. The Passenger Priority legislation)</p> <p>Aurizon does not see how the changes to this clause have addressed Aurizon’s concerns. The clause allows for QRail to prioritise a train that is not currently operating ahead of an Operator’s service. The clause is too broad, particularly with respect to a service ‘that will be scheduled to operate’.</p>
14	Compliance	5.4 Renumbered 5.3	No	Under 6.2(iii), the Operator has an obligation at all times to act in accordance with Prudent Practices. It is reasonable, in Aurizon’s Aurizon opinion for this to be a mutual obligation.	<p>Include an obligation for QRail at all times to act in accordance with Prudent Practices.</p> <p>Although amendments have been made to this clause, the substantive issue has not addressed by QRail.</p>
15	Written consent if Train Services other than as per agreement	6.1	No	The obligation is for the Operator to obtain prior written consent to Operate Train Services other than as per the agreement. This clause is potentially restrictive in relation to day of operation changes and would benefit by being subject to cl 6.4, which is the ability to make	It would be beneficial for QRail to clarify that an Operator does not need to seek written consent if complying with a Train Control Direction. Additionally, this variation should not require consent of QRail if consistent with Train Route Acceptance.

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				<p>alterations to Train Services, as well as having a materiality threshold for the requirement to have prior written approval.</p> <p>Aurizon would like clarification on what is considered written consent. For example does the network controller providing a written approval of the train manifest constitute prior written consent.</p> <p>QRail's base service obligation is not clear.</p>	<p>Obligations of QRail to be defined within agreement.</p> <p>Definition of Train Service in 26.1 should reference the Train Service Description rather than clause 6.1 so that it reads: "...means the operation of a Train in accordance with a Train Service Description....."</p> <p>Clarification is provided regarding what is considered written consent.</p> <p>Substantive issues not addressed by QRail.</p> <p>Definition of "Train Service" changed to make it in accordance with "this agreement", rather than cl 6.1. This remains circular.</p> <p>The definitions set out in clause 26.1 should define the terms used in the agreement for legal clarity. Definitions which defer 'to a meaning in accordance with the access agreement' are open to wider interpretation than if the term was specifically defined.</p>
17	Operator Compliance prior to commencing services	6.2	Partial	<p>The following must be observed and complied to by the Operator:</p> <p>(a)(i)(H) the Access Undertaking; Aurizon would like clarification on what in the Undertaking is required to be complied with prior to commencing services – given removal of the ringfencing arrangements. The Access Agreement should contain all of the applicable obligations.</p> <p>(b)(iii) The Operator must not doing anything which may be a material nuisance or annoyance or cause disturbance to QRail or occupiers or users of the Network or land adjacent to the Network in exercising rights under this agreement. This is unacceptable and the risk can be adequately managed through the IRMP.</p> <p>(b)(iv) Operator is obligated to not omit to do anything that would cause or contribute to the Network not being clean and presentable, well maintained etc. The proposed obligation may go to such things as keeping</p>	<p>(a)(i)(H) should include to extent applicable and clarify that where there is conflict the Access Agreement has precedence over Access Undertaking</p> <p>(b)(iii) should be removed as specific risks should dealt with under specific provisions of IRMP .</p> <p>(b)(iv)-(v) amend or remove as obligations regarding these provisions will be considered in 6.2(a)(i)(B) or IRMP and should have obligation to notify only if aware.</p> <p>6.2(b)(ix) should consider mirror provisions in existing standard access agreement (clause 5.8)</p> <p>6.2(c) should consider the obligations to be imposed on</p>



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				<p>wagons that are considered unsightly off the network. This is unacceptable.</p> <p>(b)(v) Operator is obligated to not allow anything or substance to be deposited on Network that is not expressly required by Operating Requirements and Train Control Directions. Once again this risk should be dealt with in the IRMP.</p> <p>Generally the obligation is to ensure rubbish or toilet waste is not deposited on the Network – which is a more balanced requirement.</p> <p>(b)(viii) &amp; (ix) the obligation to operate Rollingstock should be in line with the objective and measurable standards such as the Rollingstock Interface Standards (see section 1 or cl 6.7 below for further comments)</p> <p>(c) the obligation should be to advise QRail “as soon as practicable” rather than “immediately”. – this has been changed.</p>	<p>QRail to notify the operator of non-compliance and amend so that notification is “as soon as practicable”.</p> <p>Although amendments have been made to clause 6.2, Aurizon still has concerns with respect to the following clauses:</p> <p>(b)(iii) – changes do not adequately address initial concerns. Delete.</p> <p>(b)(iv)-(v) changes do not adequately address initial concerns. Delete.</p> <p>(b)(ix) should have been standard provisions under existing – this still needs to be addressed.</p> <p>Comments on amendment from QRail’s supporting information provided to the QCA 5.2 Train Control <b>Clause 5.2</b> specified Queensland Rail’s rights in relation to Operational Constraints.</p> <p>This clause has been deleted and <b>clause 6.2(iv)</b> has been inserted. <b>Clause 6.2(iv)</b> requires the operator to observe and comply with the NMP. This removes the potential for a conflict to occur between an Access Agreement and the NMP contained in any future access undertakings. The reference to 6.2(iv) is actually 6.2(a)(iv)</p>
18	Compliance with scheduled time	6.3	NA	<p>It is Aurizon’s view that the intent of this clause should be for both parties to use their reasonable endeavours to ensure that Train Services comply with the Scheduled Times.</p> <p>The obligation on the Operator to operate train services only in accordance with the Train Service Description is already addressed in 6.1.</p> <p>In addition, this clause should provide clarification on what is deemed to be “in accordance with the Scheduled Time”. Aurizon considers a buffer of 15 minutes for freight (coal and non-coal) trains a reasonable approach and is in line with like jurisdictions.</p>	<p>Consideration should be given to reasonable variation to Scheduled Times (e.g. 15 minute variance to schedule similar to ARTC)</p> <p>Obligation should be to use ‘reasonable endeavours’ as per existing SAA, not ‘must only’ as per proposed SAA.</p> <p>Schedule Times should consider impact of operational constraints</p> <p>Previous concerns not addressed by QRail.</p> <p>The standard access agreement needs to be amended to reflect the practical operations of running trains.</p>

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					Amendments should be made to  Clause 5.2 (Operational Constraints) has been deleted from the updated SAA. (refer to item 10)
19	Alterations to Train Services	6.4	NA	(a)(ii)(B) Includes a requirement that QRail's reasonable endeavours to provide an alternative Train Service where an Operator is not able to meet Scheduled times is subject to whether QRail would incur additional costs or expenses. This should be a mutual obligation where QRail seeks to change the Scheduled Service for any reason. In addition, there should be a materiality threshold for costs incurred. (b) Proposes an obligation on the Operator to immediately notify whether they can accept an alternative Scheduled Time. Whilst this may be appropriate where the Operator notifies QRail immediately prior to the Scheduled Time, where notification is provided or where Scheduled Time variation is at QRail's behest it is Aurizon position that there should be subject to bona fide consultation. Notwithstanding this, alterations to Train Services should be subject to the NMP and the applicable protocol. (c) in line with the discussion above the timeframe for acceptance must be reasonable.	6.4(ii)(B) Reference to 'additional costs' should be changed to 'material costs' to prevent frivolous claims for costs. 6.4(b) Aurizon proposes the removal of 'immediate acceptance'. If Alternative Scheduled Time not reasonably acceptable to both parties available then Train Service should be cancelled by giving notice to other party. This is required to cover the risk that QRail imposes a possession without bonafide consultation – acceptable that not a Claim (except negligence or wilful default) but should be relief of Take or Pay obligation.  Previous concerns not addressed by QRail.  The standard access agreement needs to be amended to reflect the practical operations of running trains. Amendments should be made to  The above comments also apply to this section and Item 10
20	Operator to Supply Information	6.5	Partial	The obligation in Clause 6.5 to comply with QRail's requirements should be subject to a reasonableness test. In the section 7 of the ORM, the Operator is required to advise QRail of a number of contacts. It is Aurizon's view that this information should be included in the Access Agreement for transparency. Please note previous comments with regard to system wide requirements.	<u>6.5</u> Needs to be a test of reasonableness, rather than 'absolute discretion'.  A schedule to be included to the agreement for contacts to be provided.  Previous concerns have been partially addressed by QRail. However, 'absolute discretion' remains, which is unacceptable to Aurizon.
21	Queensland Rail may supply data	6.6	No	Under clause 6.6 (b) & (e), if QRail makes decisions on the information affecting the Operation of the Train Services or compiles and uses the information in reports made publicly available by QRail, then the Operator should be able to request access to that information and	Previous concerns not addressed by QRail.  <u>6.6(b) &amp; (e)</u> Aurizon proposes the inclusion of obligation on QRail to provide rail specific data with respect to the operator that

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				<p>be able to rely on it. It is Aurizon's view that both parties must warrant the accuracy of all information supplied or used to make decisions.</p> <p>6.6 (c): The provisions here should relate to all Confidential Information. Therefore, Aurizon recommends the Confidential Information clause be expanded to address these points.</p>	<p>can be used for any purpose and where data is provided by QRail the obligation should exist for QRail to have validated that information (including performance related data).</p> <p><u>6.6(c)</u> The Confidential Information Clause 22.1 is expanded to address clause 6.6(c), and clause 6.6(c) be removed.</p>
22	Authorisation of Rollingstock & Train Configurations	6.7	Partial	<p>6.7(a)(i)(B) should reflect an objective test to QRail's satisfaction with dispute resolution available if an agreement can't be reached.</p> <p>6.7(b)(iii) It is Aurizon's view that a distinction should be made between a permanent variation to the Rollingstock of train configuration and a temporary one. This clause incentivises QRail to amend Access Charges where there is a temporary reduction in the volumes carried in order to maintain a fixed revenue stream. The Operator should be incentivised make decisions to maximise throughput based on the terms and conditions negotiated.</p>	<p>Previous concerns not addressed by QRail.</p> <p><u>Clause 6.7(a)(i)</u> Aurizon proposes an obligation should be on QRail's to issue certificate, not for Operator to obtain a certificate, the Operator's obligation being not to operate without having certificate.</p> <p><u>Clause 6.7(a)(ii)</u> An Obligation to be inserted for QRail to 'authorise' rather than 'acknowledge/be satisfied' with the Rollingstock Configuration Certificate (as per the existing agreement).</p> <p><u>6.7(a)(i)(B)</u> This clause be amended to reflect an objective test rather than at QRail's absolute discretion.</p> <p><u>6.7(b)(iii)</u> This clause is amended to distinguish between temporary and permanent variations to Rollingstock, and the methodology, rates or other inputs for calculating Access Charges stated to only apply to permanent rollingstock configuration changes.</p>
23	Amendments to	6.8	No	6.8(b) provides QRail the ability to amend Operating	Previous concerns not addressed by QRail.

