Review of submissions on QCA draft recommendation for declaration of coal handling service at NQXT

A report for Arnold Bloch Leibler

Confidential version

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1. Introduction

1. I have been asked to prepare this report by Arnold Bloch Leibler (ABL) on behalf of QCoal Pty Ltd and Byerwen Coal Pty Ltd (together, the QCoal Users). Its context is the lay evidence and expert reports submitted to the Queensland Competition Authority (QCA) on its draft recommendation in relation to a request by the QCoal Users to declare for third party access the coal handling service (the service) supplied at North Queensland Export Terminal (NQXT or the Terminal).

2. I have prepared four previous reports in relation to the process for the QCA developing its recommendation, ie:

    a. two expert reports that were attached to the QCoal Users' request for declaration that set out the basis for my conclusion that the coal handling service supplied at NQXT satisfied the four criteria of section 76(2) of the *Queensland Competition Authority Act 1997* (QCA Act), ie:

        i. one report on criterion (a), hereafter referred to as 'my criterion (a) report'; and

        ii. one report on criteria (b) to (d), hereafter referred to as 'my criterion (b) report';[1]

    b. an expert report that responded to lay evidence and expert reports submitted by NQXT, hereafter referred to as my 'October 2025 report';[2]

    c. an expert report that responded to the QCA's draft recommendation, hereafter referred to as 'my June 2026 report'.[3]

3. This report should be read in conjunction with these four earlier reports.

4. In June 2026, the QCA received submissions from QCoal Users, NQXT and Aurizon Network on its draft recommendation not to declare for third party access the service provided at NQXT.[4]

5. In this report I respond to ABL's request to provide my opinion, within the confines of my expertise as an economist:[5]

> …on the matters raised by the June Submissions and to review and comment on the economic matters raised in the June Submissions that are relevant to the QCA's assessment of criteria (a) and (b) in section 76(2) of the QCA Act.

6. I attach a copy of ABL's letter of instructions at Annexure A.

7. ABL has also requested that in preparing my report I comply with the duties and requirements of an expert for court proceedings as set out in rules 429F of the Uniform Civil Procedure Rules 1999 (QLD) (UCPR), as if those duties and requirements applied to these instructions. Consistent with those

[1] Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criterion (a)?*, 13 June 2025; and Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criteria (b) to (d)?*, 13 June 2025.

[2] Houston, G, *Further expert report re proposed declaration of NQXT*, 21 October 2025.

[3] Houston, G, *Review of QCA draft recommendation for declaration of coal handling service at NQXT*, 12 June 2026.

[4] QCoal, *Response to NQXT draft recommendation*, 12 June 2026; NQXT, *Response to draft recommendation*, 12 June 2026; CEG, *QCA draft determination for NQXT*, 12 June 2026; Smith, M, *Supplementary statement in response to request for declaration*, 12 June 2026; and Aurizon Network, *Draft recommendation on application for declaration of coal handling services provided by the North Queensland Coal Export Terminal*, 12 June 2026.

[5] Arnold Bloch Leibler, *Instructions – Access Declaration North Queensland Export Terminal Facility*, 20 July 2026, p 1.

requirements, including the Code of conduct for experts attached at Schedule 1C of the UCPR (Experts' code of conduct), I confirm that:

a. I have read and agree to be bound by the Code of conduct for experts to the extent it imposes duties and obligations relevant to my role as an expert assisting the QCA;

b. the factual matters stated in my report are, as far as I know, true;

c. I have made all inquiries considered appropriate; and

d. that I understand my duty to the QCA and have complied with that duty.

8. Details of my relevant training, education and experience, along with my curriculum vitae, are set out in my criterion (a) and criterion (b) reports.

9. I have structured my report as follows:

a. in section 2, I respond to Dr Hird and Mr Ockerby's report, dated 12 June 2026, on the definition of the market for the service that should underpin the assessment required by criterion (b); and

b. in section 3, I comment briefly on NQXT's contentions as to the relevant counterfactual for assessing the effect of declaration, and on the relevance of available terminal and rail network capacity (and associated constraints) for the QCA's assessment of criterion (a).