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	Operating Requirements			<p>Requirements Manual and is only required to consult with the Operator and provide reasonable notice prior to making amendments if they will have a material adverse impact on operator.</p> <p>The grounds upon which QRail can amend the ORM are open and do not provide any dispute mechanisms. QRail should consult in all cases particularly in light of how broad new sub-clause (f) is with respect to when QRail does not have to consult – e.g. safety grounds.</p> <p>6.8(e)(ii) provides the Operator 10 days to amend their processes following a change to QRail's Operating Requirements. This period should be dictated by what is reasonable given the changes to be made. QRail have removed the System Wide Requirements. The current SAA (cl 5.10) limited the ability of QRail to amend Network Management Principles and Safe Working Procedures. Given these are no longer explicit it is Aurizon's position that removal of this existing obligation to consult and where appropriate seek agreement from the Operator results in the reduction in certainty of the access rights being contracted.</p> <p>Previously, the clauses relating to operating requirements were included in SAA. These provisions have been moved to Part 4 in AU1. Due to this change, <b>Clause 6.8</b> of the SAA will not apply while: the relevant rail transport infrastructure is part of the declared service and access to that rail transport infrastructure is subject to an access undertaking; and Queensland Rail's access undertaking defines the term 'Operating Requirements Manual' and sets out provisions regarding the amendment of the Operating Requirements Manual. As AU1 is only intended to have a Term of between four and five years and a West Moreton coal contract can have a Term of up to ten years or more, this clause</p>	<p><u>6.8(b)</u> This clause be amended for the inclusion of provisions similar to the existing SAA 5.10 and that of ARTC where there is an obligation on the Network Provider to ensure reasonable endeavours to minimise disruption to Operators Train Services and to ensure the obligation on the Operator is to not withhold consent unreasonably in instances where agreement is required (including compensation). If an amendment to the Operating Requirements results in a material adverse impact on the Operator, the obligation should be to implement only if QRail is able to demonstrate a benefit and the Operator is compensated for cost (eg by safer operations or financial compensation). The cost-benefit assessment should not be limited to QRail but to the wider supply chain, unless directly complying with legislation (versus interpretation of legislation). Aurizon's position is that there should be an obligation on QRail to consult on any changes to the Operating Requirements Manual and that the dispute provisions under the access agreement would apply.</p> <p><u>6.8(e)(ii)</u> Aurizon's position is that 10 business days should be amended to reflect a period that takes into account the circumstances and the impact of the Operating Requirements amendment.</p> <p>The proposed changes are arguably heavily in QRail's favour and results in a shift in risk. Aurizon's position is that in all cases QRail must consult. Aurizon does not accept any circumstances where the ORM can change without QRail's prior consultation.</p>

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				ensures that if there is no access undertaking in place, the operating requirements will continue to apply.	
24	Entering and exiting the network	6.9	No	Operator is solely responsible and bears the cost and risk of obtaining and maintaining any rights to use Private Infrastructure. The definition of Private Infrastructure includes adjoining networks. This clause needs to reflect the management of through running trains	Previous concerns not addressed by QRail.  <u>6.9(b)</u> This clause be amended to reflect that QRail has an obligation to not unreasonably restrict access from the adjoining network and ensure that communication protocols between network providers exist to minimise disruption to Operator Train Services during time of Planned Possessions.
25	Interface Risk Management	7	No	7(a) imposes an obligation on the Operator to not do anything, or permit anything to be done, which may give rise to Interface Risks that are not addressed in the IRMP. This should be a mutual obligation.  Under the Operating Requirements Manual: 2.2(b)(ii)(D) imposes an obligation on the Operator to identify environmentally sensitive areas on QRail's network, for example, waterways. It is QRail's obligation as the Railway Manager to identify environmentally sensitive areas on or near the Network. 2.3 stipulates the risks to the environment that must be considered in any Interface Risk Assessment. The clause only considers what must be included by the Operator. For example, issues with regard to noise are a product of the rail and wheel interface. As such, QRail has an obligation to mitigate the risk to the same extent as the Operator. The Interface Risk Management is a joint assessment and both the SAA and the Operating Requirements Manual should better reflect this.  The addition of new subclause (a) does not address Aurizon's concerns with respect to joint obligations under this clause, insofar as there is no obligation on QRail to notify the Operator of any issues that give rise to interface risks not addressed in the IRMP. (E.g. subclause (b)).	Previous concerns not addressed by QRail.  QRN proposes that the Operating Requirements Manual should be amended to reflect joint responsibility of the parties to identify risk and have the appropriate measures in place.

Item	Issue	Clauses	Has QRail changed from 2012 DAU	Description	Suggested Resolution
26	Dangerous Goods	8.1	No	Given the Standard Access Agreement is specific to coal, Aurizon has no objection to this clause. However, as the SAA will be used as a precedent for non-coal freight, some of which is classified as Dangerous Goods, Aurizon believes the current SAA provides greater transparency on the conditions to be met in the transportation of Dangerous Goods.	<p>Previous concerns not addressed by QRail.</p> <p><u>8.1</u> This clause is amended to reintroduce clause 8.3 of current SAA.</p>
27	Environmental damage	8.2	No	It is Aurizon's view that the obligations on the Operator with regard to Environmental Damage should be equivalent to the legislative obligations and reflected in the Interface Risk Assessment. Any costs or attribution of damages should be the result of an incident investigation.	<p>Previous concerns not addressed by QRail.</p> <p><u>8.2(c)</u> Aurizon is of the view that QRail <b>must</b> notify the Operator in clause 8.2(c).</p> <p><u>8.2</u> Information be included at the beginning of this clause which clarifies the intent of this clause.</p>
28	Operator's Emergency Management Plan	8.3	No	QRail have removed some of the prescription in relation to the Operator's Emergency Management Plan (OEMP) and the associated standards. Providing there is a requirement to be met that both parties are satisfied and that the OEMP complies with this agreement and there is an ability to have recourse to dispute resolution, Aurizon accepts this approach.	<p>Previous concerns have not been addressed by QRail.</p> <p><u>8.3(a)</u> Amend the clause such that QRail is required to be satisfied that the OEMP complies with this agreement.</p> <p><u>8.3(a)(i)(A)</u> Aurizon seeks clarification on the term 'from time to time'.</p> <p>Please note these additional concerns:</p> <p>Reference to the Emergency Management Plan requires the Operator to have a plan that manages an event, whereas the Queensland Rail Standard MD-12-208 only requires Operators to develop a plan to achieve onsite and offsite coordination, including plans for restoration of train services.</p> <p>see clause 8.3(a) (i) (A)] Aurizon has concern regarding the terminology 'from time to time'. This needs to be clarified with regards to intent, to assess the possible impacts of the OEMP requiring amendments.</p>



Item	Issue	Clauses	Has QRail changed from 2012 DAU	Description	Suggested Resolution
29	Obstructions	8.4	Partial	<p>It is Aurizon's view that an Operator should only be liable for cost or loss in relation to the removal of an obstruction to the extent it is caused by the Operator's negligent act or omission.</p> <p>This clause requires clarification of the ability of an Operator to refuse to use their equipment to remove another Operator's obstruction unless QRail accepts estimated costs of doing so.</p> <p>Previously, Aurizon requested that 8.4(d) be amended so that the last line read "to the extent caused or contributed to by the negligent act of omission of the Operator in removing any rolling Stock."</p> <p>Include ability of Operator to refuse to provide assistance to another Operator if QRail does not accept the cost estimate of doing so.</p> <p>Amend 8.4 to be subject to the IRMP.</p> <p>8.4(d) has been amended so that QRail will reimburse the operators reasonable direct costs and expenses if the operators are acting under a train control direction to remove, rectify, mitigate or otherwise deal with an obstruction caused or contributed to by another Rail Transport Operator (including to use any of the Operators Rolling Stock to move, or remove from the Network, any Rolling Stock of another Train Transport Operator).</p>	<p>8.4 (d) Amend the last line to read "to the extent caused or contributed to by the negligent act of omission of the Operator in removing any rolling Stock."</p> <p>Include ability of Operator to refuse to provide assistance to another Operator if QRail does not accept the cost estimate of doing so.</p> <p>Amend 8.4 to be subject to the IRMP.</p> <p>This clause has been partially amended and Aurizon is satisfied with this change.</p>
30	QRail notification of Network Incident	8.5(a)	No	<p>The current requirement states that QRail will notify the Operator of any Network incident that may reasonably be expected to materially adversely affect the Operator's Train Services. Aurizon believes that QRail should also regularly update the Operator on the anticipated effect on the relevant Train Service.</p> <p>Previous concerns not addressed by QRail. Note the comments from the ORM about notification and incident response including contacts at items 18 – 22.</p>	<p>Aurizon's position is that this clause should be amended so that there is a requirement for QRail to include in a notification the anticipated effect on the relevant Train Service, and update the Operator from time to time as more information becomes available.</p>
31	Operator notifiable	8.5(b)	No	8.5(b)	