2. Market definition for criterion (b)

10. In this section I respond to Dr Hird and Mr Ockerby's report, dated 12 June 2026, on the definition of the market for the service that should underpin the assessment required by criterion (b). Dr Hird and Mr Ockerby contend that the QCA's approach to market definition is flawed and that their proposed alternative is the only 'economically sensible' approach.[6]

11. I have organised this section so as:

    a. to summarise the conceptual framework that should underpin definition of the market for the service provided by NQXT;

    b. to highlight the essential commonalities and distinctions between the approach to defining the market for the service, as set out in my criterion (b) report, in the QCA's draft recommendation and as put forward by Dr Hird and Mr Ockerby, viewed through the lens of that conceptual framework;

    c. to present the basis for my opinion that the QCA's approach is significantly preferable to that proposed by Dr Hird and Mr Ockerby, as relevant to the potential inclusion in the market of demand from certain mines located in the Goonyella system; and

    d. to identify a range of shortcomings and inconsistencies in Dr Hird and Mr Ockerby's assessment of the QCA's approach to market definition.

12. The comparative assessment that I describe in section 2.2 identifies significant alignment between the conceptual framework for market definition that underpins both my criterion (b) report and the QCA's draft recommendation. Further, both my approach and that adopted by the QCA give rise to the conclusion that criterion (b) is satisfied.

2.1 Conceptual framework

13. I explained in my criterion (b) report that a market is an area of close competition between firms.[7] I also highlighted that when defining a market it is important to be guided by both:[8]

    > (a) the purpose at hand – a consideration usually centred around the actual or potential conduct at issue; and
    >
    > (b) the commercial context in which the conduct has taken or could take place – a consideration that calls for alignment with the interactions between, and actions of, the relevant participants in the market.

14. Similarly, in its draft recommendation the QCA refers to both these guiding considerations for market definition.[9]

15. Criterion (b) concerns the question as to whether the facility for the service could meet total foreseeable demand in the market at least cost.[10] It is often described as a 'natural monopoly' test because – in economics – a supplier can be said to have characteristics of a natural monopoly if it

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[6] Hird, T and Ockerby, J, *QCA draft determination for NQXT*, 12 June 2026, para 3.

[7] Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criteria (b) to (d)?*, 13 June 2025, para 77.

[8] Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criteria (b) to (d)?*, 13 June 2025, para 82.

[9] QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, pp 18 and 105.

[10] Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criteria (b) to (d)?*, 13 June 2025, para 71.

alone can meet all demand in a market at least cost.[11] I further explained in my October 2025 report that:[12]

> The relevance of natural monopoly to economic regulation stems from its economic implication that:
>
> (c) it is efficient (least cost) for demand in the market to be met by a single supplier; but
>
> (d) the exercise of market power by a monopoly supplier is not constrained by the availability of close substitutes.

16. The QCA similarly explains that the purpose of criterion (b) is to identify facilities that give rise to an enduring lack of competition in the markets they serve,[13] with the intended purpose and operation of criterion (b) being to:[14]

> - capture facilities facing an enduring lack of effective competition
> - identify demand for the service as well as demand for substitutes
> - only capture genuine economic substitutes that impose an effective constraint on the facility — which may be identified by applying the hypothetical monopolist test (HMT).

17. In the context of this same relevant purpose, I explained in my criterion (b) report that the governing economic principle for the definition of markets is the degree of substitutability of the relevant products or services.[15] I also explained that the purpose of substitution analysis is to identify the products or services that act as close constraints on the firm in question. In its draft recommendation the QCA similarly explains that:[16]

> …in assessing the market for the service in this draft recommendation, we have focused our analysis only on whether the common-user facility at Hay Point (that is, DBT) is a close economic substitute for the Terminal

18. I also highlighted in my criterion (b) report the importance of substitution analysis that is:[17]

> …consistent with the conduct, purpose and commercial context at hand.