Item	Issue	Clauses	Has QRail changed from 2012 DAU	Description	Suggested Resolution
	events			<p>The definition of Incident includes Environmental Harm involving activities of an Operator which duplicates the obligation to notify under 8.5(b) (ii) of any Environmental Harm.</p> <p>The Operator's obligation should be to notify QRail in the event of a failure to comply with the IRMP as this addresses the "reasonably foreseeable risks" and the agreed controls in place.</p>	<p>QRN position is that the IRMP should define the responsibilities in relation to the identified risks.</p> <p>These previous concerns not addressed by QRail.</p> <p>Aurizon position remains that the IRMP should define the responsibilities in relation to the identified risks.</p> <p>Note the comments from the ORM about notification and incident response including contacts at item 18 - 22</p>
31a	Noise mitigation	8.6	No	<p>In addition to comments with respect to noise mitigation in the ORM, Aurizon has the following concerns:</p> <p>The potential scope of this clause 8.6(a) is to expose access holders to all noise mitigation costs for actions taken to mitigate those noise risks by QRail, with no reciprocal requirement on QRail towards the Operator (fails to acknowledge the allocation of responsibility in the IRMP).</p> <p>This clause implies there will not be any negotiated outcome from consultation by QRail. Rather, it suggests only that QRail will notify the Operator of its intended measures and then impose the cost on the Operator of what QRail considers should be the Operator's contribution to the implementation of that measure.</p> <p>The clause does not acknowledge that QRail, as RIM, has significant obligations to maintain and manage their Network. (eg <i>NB – standards are in place and there would be significant cost imposed on the rail industry which will affect the competitiveness in a number of markets where those standards are 'tightened'.</i>) For example, in the metro system any issues around noise barriers would be covered under QRail's TSC because it is a passenger issue, not freight.</p> <p>8.6(b) Change 'will use reasonable endeavours' to 'must'.</p>	<p>Delete clause.</p> <p>Aurizon believes that should this clause remain in the SAA, there should be a dispute provision.</p> <p>It would be reasonable to expect that the mitigation strategy be determined jointly between QRail and industry. If it is expected that access holder will be exposed to the potential risks and costs of below rail mitigation for noise, Aurizon believes it is reasonable to be provided with copies of QRail's TSCs.</p>
32	Inspection and audit rights	9	No	<p>QRail may at any time give a notice to the Operator requiring an inspection for the purpose of assessing the</p>	<p>The provisions in the current SAA should be reflected either</p>

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				<p>Operator's compliance with this agreement or whether the Operator's wagons are overloaded or not loaded safely.</p> <p>Previously, the inspection for compliance was in relation to the IRMP (including the Rollingstock Interface Standards), authorised Rollingstock Configurations, Safeworking Procedures and Safety Standards. These documents deal with the agreed levels of compliance in relation to the provision of Access and operation of Train Services. The proposed agreement does not recognise the role of the IRMP in managing risk.</p> <p>The agreement does not include a process regarding notice or the grounds upon which QRail requires the inspection.</p> <p>To provide reasonable prior notice and mutuality or requirement to specify what the audit is for</p> <p>The agreement does not address the circumstances where QRail should only have rights to inspect when they are unable to determine compliance in any other way, acting reasonably. For example, if compliance can be asserted by reference to available reports whether using QRail or the Operator's information systems.</p> <p>No mutual right of the Operator to Inspect or audit.</p> <p>The cost of an inspection should be borne by the party requiring the audit, unless the stated grounds for the audit have been demonstrated to exist.</p> <p>Must include cost provisions and be conducted by a suitably qualified person and/or suitable device(s) (eg calibrated overload detector)</p> <p>Any reports from an Inspection or Audit regarding compliance with IRMP should be made available to the inspected party.</p> <p>Previous concerns not addressed by QRail.</p>	in the proposed SAA or the ORM.
33	Assumption of risk	10.1	Addressed	As currently drafted, this clause is very broad. Why should the Operator accept all risks and liabilities arising out of the agreement? The risk allocation in the Access Agreement needs to sit with the party which is best able to manage it. QRail, as an expert in railway infrastructure	Clause deleted – no issues.

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				management and maintenance, is best placed to manage a number of risks imposed on the Operator under the proposed SAA.	
34	Operator's indemnity	10.2 Now 10.1	No	<p>Aurizon notes that the explanatory document does not provide a rationale behind the risk and indemnities. On the face of it, it appears Q Rail is trying to exclude liability for absolutely everything under the agreement. The Indemnity as currently drafted is very broad and one-sided. There is no reciprocal indemnity from QRail as under the current SAA.. In addition, the current SAA does not indemnify QRail for breach and Aurizon does not consider it reasonable to do so now. Without an indemnity, QRail still has the ability to sue Aurizon for breach of contract.</p> <p>It is Aurizon's view that the principles to be included should reflect clauses 14.2 and 14.4 of the current SAA. To that extent, this clause requires redrafting to better reflect this.</p>	<p>Previous concerns not addressed by QRail.</p> <p>Include reciprocal indemnity from QRail:  "Queensland Rail indemnifies the Operator against all Claims which may be brought against or made upon the Operator and all losses which the Operator suffers or incurs in respect of property damage, personal injury or death to the extent caused, or contributed to, by any negligent act or omission by Queensland Rail or Queensland Rail's Associates."  Amend (a) to read:  "in respect of property damage, personal injury or death to the extent caused, or contributed to, by any negligent act or omission by the Operator or the Operator's Associates."  Delete 10.2(b) – this is too broad. Aurizon should only be liable if we are negligent, and this is would be covered in the suggested amendment to (a) above.  Delete 10.2(c) – Aurizon would like to understand the rationale for the change in risk position from the current SAA  Delete 10.2(d) and 10.2(e)</p>
35	Operator Responsible for Operators Associates	10.4 Now 10.3	No	<p>Clarify the intent of clause 10.4. Specifically, is this clause intended to allow the Operator to subcontract its rights and/or obligations under the agreement <u>to any person</u>? It is unclear as to whether this clause is intended to replace clause 14.11 of the existing SAA (Relationship with sub-contractors) – please clarify.</p>	<p>Previous concerns not addressed by QRail.  Clarify the intent of clause 10.4 and redraft where appropriate.</p>
36	General caps on liability	11.1	Changed	<p>Under this clause QRail have proposed a cap on the aggregate liability of QRail to \$20 million per year, which is not a reciprocal right for the Operator. This cap on liability is very low. Aurizon suggest that liability for both parties should be uncapped. Alternatively if a cap is to be introduced a methodology should be adopted, rather than a fixed value, to allow for a commercially appropriate allocation of risk.</p>	<p>Clause deleted – no issues</p>
37	Consequential loss	11.2 Now 11.1	No	<p>The Operator is liable for consequential loss incurred by QRail arising out of any claim by a third party including an Operator's customer. This is a significant departure from the risk position in the existing SAA and is contrary</p>	<p>Previous concerns not addressed by QRail.</p> <p><u>11.2(a)</u>  In 11.2(a), delete the words "Subject to clause 11.2(b)".</p>

Item	Issue	Clauses	Has QRail changed from 2012 DAU	Description	Suggested Resolution
				to the position in like jurisdictions. Aurizon cannot under any circumstances accept liability for consequential loss. In addition, QRail have removed QRail's liability for consequential loss in relation to inspection and audits and suspension. The inclusion of this liability of QRail provided balance to QRail's rights in relation to inspection and audit and suspension. .	<u>11.2(b)</u> Delete clause 11.2(b).  <u>Clause 9 and Clause 12</u> Include in cl 9 (Inspection and Audits) and cl 12 (Suspension) QRail liability for Consequential Loss.
38	Exclusion of liability	11.3 Now 11.2	No	On the face of it, QRail is attempting to exclude liability in relation to all obligations under the agreement. This is very unbalanced and is a significant change in the risk position compared with the current access agreement. QRail should assume a level of performance risk that provides certainty to Access Holders with regard to the contracted entitlements. Aurizon considers a balanced approach to the items exclusion of liability is as follows: 11.3(a) in relation to liability for loss of product, it is reasonable that QRail liability should be limited to where they are negligent or in breach of the agreement; 11.3(b) Claims in respect of delays to Train movements should be reciprocal and reflect the degree of control by the defaulting party. (see further discussion at 11.6); 11.3(c) given the risk imposed on the Operator at 10.1 and in relation to the infrastructure standard in cl 21, this clause results in the Operator taking risk for things under the control of the railway manager. This clause should be deleted; 11.3(d) QRail liability in relation to Obstructions 8.4(b) or (c) should be limited to QRail negligence. 11.3(e) is too broad an exclusion and should be deleted; and 11.3(f) the Operator should have the right to rely on Data provided by QRail as such this clause should be deleted.	As per comments above in relation to clause 10.2, add a reciprocal indemnity so that QRail is indemnifying the Operator for negligence. Delete 11.3(c), (e) and (f) Add an additional clause that states that any exclusion of liability does not apply to or limit any of the following liabilities: liability to the extent Queensland Rail is paid or indemnified by an insurer under an insurance policy required by the Agreement, or is entitled to be paid or indemnified for the liability by such an insurer; liability to the extent Queensland Rail would have been entitled to be paid or indemnified for the liability by an insurer under an insurance policy required by the Agreement, but for a failure by Queensland Rail to effect and maintain the insurance policy as required by the Agreement; liability to the extent Queensland Rail recovers compensation for its liability to QR National from another person (including any subcontractor and whether by way of indemnity or otherwise) which compensation will be net of the costs of recovery incurred in the recovery action.  Previous concerns not addressed by QRail.
38a	Claims in respect of Train Movements	11.3	Partial	Aurizon considers the inclusion of this clause to be reasonable as it closely aligns with the provisions of the 2008 SAA (clause 15.4).  However, considers the clause is too broad as presently drafted – eg Rail Infrastructure Operations and greater ability to make a claim in event speed restrictions are	Remove clauses 11.3(b)(iv) and (v) and replace with “major periodic maintenance” as included 2008 SAA.

Item	Issue	Clauses	Has QRail changed from 2012 DAU	Description	Suggested Resolution
				imposed for a prolonged period.	
39	Full details of Claims	11.4(a)	Accepted	It is unreasonable to require Operators to provide full details of the claim to QRail within 12 months of the occurrence of the event. Generally, an Operator can provide notice of its intention to make a claim 12 months after the occurrence but is unlikely to be in a position to submit all supporting details and data until the completion of all investigations.	Aurizon accepts this as a reasonable amendment.
40	Claim threshold	11.4(b) Renumbered 11.4(a)(ii)	No	In the current access agreement the minimum threshold for a claim is \$50,000. This has increased to \$500,000. Aurizon does not understand the rationale for increasing this threshold and changing the risk position.	Reduce threshold to \$50,000.
40a	Limitation on claims	11.4(b) New numbering	New	Aurizon has no real issue with the addition of this clause, but fails to see how it adds anything to clause 11.4(a)(i).	QRail to provide clarity on the purpose of this clause, as it seems to follow on from 11.4(a)(i). In this context, 'best endeavours' should be changed to 'reasonable endeavours'
41	Claims in respect of non-provision of access	11.6	No	As per comments in 11.3 above, Aurizon is of the view that the current SAA provides a balanced approach in relation to Claims in respect of the non-provision of access and in respect of delays to Train Movements. This is demonstrated by the reciprocal rights to both parties in relation to claims in respect of delays in Train Movements. It is Aurizon's view that clause 11.3(b) should be deleted and replaced with 15.4 from the current SAA and clause 11.6 should be deleted and replaced with 15.3 of the current SAA. 15.3 of the current SAA, provides transparency on the cause of the non-provision of access, that is it is directly related to whether QRail have made the Infrastructure available for the Operator to operate the train service at the Scheduled Time or a reasonable alternative time. Replace 11.6(a) with 15.3(a) of current SAA. Previously if a claim event was attributable to Major Periodic Maintenance the Operator would not have a right to make a claim. Under 11.6, the Operator will not be able to make a claim in the event of any possession, including urgent or emergency possessions, any construction, operational or maintenance activity or any inspection or investigation. This effectively results in	<u>11.3(b)</u> Delete 11.3(b) and replace with 15.4 of the current SAA.  <u>11.6</u> Delete 11.6 and replace with 15.3 of the current SAA. Amend the new clauses to reflect that the claim event is "not predominantly attributable" to reasons listed in the new clause.  Reflect in the agreement that QRail is liable for negligence or breach in relation to the Interface Agreement with the adjoining network owner.



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				<p>QRail not being accountable for the provision of access. With regard to Private Infrastructure, given the Access Provider should have an Interface Agreement, as discussed in section 2 above, in the event that QRail is in breach of that Interface Agreement, the Operator should have recourse to QRail if that breach results in the non-provision of Access or delay in Train Services. Notwithstanding the above, it is Aurizon's view that the intent of the change in wording in the first in wording in the first paragraph of the clause should be clarified. That is "and shall only have a claim to the extent that" versus "shall only have a claim to the extent that each of the following is satisfied". It is unclear as to whether QRail have intended to change the risk position or not.</p> <p>Previous concerns not addressed by QRail.</p>	
42	Suspension	12	No	<p>The provision, as presently drafted, provides QRail with the option of either electing to suspend or terminate the AA for any of the events listed in clauses 13.1(a) to (j). The current SAA prescribes a number of "material" circumstances which may lead to suspension and addresses any remaining "default of due performance" in 19.1(x) – allowing that for a right of suspension to exist under 19.1(x) it must continue for 30 days after a notice from QRail of the default. The proposed SAA is not as prescriptive and seeks to address what isn't listed in both 12.1(a)(iii)(B) and 13.1(a). It is Aurizon's view that the current SAA provides greater certainty to Operators of what circumstances might lead to suspension together with a reasonableness in relation to what is "material". In addition, there are a number of circumstances where the current SAA acknowledges that the trigger for suspension is whether the default results in another Operators entitlements being adversely affected or has caused an increased risk to the safety of any person or material risk to property. It is Aurizon's view that the Suspension (and Termination) clause should more clearly denote what would be considered a material breach resulting in suspension (or subsequently</p>	<p>Previous concerns not addressed by QRail.</p> <p>Include clause that QRail must first exercise its rights under suspension prior to exercising its rights of termination. Prescribe the circumstances that will lead to "material default".</p> <p>Limit QRail's predictive ability to breach of safety considerations only.</p> <p>Include ability by Operator to make a claim against QRail if rationale for suspension is not reasonable.</p>

Item	Issue	Clauses	Has QRail changed from 2012 DAU	Description	Suggested Resolution
				<p>termination).</p> <p>By including that a right of suspension is available where it is QRail's opinion that an Operator will, or intends to fail, to comply with the circumstances outlined in 12.1(a)(iii), the proposed SAA provides QRail with an almost unfettered right to suspend the Operator's rights under the access agreement. This is unacceptable, the predictive ability of QRail resulting in suspension should be limited to safety considerations.</p> <p>As per previously, in the event the rationale for suspending the Operator's rights are not reasonable, the Operator should be able to make a Claim against QRail that includes Consequential Loss.</p>	
43	Termination by QRail	13	No	<p>The current SAA provides that terminating events are generally an escalation of the events that result in suspension. For example, under the current SAA, if a default in payment continues for 7 days it creates a right of suspension whereas the default must continue for 30 days before it is a terminating event<sup>24</sup>. The proposed SAA does not differentiate between suspension and terminating events.</p> <p>QRail ceasing to hold the Sublease or any other Land Tenure would be a material default, impacting on QRail's ability to perform or comply with this agreement and as such in the event of this occurring the Operator should have the right to terminate, not QRail. See also discussion in relation to clause 25.18.</p>	<p>Previous concerns not addressed by QRail.</p> <p>Differentiate between material events that give rise to suspension and those that give rise to termination. Include clause that QRail must first exercise its rights under suspension prior to exercising its rights of termination. Delete 13.1(d) and add to 13.2</p>
44	Termination by the Operator	13.2	No	<p>The proposed SAA has removed the grounds for termination by the Operator in the event of cancellation of QRail's accreditation (clause 20.2(b) current SAA). Clause 13.2(c) adds a further condition to what is in the current SAA by limiting the Operator's right to terminate if QRail fails to perform under the agreement only in circumstances where QRail's liability is not limited or excluded or where it is not otherwise liable.</p>	<p>Previous concerns not addressed by QRail.</p> <p>Restore the accreditation grounds for termination. Delete clause 13.2(c) from "other than where this agreement ...".</p>
45	Remedy	13.3	No	<p>In order to reduce the potential for dispute, Aurizon would favour amendments to clause 13.3(a) that specify the minimum reasonable periods, unless otherwise agreed, to remedy the event.</p>	<p>Previous concerns not addressed by QRail.</p> <p>Insert specific timeframes rather than "reasonable period" in</p>

<sup>24</sup> Queensland Rail, "2008 Undertaking, Operator Access Agreement Coal", [www.queenslandrail.com.au](http://www.queenslandrail.com.au), cl 19.1 and 20.1

Item	Issue	Clauses	Has QRail changed from 2012 DAU	Description	Suggested Resolution
				13.3 (b) limits compensation payable by QRail to any limits and exclusions of liability under this agreement. In addition QRail have removed the clause that states termination does not prejudice a party's right to make a Claim or recover damages or avail itself of other remedies under this Agreement or at Law. Aurizon believe a more balanced approach is to delete 13.3(b) and replace with 20.4(a)(i) from the current agreement.	clause 13.3(a)(i) Delete 13.3(b) Reinstate 20.4(a)(i) from current agreement.
46	Termination for Change in Control	13.4	Accepted	Previously did not include an exception for shares and publicly listed company.	Definition of 'Change in Control' made to reflect this request as per 21.2(d) of previous SAA – no issue with amendment.
47	Obligations and other rights upon termination or expiration	13.5	No	13.5(b) is effectively a survival clause and has already been included in clause 25.14.	Previous concerns not addressed by QRail.  Delete 13.5(b) and refer to the survival provisions in clause 25.14 (which already includes a reference to clause 13.5).
47a	Removal of Rolling Stock following termination	13.6(c)	Partial	QRail has amended this clause by deleting 'obstruction', so that it states 'in relation to any damage'	No issue with amendments
48	Insurance	14.1(c), 14.3 and 14.8	Partial	QRail have included provisions that require operators to enter into a co-insured agreement with QRail. It is Aurizon's view that it is more appropriate for Operators to obtain insurance noting QRail's interest as an interested party only. Aurizon notes that clauses 14.3(a)-(c) would not be required for a co-insured agreement.	Aurizon accepts the reference to "Queensland Rail" being deleted from clause 14.1(c)(i) and clauses 14.3(a) to (c) as previously drafted have also been deleted as per the suggestion.
49	Insurable pollution damage	14.1(c)(iii) A	No	For pollution damage to be an insurable event, it must be both (a) sudden and accidental and (b) must result in personal injury or property damage.	Previous concerns not addressed by QRail.  Delete the words "without limitation" in (iii) and in the footnote Amend 14.1(c)(iii)(A)(2) to read "injury (including death) to any person arising out of or in connection with the Operator's operations and activities on the Network". Delete (B) Delete 14.1(c)(iii)(B)
50	Requirements in relation to co-insurance	14.1(c)(iv) and 14.1(d)(iii)	No	The requirement for a maximum deductible for any one claim of \$500,000 impacts on an Operator's ability to organise its insurance programs. The Operator's deductible may change during the term of the access agreement and the Operator's insurer may dictate the relevant deductible	Previous concerns not addressed by QRail. Delete 14.1(c)(iv) and 14.1(d)(iii)