19. The QCA similarly highlights the importance of the commercial context and the particular facts governing potential alternative services and the substitution decisions of customers. It further explains that:[18]

> Evidence of users switching between facilities may demonstrate that facilities are substitutes. However, it is also necessary to understand why users switch.

20. Accordingly, in my opinion there is a significant degree of alignment between the conceptual framework for market definition that underpins my criterion (b) report and the QCA's draft recommendation.

[11] Houston, G, *Further expert report re proposed declaration of NQXT*, 21 October 2025, para 71.

[12] Houston, G, *Further expert report re proposed declaration of NQXT*, 21 October 2025, para 72.

[13] QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 17.

[14] QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 25.

[15] Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criteria (b) to (d)?*, 13 June 2025, para 79.

[16] QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 19.

[17] Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criteria (b) to (d)?*, 13 June 2025, para 79.

[18] QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 106.

2.1.1 Definition of the boundary to a market

21. The necessary confluence of the relevant purpose at hand (often established by legislation), the applicable commercial context and the application of essential economic principles implies that markets are rarely defined by bright-lines.[19]

22. For instance, there is often a degree of substitution and so competition around the edges of a market, even though some of that substitution may take place from one or more dimensions that are outside the boundaries of the market, because they are not sufficiently close. Consistent with this well-established phenomenon, it is not unusual for there to be particular customers that are best described as being part of another market that nevertheless participate in the subject market. For example, I explained in my October 2025 report that:[20]

> …the existence of transactions with customers from outside a particular geographic envelope does not itself contradict the appropriateness of that boundary in terms of assessing the geographic scope of substitutes that constrain a supplier's ability to exercise market power.
>
> Rather, it is far from unusual in relation to location-based geographic markets for customers from outside a particular geographic envelope to transact from time-to-time with suppliers inside that geographic envelope. This reflects that market definition rarely involves bright lines or hard boundaries. Rather, the relevant consideration is not the existence or absence of customers that may transact from outside the candidate geographic boundaries, but rather the identification of the geographic scope of constraints on the suppliers inside the market.

23. Consistent with the need for purpose and commercial context to shape the definition of relevant markets, there may be different markets for the same service. For example, Beach J similarly determined the existence of three distinct geographic markets for a service in *ACCC v Pacific National Pty Limited*.[21] Beach J also recognised the scope for price discrimination by a supplier as establishing grounds for the definition of a market that comprises a subset of end users.[22] For example, Beach J explained that:[23]

> …if the hypothetical monopolist could profitably raise price to a subset of its customers, these customers constitute a separate relevant market.

24. In *Queensland Wire Industries Pty Ltd v Broken Hill Proprietary Co Ltd*, Deane J similarly noted that the boundaries of a market are likely to be blurred and that their definition often rests on the weighting applied to relevant considerations. Deane J explained that:[24]

> One overall market may overlap other markets and contain more narrowly defined markets which may, in their turn, overlap, the one with one or more others. The outer limits (including geographic confines) of a particular market are likely to be blurred: their definition will commonly involve assessment of the relative weight to be given to competing considerations in relation to questions such as the extent of product substitutability and the significance of competition between traders at different stages of distribution…

2.2 Comparison of approaches

25. In the material below I review and compare the approach to market definition applied in my criterion (b) report with that adopted by the QCA in its draft recommendation and that put forward by Dr Hird

[19] Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criteria (b) to (d)?*, 13 June 2025, para 78.

[20] Houston, G, *Further expert report re proposed declaration of NQXT*, 21 October 2025, paras 77-78.

[21] *ACCC v Pacific National Pty Limited* (No 2) [2019] FCA 669, para 532.

[22] *ACCC v Pacific National Pty Limited* (No 2) [2019] FCA 669, para 100.

[23] *ACCC v Pacific National Pty Limited* (No 2) [2019] FCA 669, para 102.

[24] *Queensland Wire Industries Pty Ltd v Broken Hill Proprietary Co Ltd ("Star Picket Fence Post case")* [1989] HCA 6; (1989) 167 CLR 177 (8 February 1989), para 7 (Deane J).

and Mr Ockerby. I make this assessment by reference to the conceptual framework for market definition that I describe in section 2.1.

26. I focus my assessment of these approaches on the starting point of the market definition process, since it is instrumental in shaping their different conclusions. For the approach adopted in my criterion (b) report and that is also adopted by the QCA in its draft recommendation, this starting point concerns the narrowest reasonable market that is selected for application of the 'hypothetical monopolist test'.

2.2.1 My criterion (b) report

27. In my criterion (b) report, I explain the reasons for my opinion that formulation of the initial, narrowest reasonable market should ideally be undertaken by reference to those mines that would prefer to use coal handling services provided at NQXT, absent any constraints from existing supply contracts.

28. On this approach, I ultimately applied the approach to market definition adopted by the QCA in its declaration review of DBT.[25] My reasons for adopting the QCA approach included the strong likelihood it would result in a market definition equivalent to that which would arise from application of the theoretically pure, but practically complex principle I noted in the preceding paragraph.[26]

29. Under either my theoretically pure or the QCA's more practical approach, the starting point for market definition would be the narrowest reasonable market that comprised northern mines and, similarly, this same starting point would very likely result in an equivalent conclusion on market definition.

30. I ultimately concluded that the relevant market for criterion (b) comprised northern mines, and that there are no close substitutes to NQXT's coal handling service for mines in this market.[27]

2.2.2 QCA draft recommendation

31. Consistent with the approach that I adopted in my criterion (b) report, the narrowest reasonable market adopted by the QCA also includes demand from northern mines.

32. The key difference between our respective starting points was that the QCA also included relatively limited demand from those mines located in the Goonyella system that are expected to access NQXT during the declaration period.

33. The QCA explained that its adoption of the underlying approach:[28]

> …is a pragmatic way to capture the commercial reality of the options for Goonyella NQXT users.

34. It further explained that this commercial reality includes:[29]

> …that users [in the Goonyella system] may switch to DBT during the proposed declaration period as capacity becomes available, notwithstanding that DBT is not a close economic substitute for the service.

35. Against the backdrop of a substantively similar conceptual framework for market definition that underpins the approach applied in my criterion (b) report and that applied in the QCA's draft recommendation, the substantive difference in the outcome of our respective approaches lies with the relatively higher emphasis that the QCA places on the commercial context.

[25] Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criteria (b) to (d)?*, 13 June 2025, para 113.

[26] Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criteria (b) to (d)?*, 13 June 2025, section 3.4.

[27] Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criteria (b) to (d)?*, 13 June 2025, paras 171 to 174.

[28] QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 30.

[29] QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 30.

36. For the avoidance of doubt, this commercial context is that certain mines in the Goonyella system would prefer to access DBT but cannot do so at particular points in time. Inclusion of the limited demand from these particular mines in the QCA's assessment of criterion (b) therefore reflects that, for them, DBT and NQXT are not close substitutes during the declaration period.

37. The QCA also highlighted that its approach is:[30]

> …consistent with the legislative test of criterion (b), as it accommodates changes in demand over time (consistent with the requirement to forecast total foreseeable demand over the proposed declaration period).

2.2.3 Dr Hird and Mr Ockerby's approach

38. I explain in my October 2025 report that Dr Hird and Mr Ockerby adopt a very different and, in my opinion, highly unconventional approach to market definition.

39. Viewed through the lens of the conceptual framework I describe in section 2.1, which emphasises the purpose at hand and the commercial context, Dr Hird and Mr Ockerby:

    a. place an overwhelming emphasis on a misconceived view of the purpose of market definition under criterion (b); and

    b. infer from that purpose that market definition must necessarily abstract entirely from the commercial context and practical reality on the Central Queensland Coal Network (CQCN).