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51	Other Insurances	14.1(e)	No	This clause as currently drafted is too broad.	<p>Previous concerns not addressed by QRail.</p> <p>Amend (e) to read “all other insurances that the Operator or the Operator’s agents, consultants, contractors and their sub-contractors are required by Law to hold.”</p>
51a	Insurer	14.2	New	This was not an issue raised in Aurizon’s initial submissions. QRail have amended the clause to delete the requirement that the insurer is licensed to carry on an insurance business within Australia.	Aurizon has no issue with this as it is consistent with practice and reflect the likelihood that Aurizon may hold insurance with an “international” insurance company
51b	Essential terms and conditions	14.3	Partial	<p>Although Aurizon has no concerns with the new clause 14.3(a), it does not agree with the proposed new clause 14.3(b). Insurance policies will always have exclusions. It is not for another party to determine what the acceptable exclusions etc are for insurance, provided it is consistent with industry standard.</p> <p>It is unreasonable for QRail to expect that Aurizon would provide details of the wording of its insurance policies beyond QRail’s interests being noted in that policy.</p>	<p>Suggested amended wording of this clause:  <i>“Insurance cover should be on commercially reasonable terms (including quantum) commensurate with the insurance that a prudent operator in the position of the Operator would be expected to take out, having regard to the state of the existing insurance market”</i></p>
52	Certificates of Currency	14.6(a)	No	It is not standard practice for copies of insurances to be provided. It is more usual to provide certificates of currency.	<p>Previous concerns not addressed by QRail.</p> <p>Delete “copies of insurances” and replace with “certificates of currency”</p>
53	Security	15	No	<p>The existing agreement contemplates that a security deposit is not delivered to QRail at the commencement of the contract but gives QRail the ability to require the operator to produce the security in defined circumstances. The requirement proposed by QRail is for security to be provided prior to the commencement of the contract with the ability for QRail to increase the amount of the security during the term of the contract. This creates uncertainty as to total cost of the contract in providing security over the term. Clarification should be provided with regard to when a security would be required by QRail.</p> <p>Previous concerns not addressed by QRail.</p>	Reintroduce clauses similar to existing 2.4(a) and (e). QRail to clarify when a security is required.

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54	Return of Security on Expiry	15.1(b)(D) ; 15.4(a)	No	It is Aurizon's view that the security should have an expiry date, and that the term of the security should align to the term of the Agreement. In addition, the security should be returned as soon as practicable on expiry of the agreement.  Previous concerns not addressed by QRail.	Security should expire at the end of the agreement. Security should be returned as soon as practicable on expiry of the agreement.
55	Interest payable on Cash Security	15.1(b)(i)	Accepted	If a cash deposit is provided as security there is no obligation on QRail to pay interest.	As QRail has removed cash deposit as a form of Security, Aurizon considers this to be a reasonable amendment.  Include obligation on QRail to pay interest at a defined rate.
56	Bank Guarantee	15.1(b)(ii)(B)	No	Rather than a credit rating of "A" or better by Standard & Poor's, the bank guarantee should be issued by an Australian Institution that has an investment grade credit rating.	Previous concerns not addressed by QRail.  Amend 15.1(b)(ii)(B) to reflect that the bank guarantee is issued by an Australian Institution that has an investment grade credit rating.
57	Review of Security by Operator	15.3	No	Operator has no right of review of Security during the term of the agreement	Previous concerns not addressed by QRail.  Include right of operator to request a review of the security.
58	Increasing Security	15.3(a)	Partial	QRail have the right to increase Security during the term of the agreement, creating uncertainty regarding the total contract cost. Aurizon would argue the credit risk this clause seeks to address is already mitigated by the right to suspend the agreement under a number of circumstances.	Although QRail has added a requirement to act reasonably in determining the amount of the security, Aurizon does not consider that it adequately addresses the concerns raised.  Remove QRail right to increase Security during the term of agreement.
59	Time to deliver replacement Security	15.3(b)	Accepted	QRail have reduced the timeframe to deliver a replacement security to 5 business days. It is Aurizon's view that the requirement to deliver replacement Security within 14 days is a more reasonable timeframe.	Aurizon is satisfied with the change that has been made to this clause. Revert to 14 days or 10 business days.
60	Adjustment for Changes – Reference Tariff	16.1	No	Clause 5, Schedule A of the Undertaking provides for the variation of Reference Tariffs. In the AU1 and the SAA the definitions of Endorsed Variation Event and Review Event have changed. It is Aurizon's view that the provisions in relation to the variation of the West Moreton Reference Tariff should be amended as part of a full review under 3.4.2(b) of the Undertaking and therefore	Revert to the previous definition of Endorsed Variation Event and Review Event.  No changes to clause and will need to be considered as part of AU1 review.

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				any changes to address price risk should be rejected at this time.	
60a	Relationship to clause 2.1 of Schedule 3	16.2	New	Aurizon notes the addition of this clause. However, the intention of the clause is unclear. Aurizon assumes it is for the benefit of both parties.	Aurizon requests clarification of the intention of this clause.
61	Adjustment for Material Change	16.2 Renumbered 16.3	Partial re days No	<p>QR have proposed that the parties need to meet and agree within 5 business days of Queensland Rail providing notice before then reverting to the dispute resolution mechanism. Aurizon would argue having to meet by and agree on the same day does not provide an opportunity to negotiate in good faith as is required by the clause. As such, Aurizon sees benefit in the parties meeting within 5 days but believes additional time should be provided in order to negotiate and considers 20 business days from the time of notice reasonable.</p> <p>In order for the parties to meet and negotiate adjustments it is appropriate that Operators are given full details of the Material Change including:</p> <p>the circumstances that give rise to the Material Change and impact on QRail</p> <p>the amount by which the Access Charge will be varied the methodology, data and assumptions used to vary the access charge</p> <p>include information regarding the pricing limits in the Undertaking</p> <p>Under cl 16.2(b) "If a Material Change occurs, then Queensland Rail may notify the Operator giving details of the Net Financial Effect of that Material Change." It is Aurizon's view that any Material Changes should reflect the direct "efficient" costs of providing the services rather than a general impact on QRail as reflected in the current definition of Net Financial Effect.</p> <p>The definition of Material Change has been amended to include an "Impost Change, a "Change in Law", or a "Change to Credit".</p> <p>Change in Impost appears to align with the previous definition of Change in Relevant Taxes.</p> <p>"Change in law" where previously "Change in Law" only referred to changes in Law it now includes an amendment to or replacement of the Access Undertaking. Aurizon believes this is unacceptable, as it</p>	<p>Aurizon notes the change in clause 16.3(d) from 5 to 15 business days and considers this to be reasonable. However, QRail has not addressed the other issues raised.</p> <p>Require the notification regarding the Net Financial Effect of the Material Change to include: the circumstances that give rise to the Material Change and impact on QRail the amount by which the Access Charge will be varied the methodology, data and assumptions used to vary the access charge include information regarding the pricing limits in the Undertaking Allow 20 business days to reach agreement on Net Financial Effect. 16.2(b) amended to reflect material change in direct efficient costs of providing the services under the Agreement. Include that the Net Financial Effect of Material Changes should reflect the direct "efficient" costs of providing the services under this agreement. Remove (g) and (h) from the definition of Change in Law Provide process by which Access Seekers are provided transparency on the cost allocation methodology to ensure costs applicable to QRail as a railway operator will be incorporated in evaluation of Material Change. In addition to ensure Operator's understand what risk is imposed by this clause, provide examples of circumstances when it would apply. Delete (b) from definition of "Change in Credit".</p>

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				<p>assumes there is some uncertainty with regard to the terms and conditions of the Undertaking. This is distinct from changes between undertakings as a result of a new regulatory period which should be dealt with if and when those changes are approved/ endorsed by the Regulator as transitional arrangements.</p> <p>“Change in law” also includes a change in the application or interpretation of the Access Undertaking resulting from a decision of a court or other Authority. It is unreasonable to impose this regulatory risk on Operators given they have no control over QRail’s interpretation of their own Undertaking. It is up to QRail to ensure the Undertaking is sufficiently clear and workable.</p> <p>“Change in Credit” is a new term and includes changes to “fuel tax credit” and “diesel fuel rebate”, Aurizon would expect that changes to these items would more likely have a material affect on QRail as a Railway Operator than QRail as a Railway Manager. Certainty is required by Railway Operators that the costs of access reflect those costs attributable to QRail as a railway manager and not those attributable to QRail as a railway operator. In addition, “Change in Credit” also includes the situation where any changes to the Transport Service Contracts (TSC) may result in increases to Access Charges. This is a new and unreasonable requirement. QRail is responsible for the negotiation of the TSC and Operators should not bear the risk of issues such as forecasting error or changes in Government expectations with regard to the cost of delivering contracted services. It is reasonable to expect that any change in Government Policy in relation to the support of the Network will take into consideration the impact on the ability of QRail to deliver those services and provide for transitional arrangements in order to provide contractual certainty for Operators.</p>	
62	Dispute Resolution	17	No	<p>General comments: The proposed agreement has removed the requirement to go to the Loss Adjustor<sup>25</sup>. The Loss Adjustor independently assesses the value of the loss and is</p>	<p>Restore the Loss Adjuster clause from the existing SAA. Introduce materiality thresholds in relation to resolution by expert or court.</p>