40. In particular, I explained in my October 2025 report that:[31]

> The origin of the inherent misconception of Dr Hird and Mr Ockerby's approach is the overwhelming emphasis they place on their colloquial description of criterion (b) as a 'natural monopoly' test and their associated contention that, therefore:
>
> > …the necessary approach is to consider a state of the world in which that firm, or the facility of that firm subject to the declaration proceedings, was a true monopoly.
>
> On the contention that it is necessary to establish the existence of a 'true monopoly', the Hird and Ockerby report approaches criterion (b) in an abstract, theoretical manner that is divorced from the promotion of economic efficiency in relation to the NQXT service, as well as from practical reality on the Central Queensland coal network (CQCN).
>
> Dr Hird and Mr Ockerby weave such a path by 'defining a market' on the explicit assumption that no alternative services exist…

41. In section 2.4 below I explain that, in addition to these significant shortcomings in Dr Hird and Mr Ockerby's proposed approach, their contentions in relation to the QCA's approach similarly include a range of misconceptions and inconsistencies.

2.3 Relevance of demand from Goonyella mines

42. In this section I provide my opinion on the potential to include in the market demand from certain mines in the Goonyella system, as does the QCA in its draft recommendation.

43. The approach that I apply in my criterion (b) report results in a market definition that encapsulates mines for which it is persistently least cost to access NQXT and for which there are no close substitutes to NQXT. It is these customers that are most at risk of NQXT raising prices and lowering the quality and quantity of services, to the detriment of consumers, total welfare and economic efficiency.

[30] QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 31.

[31] Houston, G, *Further expert report re proposed declaration of NQXT*, 21 October 2025, paras 84 to 86.

44. This definition of the market also reflects the enduring absence of close substitutes available to northern mines and the ability for NQXT to price discriminate. It therefore also reflects the QCA's observation that its approach may not be appropriate in circumstances:[32]

> …where it is feasible for suppliers to target customers based on their location (e.g. where the terms of access are individually negotiated and there can be price discrimination)…

45. The market definition in my criterion (b) report excludes mines in the Goonyella system that would prefer to access DBT but, given the commercial circumstances they face at a particular point in time, may access NQXT.

46. In section 2.1 I explain, along with examples from case law, that:

  a. the existence of transactions from outside a market boundary does not, in itself, contradict the appropriateness of that boundary;

  b. there may exist different geographic markets for the same service; and

  c. a market may be defined so as to comprise a subset of existing customers.

47. I also explain in section 2.2.2 above that the difference in the market definitions in my criterion (b) report and the QCA's draft recommendation can be traced back to different starting points for application of a hypothetical monopolist test. Consistent with this phenomenon, I explained in my criterion (b) report that:[33]

> There is no simple and generally accepted method for determining the narrowest reasonable market, and so some degree of judgement is required.

48. I also highlight in section 2.2.2 that the narrowest reasonable market adopted by the QCA reflects its intention to address pragmatically the 'commercial reality' of select Goonyella mines that access NQXT at particular points in time.[34]

49. In my opinion, the invoking of this consideration by the QCA is also consistent with Deane J's observation – which I note in section 2.1 above – that the outer limits of a market are likely to be blurred and that their definition involves assessment of the relative weight given to competing considerations.[35]

50. Drawing these observations together, in comparison to the approach that I adopted in my criterion (b) report, the market definition adopted by the QCA:

  a. is underpinned by a similar conceptual framework;

  b. is based on an assessment of whether other terminals are close substitutes to NQXT, through application of a hypothetical monopolist test (HMT), which contemplates the reaction to a small but significant non-transitory increase in price (SSNIP);

  c. reflects application of comparatively higher weight to the commercial context faced by certain mines in the Goonyella system during the declaration period;

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[32] QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 30.

[33] Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criteria (b) to (d)?*, 13 June 2025, para 87.

[34] QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 30.

[35] *Queensland Wire Industries Pty Ltd v Broken Hill Proprietary Co Ltd ("Star Picket Fence Post case")* [1989] HCA 6; (1989) 167 CLR 177 (8 February 1989), para 7 (Deane J).

d. in practice results in the inclusion of only modestly more tonnes – [redacted]rom the financial year ending 30 June 2029 onwards (FY29)[36] – in the estimate of total foreseeable demand for the NQXT service; and

e. by consequence, results in a modestly more conservative assessment of criterion (b), as a result of its inclusion of modestly more incremental demand that must be met by NQXT at least cost for criterion (b) to be satisfied.

51. In my opinion, if the commercial context is to be taken as requiring that definition of the market for the service provided at NQXT must include demand from mines in the Goonyella system that have no better alternative than to access NQXT during the declaration period, the QCA's approach is significantly more preferable to that contended for by Dr Hird and Mr Ockerby. The QCA's approach reflects the application of a modestly different starting point – as compared to that adopted by me – for the market definition process, without undermining the essence of the conceptual framework that calls for application of an HMT framework to identify close substitutes.

52. On the starting point assumption adopted by the QCA in relation to the inclusion of demand from mines in the Goonyella system, any approach to market definition should, as does the QCA:

a. be constrained to include only demand from those specific mines in the Goonyella system that have no access to close substitutes; and

b. reflect the time-limited circumstance in which certain mines located in the Goonyella system would access NQXT.

53. In contrast, I explain below that the approach contended for Dr Hird and Mr Ockerby overlooks the core focus of the market definition process, ie, an inquiry as to the closeness of potential substitutes.

2.4 Dr Hird and Mr Ockerby's contentions as to the QCA's approach

54. In this section I identify a range of shortcomings and inconsistencies in Dr Hird and Mr Ockerby's assessment of the QCA's approach to market definition.

55. I have organised my discussion by reference to Dr Hird and Mr Ockerby's contentions in relation to:[37]

a. the QCA's assessment of substitutability between NQXT and DBT; and

b. their characterisation of contracting decisions by mines in the Goonyella system as evidence of rivalry between NQXT and DBT.

2.4.1 Assessment of substitution

56. In my criterion (b) report and section 2.1 I highlighted that a market is an area of close competition between firms, and that the governing economic principle for the definition of markets is the strength of substitutability of the relevant products or services.[38]

57. The availability of a substitute that is sufficiently close to have a material effect on consumption and production decisions in relation to a product or service is likely to provide a close competitive constraint, such that it is 'in the market' for that product or service. In the context of criterion (b), the availability of a close substitute would be expected to constrain the ability of a monopoly supplier to exercise market power.

[36] QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 39.

[37] Hird, T and Ockerby, J, *QCA draft determination for NQXT*, 12 June 2026, sections 1 and 2.

[38] Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criteria (b) to (d)?*, 13 June 2025, paras 77 and 79.

58. I note in section 2.1 that the QCA also highlights the identification of close substitutes as having a foundational role in market definition. For example, the QCA explains that:[39]

> …the SSNIP test does not seek to capture all technical substitutes – it tests whether there are close economic substitutes that impose an effective competitive constraint on the Terminal.

59. In sharp contrast, Dr Hird and Mr Ockerby systematically overlook the important role of the strength or closeness of substitutability in defining a market. They repeatedly refer to market definition as concerning the identification of *possible* or *potential* substitutes, rather than *close* substitutes.

60. By way of illustration, Dr Hird and Mr Ockerby contend at several instances throughout their memorandum that:[40]

> Market definition is concerned with underlying substitution *possibilities*…[emphasis added]

61. Dr Hird and Mr Ockerby similarly propose that:[41]

> The relevant question is whether that mine would, in past actual or foreseeable future circumstances, consider the terminals as *potential substitutes* for each other. [emphasis added]

62. The definition of a market that is guided by the possibility of substitution, rather than its closeness, necessarily lends itself to a definition that is too broad.

63. Notwithstanding the importance of the lens through which substitution is assessed, it is difficult to reconcile Dr Hird and Mr Ockerby's contentions as to the QCA's assessment of substitution with a proposed alternative that is predicated on the absence of any or all alternative services.

64. Specifically, the proposed alternative that Dr Hird and Mr Ockerby maintain is the only 'economically sensible'[42] approach is based on their view that:[43]

> …the geographic scope of the market should extend to include any mine customer that could profitably exchange with NQXT if there were no alternative for the mine than to trade with it.

65. The extent to which Dr Hird and Mr Ockerby's proposed alternative departs from market definition convention is best illuminated by reference to the lens of the HMT framework, which involves contemplating the effect of imposing a *small but significant* non-transitory increase in price or SSNIP.