<sup>25</sup> Queensland Rail, “2008 Undertaking, Standard Operator Access Agreement Coal” [www.queenslandrail.com.au](http://www.queenslandrail.com.au), clause 14.8



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				integral to the claims process. The Loss Adjustor clause in the current SAA should be reinstated. In order to provide some guidance on the circumstances when it is appropriate for a dispute to go to expert versus, determination by court, Aurizon believes there may be some value in introducing materiality thresholds.	Previous concerns not addressed by QRail.
63	Resolution by escalation	17.2	No	QRail has introduced a 3 step “informal” escalation process. Whilst Aurizon does not disagree in principle with the inclusion of this escalation process, we do note that the effect of this clause may be either the duplication of steps completed prior to formal notification of a dispute, or to increase the number of “formal” disputes in order to avoid that duplication.	Previous concerns not addressed by QRail.
64	Resolution of Disputes by Queensland Rail	17.5	No	This clause gives QRail (acting reasonably) the power to determine any dispute to which the provision applies after considering matters raised by the Operator. Therefore, providing QRail with the power to determine the dispute means the provision lacks independence with respect to dispute resolution.	Delete this clause.  Previous concerns not addressed by QRail.
65	Force Majeure Event Occurrence	18.1	No	Under the drafting of this clause, whilst the party has an obligation to use reasonable endeavours to remove the effect of the Force Majeure (FM) Event there is no requirement to identify in the FM Notice details of those actions. In addition it is only the duty of the Affected Party to use reasonable endeavours to mitigate the affect of the FM event. This should be a mutual obligation. There should be a requirement on the Affected Party to notify the other party that the period of FM has ended and the Affected Party is able to resume full performance of their obligations under the Access Agreement. Prior to termination as a result of the FM, there should be an obligation on the parties to meet to identify alternative viable means to provide the suspended access rights.	The effect of the FM event should be based on obligation “ <i>under each Access Agreement</i> ” The FM notice should provide <i>full</i> details of the nature of event, impact and detail of actions taken to remove the effect of the FM event. Notification of the FM event should be “as soon as the Affected Party becomes aware”. Include a mutual duty to mitigate. The Affected Party should be required to issue a notice of when the suspension has ended and the full performance of obligations under the agreement will recommence.  Previous concerns not addressed by QRail.
66	Loss or Damage to Network	18.1(d)	Partial	It should be clarified the circumstances in which QRail would not be prepared to finance the cost of repairing damage as a result of the FM event. For example under the current SAA, “ <i>cost of repairing is not economic on the basis of the then and committed future utilisation</i> ” <sup>26</sup> In	Amend the clause to clarify the test to be met in relation to the repair or replacement as a result of the FM event. Include obligation to use reasonable endeavours to seek Government funding either through the TSC or disaster relief funding.

<sup>26</sup> Queensland Rail, “2008 Undertaking, Standard Operator Access Agreement Coal”, [www.queenslandrail.com.au](http://www.queenslandrail.com.au), cl 18.5(a)

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				<p>addition, given QRail is a GOC and the nature of State Government support in relation to regional economies, prior to any notifications to Access Holders regarding the financing of repairs, QRail should be obligated to use reasonable endeavours to obtain the required financing via Government funding or Disaster relief funding. In order to ensure the repairs are “fit for purpose” there should be an opportunity for all relevant Operators to be consulted on the repairs and to contribute to the cost. To assist in that consultation process, it should be required that the expenditure will meet the prudence of scope, standard of works and cost tests. In relation to 18.1(d)(iii) the agreement to proceed with the repair should be based on reasonable terms and conditions.</p>	Amend clause 18.1(d)(iii) to reflect that the terms should be reasonable.
67	Force Majeure Termination	18.2	No	No consultation for identifying alternative to termination nor period during which alternative can be identified	<p>Previous concerns not addressed by QRail.</p> <p>Aurizon would propose 30 day period to identify alternative to termination. Force Majeure definition (g) to remove accident or accidental damage to any thing Force Majeure Definition (l) to remove reference to severe weather conditions Force Majeure Definition (m) to be removed</p>
68	Reduction in Access Rights	19.1	Partial	<p>If Operator fails to operate a Train Service for 7/12 occasions, QRail may give a notice to the Operator deleting the relevant Train Path from the Operator’s Train Service Description. The purpose of this clause is to ensure the efficient use of the network and prevent the hoarding of access rights. The activation of this clause should leave QRail indifferent to the result. That is QRail is incentivised to act against hoarding where there is a demand for the access rights and not to make a commercial gain. In order to meet the intent, QRail should have to demonstrate there is a demand for the access rights in question and the Operator should have an opportunity to demonstrate that it has a legitimate demand for the access rights. If the paths are resumed the Operator should not have to pay any relinquishment fee.</p>	<p>Include process for Operator to show there is reasonable demand. Include process for QRail to demonstrate there is an alternative demand for the access rights. Exclude payment of relinquishment fee or any other fee on reduction of access rights.</p> <p>Aurizon considers the amendments to the reduction test to be reasonable. However, previous concerns have not addressed by QRail.</p>
69	Relinquishment	19.2	No	The Operator has an opportunity to relinquish access	Include a provision for prorata of partial relinquishment of

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	and Transfer of Access Rights			<p>rights providing it pays a Relinquishment Fee. There is a requirement to clarify that the Relinquishment Fee is a pro rata of the part of access rights being relinquished.</p> <p>The Relinquishment Fee is the Present Value of the aggregate Take or Pay charges until the end of the Term of the contract, using the WACC as the discount rate. If the remainder of the term is to be used for the calculation of the Relinquishment Fee, then there should be an obligation on QRail to refund on a pro rata basis, that part of the Relinquishment Fee relating to use by an Access Seeker over the same period until "the end of the Term".</p>	<p>access rights. In addition, there should be a reduction in the Relinquishment Fee (on a pro rata basis) if within the period to the end of the term those access rights have been provided to another access seeker/operator.</p> <p>Previous concerns not addressed by QRail.</p>
70	Representations and Warranties	21	Partial (refer below)	<p>The representations and warranties as presented by QRail are in QRail's favour only. It is Aurizon's view that as a matter of balance there should be mutual representations and warranties, and in addition to those matters already addressed each party should warrant it has and will maintain Accreditation. In line with QRail's base obligation, it should warrant that it is entitled to grant access to the Operator. In relation to the matters included at:</p> <p>(viii) It is Aurizon's view that it is QRail's obligation to warrant that the standard of the Network is suitable for the purposes of Train Services and that the Rollingstock will safely interface with the Network, providing the Operator complies with the Rollingstock Interface Standard. This is the railway manager's core expertise. As currently proposed, whilst the railway manager has the expertise and control regarding the standard of infrastructure, QRail have sought to contract out of this obligation and place the risk of the standard of infrastructure on the Operator.</p> <p>(ix) Operator has to warrant that all information it provides to QRail is correct. Each party should be able to rely on the information provided to them, as such Aurizon would argue this should be a mutual obligation. See further comment in clause 6.6, where QRail have sought to specifically exclude any obligations regarding the ability of the Operator to rely on the data supplied by QRail.</p>	<p>Representations and warranties should be mutual and clause 21(a)(viii) should be amended to be a warranty by QRail.</p>

Item	Issue	Clauses	Has QRail changed from 2012 DAU	Description	Suggested Resolution
				Previous concerns not addressed by QRail.	
70a	Representations and Warranties	21(c) and (d)	New	Aurizon considers the reimbursement of costs to QRail to attend an inspection of the Network to be unreasonable.	Replace with clause 6.3 of current SAA.
71	Confidentiality	22	Partial	Aurizon believes that the definition of confidential information would be enhanced by including examples such as those included in the ARTC Indicative Access Agreement <sup>27</sup> . This would then clarify the need for confidentiality exceptions in relation to Train Control Directions and to clear an incident.	Clarify the requirement for Train Control Directions and to clear an incident by more clearly defining what is "Confidential Information".  Aurizon considers the inclusion of (xii) to the definition of 'Confidentiality Exception' satisfies this concern. However, Aurizon does not agree with the definition extending to include 'feedback to unsuccessful access applicants' pursuant to new (xiii) in the definition.
72	Representatives of the Operator	23.6	No	For clarity, it should be included in the Access Agreement all nominated representatives (both QRail and the Operator) including those required under the Operator Requirements Manual. In addition the requirement to update nominated representatives should be as soon as practicable.	Include nomination of all (QRail and Operator) representatives and any changes to be notified as soon as practicable.  Previous concerns not addressed by QRail.
73	Entire understanding	25.11	No	No reference to schedules and other documents referred to in schedules as there is under clause 22.4 of the Current SAA.	Include reference to schedules and other relevant documents and parts of the agreement as constituting the entire agreement . Previous concerns not addressed by QRail.
73a	Benefit	25.15	Yes	'Enurement' change to 'Benefit' 'enure' replaced with 'continue' after 'The provisions of this agreement will, subject as otherwise provided in this agreement'	Accepted
74	Sublease	25.18	No	This clause is much broader than clause 22.18 (Ownership of Land) in the current SAA, and provides that the agreement is subject to the terms of the sublease and any other land tenure. Aurizon does not understand the rationale for the change in this obligation.	Clarify the rationale for extending the obligations around Ownership of Land to the Sublease. Previous concerns not addressed by QRail.
75	Intellectual property		NO	QRail have removed the provisions in relation to Intellectual Property. The rights of both parties in relation	Reinstate the clause on Intellectual Property. Previous concerns not addressed by QRail.