66. In contrast, Dr Hird and Mr Ockerby's approach to market definition – with its focus on the ability of a mine customer to switch terminals and remain profitable – is tantamount to contemplating the effect of a *multitudinous, very large* non-transitory increase in price, the practical effect of which is to include in the market all possible or technical substitutes. By reframing the conventional HMT examination of the consequence of small changes in price to be an examination as to the potential for the profits of buyers to be eliminated, Dr Hird and Mr Ockerby have undermined the core focus of the HMT framework.

[39] QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 30.

[40] Hird, T and Ockerby, J, *QCA draft determination for NQXT*, 12 June 2026, para 22. See also: Hird, T and Ockerby, J, *QCA draft determination for NQXT*, 12 June 2026, para 7 and 39.

[41] Hird, T and Ockerby, J, *QCA draft determination for NQXT*, 12 June 2026, para 39.

[42] Hird, T and Ockerby, J, *QCA draft determination for NQXT*, 12 June 2026, para 3.

[43] Hird, T and Ockerby, J, *North Queensland Export Terminal – Criterion (b)*, 26 August 2025, para 83.

2.4.2 Characterisation of rivalry

67. Dr Hird and Mr Ockerby also contend that:

a. the QCA has invented a spot market paradigm that does not reflect the reality of the market;[44] and

b. decisions by mines in the Goonyella system to enter contracts with NQXT, in the absence of capacity at DBT, is evidence of rivalry between NQXT and DBT.[45]

68. Dr Hird and Mr Ockerby state that the QCA has 'invented a spot market paradigm' and approached market definition by implementing 'hypothetical spot market substitution'.[46]

69. I note that a 'spot market paradigm' and 'spot market substitution' are not phrases with any clear economic meaning and, from Dr Hird and Mr Ockerby's description, I am not able to infer with any precision the concepts they are seeking to engage. Insofar as they relate to the QCA's assessment of substitution, I note that the QCA has evaluated the closeness of substitutes through application of the HMT framework, being the conventional tool for the definition of markets that I also apply in my criterion (b) report.

70. Dr Hird and Mr Ockerby do note that a 'spot market' is different from their characterisation of intermittent contracting decisions by mines as involving 'episodic competition' between NQXT and DBT.[47]

71. I agree with Dr Hird and Mr Ockerby that the absence of available capacity at DBT when it is required by certain mines in the Goonyella system can result in them entering contracts to access NQXT.[48] However, I disagree with the characterisation of these contracting decisions as evidence of rivalry or episodic competition between NQXT and DBT.[49] Rather, the absence of available capacity at DBT means that, when required during the declaration period, DBT is not a close substitute to NQXT for these mines in the Goonyella system.

72. Similarly, I also disagree with Dr Hird and Mr Ockerby's characterisation of these contracting decisions as a process of competition that is 'won' by NQXT and 'lost' by DBT.[50] If a Goonyella mine must contract for capacity at NQXT because its preferable terminal – being DBT – has insufficient capacity to accommodate that mine, it is incorrect to characterise this phenomenon as DBT having competed for and 'lost' a customer that DBT otherwise had no ability to serve. Notably, Dr Hird and Mr Ockerby do not describe this circumstance as involving 'close substitution' between terminals.

73. Dr Hird and Mr Ockerby also appear to have conflated the QCA's observation that contracting decisions indicate that the market is 'episodic',[51] as tacit agreement that this amounts to a form of competition between NQXT and DBT. By way of support for this contention, Dr Hird and Mr Ockerby cite a statement by the QCA that is specific to the market and contracting decisions, observing that:[52]

> The QCA acknowledges that competition in this market is episodic.

[44] Hird, T and Ockerby, J, *QCA draft determination for NQXT*, 12 June 2026, para 16.

[45] Hird, T and Ockerby, J, *QCA draft determination for NQXT*, 12 June 2026, para 10.

[46] Hird, T and Ockerby, J, *QCA draft determination for NQXT*, 12 June 2026, paras 15 and 16.