<sup>27</sup> ARTC, "Indicative Access Agreement, 15 July 2008", [www.ARTC.com.au](http://www.ARTC.com.au), ARTC, 2008, cl. 18

Item	Issue	Clauses	Has QRail changed from 2012 DAU	Description	Suggested Resolution
				to Intellectual Property must be protected.	
76	Interpretation not to disadvantage a Party		No	This clause, in the current SAA, provides some protection to Operator's that the interpretation of the agreement will not favour QRail on the basis that it was written by QRail.	Reinstate clause. Previous concerns not addressed by QRail.
77	Most Favoured Nation Status		No	QRail have removed the Most Favoured Nation clause which gave force to the rights in relation to the pricing principles in the Undertaking once an agreement has been executed. This clause should be reinstated.	Reinstate Most Favoured Nation clause. Previous concerns not addressed by QRail.
A	Definitions: Change in Control	26.1	Changed	Amended definition	No Issue
B	Definition: Consequential loss	26.1	Changed	Amended definition  <i>(e)(i) replaced 'of' with 'owned or leased by' after 'the cost of repairing, replacing or reinstating any real or personal property ...'</i>	No issue
C	Definition: Interest Rate	26.1	Changed	Amended definition	No Issue
D	Definition: Limitation amount	26.1	Deleted	Deleted	Linked to deletion of Limits on Liability. Aurizon has no issue with the deletion.
E	Definition: Metropolitan Region	26.1	New	New definition	Aurizon has no issue with this.
F	Definition: Operating Requirements Manual	26.1	Changed	Amended definition	Refer to section 5.4 Replaced 'means the practice, standards, systems, protocols, requirements, rules, policies and other information in relation to or in connection with Train Control and the access to and use of the Network by the Rail Transport Operators (including interface management and coordination requirements, safeworking procedures, safety standards, emergency and investigation procedures, requirements for the management of Network Incidents and environmental requirements) as published from time to time by QRail with 'has the meaning given in the Access Undertaking, provided that on and from the date of clauses 6.8(b) to (e) commence in accordance with clause 6.8(a) the term means the 'Operating Requirements Manual' as defined under the Access Undertaking as at that date as amended from time to time by QRail under clause 6.8'

Item	Issue	Clauses	Has QRail changed from 2012 DAU	Description	Suggested Resolution
H	Definition: Present Value	26.1	Changed	Amended definition	Aurizon has no issue with the amendment. (added) 'Weighted Average Cost of Capital' after 'means the present value calculated at a discount rate equal to the ...'
I	Definition: Queensland Rail Cause	26.1	Changed	Amended definition	Refer to item 5.
K	Gross tonnes kilometres GTK	Schedule 3 CI 5.2	New	Empty wagon to be treated as loaded wagons on a loaded service. Present position is that partly loaded or loaded wagons are charged as loaded wagon. Empty wagons are charged at TARE weight. This amendment may potentially discourage on time departure. QRail already receives suitable revenue under the fixed component of the access tariff for opportunity cost.	Aurizon considers it reasonable to revert to the position under the 2008 SAA, so that billing on loaded services is limited to partly loaded or loaded wagons. (notwithstanding TARE weight)

## 7 Operating Requirements Manual and Associated Documents in detail

Item	Issue	Clauses	Description	Suggested Resolution
<b>Access Application</b>				
1.	General Comment - Use of QR National on the cover page		The disclaimer on the front cover of the document refers to QR National Network.	Change to Aurizon Network
<b>IRMP</b>				
2.	IRMP Template		<p>The IRMP needs to be flexible enough to address the different risk management processes of different organisations.</p> <p>Aurizon understands from QRail that the contents of the IRMP are for guidance only and do not represent a base position. This should be clarified.</p>	Include in the Operating Requirements Manual at clause 2.1 that the IRMP template provided on QRail's website is a guide and will be amended to the risk management process of each party. The content of the IRMP template is illustrative only and will be completed during the interface risk assessment.
<b>Operating Plan</b>				
3.			Aurizon has no comment to make on the operating plan.	
<b>Operating Requirements Manual</b>				
4.	General Comment		<p>Throughout the document there are various references to "relevant" standards and regulations.</p> <p>Aurizon also notes that there are several places where QRail have a right to provide directions to operators. Those directions should be required to be "reasonable" directions.</p>	<p>Aurizon believes the document should clearly identify the actual standards that are considered "relevant" .</p> <p>Review the document for when the use of "reasonable" is appropriate.</p>
5.	General Comment - The manual does not	1	The Operating Requirements Manual states (p.3) that operators are able access the current version of the ORM on	Aurizon sees this as a reasonable position, however alternative methods to accessing information other than via



Item	Issue	Clauses	Description	Suggested Resolution
	include alternative arrangements to access upgraded documents if the website is not working or not accessible by the operator.	6.2.4 6.5 6.6	<p>QRail's website and that QRail acknowledges their obligation to provide relevant documentation upon request (i.e. Standards).</p> <p>QR has included internet access addresses as the means by which operators can gain access to its radio frequency maps. Aurizon recognises that is the most efficient way to make this type of information available, however it cannot guarantee that this method will be available at all times.</p>	the website should be addressed in the ORM to ensure parties have access at all times.
6.	Contents of an IRMP	2.1	In the first and last paragraph, 'typically' is used to describe what is included in an IRMP and when an IRMP will be developed.	Typically should be "include".
7.	Noise - Interface Risk Management Process - Risks to the Environment	2.2(b)(i)(D) & 2.3 (b)	<p>Aurizon has concerns that the ORM notes applicable noise levels or limits without reference to the laws or authorisations that are applicable in determining the levels or limits.</p> <p>In addition, Aurizon has significant concerns regarding the lack of acknowledgement of the dual responsibility between operator and track owner with regard to the mitigation of noise, the cumulative nature of activities contributing to noise issues, the lack of baseline studies by QRail. There is also no distinction between areas of high noise concerns such as urban corridors with high track curvature and steep gradients with non built up areas. Also there is no reflection of QRail obligations as the Railway Manager and no transparency to the Operator regarding their potential exposure to risk relative to the negotiated position between QRail and the Qld Government in relation to the Transport Services Contract, particularly in relation to the Metropolitan and North Coast Lines.</p>	<p>Aurizon believes that QRail needs to specify what determines the applicable levels and limits.</p> <p>More balanced approach with regard to noise mitigation be included in the operator requirements manual.</p>
8.	Interface Risk Management Process - Types of Products to be Transported	2.2(b)(ii)(B)	Aurizon considers, particularly when transporting containerised traffic, the descriptions of the products being transported may be very broad.	The level of prescription in relation to the product being transported needs to be flexible depending on the type of traffic. For containerised traffic for example, what is reasonably able to be provided will vary and it would seem what would be of particular concern to QRail is if the product being transported is a dangerous good for the purposes of the Dangerous Goods Act' and what class of dangerous good.
9.	Interface Risk Management Process -	2.2(b)(ii)(D)	Information regarding the location of waterways.	Information regarding the location of waterways should be provided by QRail relative to their role as the manager of the rail corridor.

Item	Issue	Clauses	Description	Suggested Resolution
	Types of Products to be Transported			Aurizon has made other comments relating to this subject in relation to Clause 7(a) of the SAA.
10.	Interface Risk Management Process - Anticipated Environmental Impact	2.2(b)(ii)(E)	Aurizon believes that the obligation on the Operator is to comply with required environmental standards and legislation. QRail should clarify if this information request is for the Operator to provide information regarding the potential environmental impact in the event of an incident.	QRail to clarify as to how the information required is materially different from the requirement to provide information regarding the details of any additional hazards, risks and non-compliances as required under (2.2(b)(ii)(A)).
11.	Interface Risk Management Process - Any information relating to anything in this section	2.2(b)(ii)(G)	Aurizon considers this to be too broad. This requirement should target specific information to make any requests transparent to the operator.	Clarify the specific information required in relation to incident and emergency response for the purpose of the development of the IRMP.
12.	Risks to the environment - Lack of clear mutual obligations related to management of risks to the environment	2.3 (g)(iv) (B)	<p>Aurizon considers that under this clause there is no obligation on QRail to collate further baseline data where absent.</p> <p>QRail states that where it has baseline data available it may provide the baseline data to the Operator and if no further baseline monitoring is undertaken by the Operator, its baseline data will be taken to be accurate baseline data. QRail also states that to the extent that no baseline data is available, QRail will be taken to currently meet all environmental standards for the purpose of determining cause of any future environmental affects.</p> <p>Aurizon considers this to be unreasonable as environmental management is a mutual obligation and the management of the base obligations should be as per each parties legislative requirements.</p> <p>Aurizon is of the view that operators will be exposed, to QRail potentially claiming any additional service or change to operation could cause additional environmental harm and require that operator to bear the cost of that environmental harm or obligation. Without any assessment of whether there is actually a breach of requirements. It is reasonable that QRail should be required to undertake a study that is focused on assessing whether there is a material concern and the cause of that concern.</p>	Aurizon believes that QRail needs to undertake baseline assessments when a problem is identified. In all cases there should be a mutual obligation to mitigate and minimise environmental harm. Responses to environmental risk problems need to be jointly managed solutions taking into consideration long term cost and the Net Present Value of the risk.

Item	Issue	Clauses	Description	Suggested Resolution
			Noise standards are currently in place and there would be significant cost imposed on the rail industry which will affect the competitiveness in a number of markets were those standards amended. Given the significant implication and the joint nature of the cause of the problem (Operator and RIM) the solution needs to be developed as part of a rail industry solution. Notwithstanding this, QRail has significant obligations as a RIM to manage their Network.	
13.	En Route Locomotive Provisioning	3.5	<p>QRail states that Operators must ensure that no en route locomotive provisioning occurs in respect of the Operator's Trains except as otherwise agreed between Queensland Rail and the Operator.</p> <p>Aurizon understands that provisioning on a mainline can cause capacity loss and can lower the efficiency of the rail network. However on mainlines that have low traffic volumes and provisioning will not result in capacity loss issues, this should be negotiable.</p>	Aurizon considers that QRail must not unreasonably withhold agreement to en route locomotive provisioning.
14.	Competence of Workers - Notification of worker identification and competencies	3.6(b)	<p>Aurizon agrees that operators must ensure that each of their associates must hold and maintain all qualifications, accreditations and competencies required under any Law or under an IRMP in relation to any entry on any railway corridor managed or controlled by QRail.</p> <p>That being said, there is no transparency of the purpose for the requirement to provide a list of names and position titles for all of the Operator's Associates who enter the railway corridor. If it is to assess competency of workers, it is the operator's obligation to ensure workers have undertaken appropriate training. Assurance to QRail would be provided via the Operator's accreditation requirements and can be demonstrated in the course of an audit if required. A general obligation is therefore not required.</p>	Clarification of the intent of this clause.
15.	Incident / Emergency Management	4.1(b)(iv)	Current legislative requirement for reporting is for within 24 hours. In addition this provision does not clarify who has responsibility to notify Environment Authority and who is responsible for any clean up.	QRail should redraft this requirement to clearly define reporting and clean up responsibilities.
16.				

Item	Issue	Clauses	Description	Suggested Resolution
	Incident / Emergency Management – Central Register	4.1(b)(vi)	QRail requirements for all incidents and all measures taken in response to incidents to be recorded on a central register. This appears to be a means for QRail to transfer reporting obligations to operators	Delete clause.
17.	Incident / Emergency Response	4.2	Aurizon observes that QRail's emergency procedures include minimal reference to environmental management associated with emergencies and incidents.	Clarify QRail's obligations for the overall coordination and management of an incident in relation to the reporting to regulators and management of environment incidents.
18.	Incident / Emergency Response - Compliance with QRail direction	4.2 (a)	An operator should only be required to comply with 'reasonable' directions given by QRail, as an operator should be able to question a direction if they consider that there are additional safety or other risk factors that need to be taken into consideration.	Amend wording such that "the Operator must comply with all reasonable directions given by Queensland Rail during the Recovery and Restoration".
19.	Incident and Emergency Response - Assistance in Investigations	4.3	Aurizon agrees with this requirement however it believes that any assistance to be provided should be reciprocal. In addition, it believes that copies of any draft reports should be provided to all parties for comment prior to the investigation being finalised.	Amend clause to reflect that where an operator conducts an investigation, QRail will provide reasonable assistance and that draft reports will be provided to the assisting party for comment prior to finalisation.
20.	Operations Requirements - Operator's Controller	6.2.1	Operators have 24 hour control centres. The requirements at 6.2.1 do not appear to reflect this. For example it is not necessary to provide the name and position in the circumstance where there is a 24 hour operations centre.	Include an alternative clause to (a) where if the operator has a 24 hour control centre,
21.	Operations Requirements - Consultation between Queensland Rail Train Controller and the Operator's Train crew	6.2.2	The information sought by QRail in this section appears to go well past what is required in a high level Operation Manual. The obligation on operators is to comply with scheduled run times, scheduled entry and exits to the network and to manage their train crew in order to achieve these obligations.	The base provision to be included here is that Train Control and the Operator's Controllers must communicate to achieve the scheduled train plan. It is of particular concern that these communication protocols do not allow for exceptions associated with emergency situations or in the event that the operators controller and train crew cannot contact each other
22.	Operator Requirements - Procedures for entering and exiting the Network differs from current SAA	6.2.3(d)	Observation of exit and entry procedures for yards provided to the operator by QRail from time to time. Under schedule 10 of the current SAA, Operators have the ability to negotiate those procedures which this clause does not provide.	Under the current Access Agreement the Operator's controller is required to advise the QRail Network Train Controller of the anticipated departure time of the Operator's Train at least two (2) hours before the scheduled departure time of the Train or when reasonably requested by the QR Network Train Controller. This approach allows the Operator and QRail to utilise available network capacity in a flexible manner that encourages optimal use of the rail

Item	Issue	Clauses	Description	Suggested Resolution
				network. Aurizon believes that this operating parameter should remain as it currently stands and that localised daily operational variations should be permitted between QRail and the operators in the day of operations environment as the current Access Agreement allows for.
23.	Operator's notifications to Queensland Rail Train Controller - The operator is required to enter information about the Train (Train List) into Queensland Rail's nominated information system in accordance with any procedures specified by Queensland Rail from time to time	6.3(b) (ii) 6.3(c) (i)	<p>QRail has proposed three additional fields for inclusion in the train list to be provided to QRail, namely the Access Agreement, the Train Route Acceptance (TRA) and the accredited operator.</p> <p>The train ID has traditionally been the information that is provided to QRail, which then links to the TRA, access agreement and accredited operator. Requiring the additional fields will require a system change with associated costs. QRail should be required to justify this new requirement on a cost benefit basis.</p> <p>Containerised freight will include a broad description of the goods being carried only.</p> <p>Out of gauge rollingstock information should be captured by the TRA/ ATT issued by QRail.</p> <p>Dangerous good information needs to reflect the class of dangerous goods.</p>	Justification for the amendment to the number of fields required in the train list should be based on a cost - benefit assessment.
24.	Safety Notices - Safety Alerts	7.2.1	Under 7.2.1, QRail only needs to give a safety notice if in QRail's opinion the incident may affect QRail or any Operator, QRail may given notice of that incident.	QRail <u>must</u> provide a safety alert of a safety incident that has or may occur that will or may affect an operator.
25.	Safety Notices - Weekly Notices	7.2.2	Operators do not require any information other than information about permanent or temporary changes to safety requirements. QRail must be obliged to provide this information and should provide it in a way that is transparent and clear.	The provision of weekly notices to QRail employees is not relevant to operators. QRail's only requirement is to provide operators with weekly notifications on a fixed day regarding permanent or temporary changes to safety requirements.
26.	Document Control Procedures - Train Notices	7.3	The proposed document control procedure does not address QRail's obligations with regard to the document controller in relation to all matters relating to the access agreement eg for the operating requirements manual and the standards and	<p>Similar Information is required regarding QRail's document controller.</p> <p>Remove reference to names.</p>

Item	Issue	Clauses	Description	Suggested Resolution
			protocols that the Operator must comply with under the access agreement. In addition names are not relevant but rather positions and contact details.	
27.	Cooperation Between Parties – Operational Meetings	7.4.1	This provision should reflect balance in terms of the key performance information that will be provided in assessing the performance issues that both the Operator and QRail have control over.	Aurizon considers that both parties should have equal obligations.
28.	Cooperation Between Parties – Contractual Meetings	7.4.2	Network have provided the position and phone contact details for the Queensland Rail representative but have required the name, position and contact details of the Operator representative.	Operators should also only be required to provide the position and contact details of its representative.
29.	Government Supported Infrastructure maps	7.5	Government Supported Infrastructure maps are out of date – still include Central Queensland Coal Network.  Government supported infrastructure should be included in the preliminary information provided by QRail in the undertaking.	Update map.  Include map as part of Preliminary information in undertaking.
30.	Glossary	9	The Glossary contains references to QR documents that have been superseded on the customer portal.	QRail needs to ensure that the documents listed in Section 9 of the ORM are current at the time of publication of the ORM, post QCA approval.
31.	Access to ORM document reference sources	10	Queensland Rail Documents Listing appears to list QR documents that are not included on the customer portal. The list also includes superseded documents.	QRail needs to ensure that the documents listed in Section 10 of the ORM are current and that the information it provides through its customer portals is kept current and up to date. Aurizon considers that it is unable to make a detailed assessment of the full scope of the ORM without full access to all of the standards and protocols that QRail has referenced throughout the document.
<b>Master Train Plan Protocols PROT-NA-PRO-001 (Version 2)</b>				
32.	Access to Train Control Diagrams	Appendix B Part B f (ii)	Train control diagrams are a key source of information used in the investigation of incidents that occur on the rail network. Aurizon considers that access to train control diagrams should not be withheld from any operator that requests them after an incident has occurred.	Aurizon believes that QRail must freely provide access to the train control diagrams upon request from an operator. Aurizon considers that it would be reasonable for QRail to redact any information that is not applicable to the requesting party.
<b>Network Business Daily Train Plan Protocols PROT-NA-PRO-002 (Version 2)</b>				
33.	Scheduling and Pathing	4.3	Alteration of Train Services in the Daily Train Plan (DTP) environment	Aurizon believes that train service alterations should not occur in the DTP environment except in the case of

Item	Issue	Clauses	Description	Suggested Resolution
			Record Speed Restrictions: QRail production planners are to record speed restrictions in Vizirail system as provided by Network Services personnel.	emergency closures. All closures should be planned outside of the 30 day environment and aligned to the Master Train Plan (MTP) which would align with agreed MTP schedules.  Aurizon agrees that QRail production planners should record speed restrictions in the Vizirail system as they are provided by QRail Network Services personnel. QRail should also advise how the restrictions are communicated to operators outside of normal work hours when noticeboards are not erected along the path of operational trains.
34.			General Comment	QRail needs to update all references to QR National to Aurizon where applicable.
<b>Rolling Stock Authorisation for the Queensland Rail Network</b>				
35.	Interface Standards - Cross referencing to standards	Section 2	Aurizon has no issue with QRail updating standards from time to time as operational and legislative requirements change. Section two of the document refers to Queensland Rail safety standard SAF/STD/0145/INF which has been superseded by Queensland Rail standard MD-10-194.	The standard needs to be updated to the current version and a notification process similar to the Access Agreement should be included in the document
36.	Authorisation - Use of QR system proprietary system names (Vizirail) and other acronyms	Section 6	Use of Queensland Rail specific terminology may be confusing to new operators.	A glossary of terms should be added as Section 9 to the document to clarify the meaning of all QRail centric terms and acronyms used throughout the document