[47] Hird, T and Ockerby, J, *QCA draft determination for NQXT*, 12 June 2026, para 13.

[48] Hird, T and Ockerby, J, *QCA draft determination for NQXT*, 12 June 2026, para 20.

[49] Hird, T and Ockerby, J, *QCA draft determination for NQXT*, 12 June 2026, paras 10 and 38.

[50] Hird, T and Ockerby, J, *QCA draft determination for NQXT*, 12 June 2026, para 10.

[51] QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 33.

[52] Hird, T and Ockerby, J, *QCA draft determination for NQXT*, 12 June 2026, para 6.

> *The market for coal handling services (and the associated market for rail services) is episodic. The pattern in central Queensland has been for miners to sign long-term contracts. For major expansions, the facility owners have sought underwriting from the customers to support their investments*

74. Dr Hird and Mr Ockerby also contend that a fundamental problem with the QCA's 'spot market paradigm' is that it includes fixed infrastructure capacity.[53]

75. I disagree that application of the HMT framework by the QCA necessarily assumes that infrastructure capacity is fixed.[54] That infrastructure capacity constraints inhibit substitution does not imply that capacity is fixed, but rather reflects that alleviation of those constraints is sufficiently costly to prevent an alternative terminal from being a close substitute to NQXT.

2.5 Conclusion

76. I explain in section 2.1 that there is significant alignment between the conceptual framework for market definition that underpins both my criterion (b) report and the QCA's draft recommendation, both of which take important guidance from the purpose at hand and the applicable commercial context.

77. I explain in section 2.2.2 that the difference in the market definition in my criterion (b) report and the QCA's draft recommendation can be traced back to different starting points for application of the HMT framework, being selection of the narrowest reasonable market for the service.

78. Consistent with the approach adopted in my criterion (b) report, the narrowest reasonable market adopted by the QCA includes demand from northern mines. The essential difference between our starting points is that the QCA also includes relatively limited demand from those mines located in the Goonyella system that are expected to access NQXT during the declaration period.

79. The QCA explains that adoption of an approach that includes demand from these mines is a pragmatic means by which to capture the 'commercial reality' faced by certain mines in the Goonyella system during the declaration period, being that although they would prefer to access DBT, they have no alternative but to access NQXT.

80. Against the similar conceptual framework for market definition that underpins the approach that I applied in my criterion (b) report and the QCA's draft recommendation, the substantive difference in the outcome of our approaches to market definition lies with the relatively greater emphasis that the QCA places on the commercial context.

81. In my opinion, the invoking of this consideration by the QCA reflects Deane J's observation that the outer limits of a market are likely to be blurred, and that their definition involves assessment of the relative weight given to competing considerations.[55]

82. In comparing the approach to market definition adopted in my criterion (b) report and that adopted by the QCA, I conclude that the QCA's approach:

    a. is underpinned by a similar conceptual framework;

    b. reflects application of comparatively higher weight to the commercial context faced by certain mines in the Goonyella system during the declaration period;

[53] Hird, T and Ockerby, J, *QCA draft determination for NQXT*, 12 June 2026, para 16.

[54] Hird, T and Ockerby, J, *QCA draft determination for NQXT*, 12 June 2026, para 21.

[55] *Queensland Wire Industries Pty Ltd v Broken Hill Proprietary Co Ltd ("Star Picket Fence Post case")* [1989] HCA 6; (1989) 167 CLR 177 (8 February 1989), para 7 (Deane J).

c. in practice results in the inclusion of only modestly more tonnes [redacted]rom FY29 onwards)[56] in the estimate of total foreseeable demand for the NQXT service; and

d. by consequence, results in a slightly more conservative assessment of criterion (b), owing to its inclusion of slightly more incremental demand that must be met by NQXT at least cost for criterion (b) to be satisfied.

83. In my opinion, on the assumption that the definition of the market for the service provided at NQXT must include demand from mines in the Goonyella system that have no better alternative than to access NQXT during the declaration period, the QCA's approach is significantly preferable to that proposed by Dr Hird and Mr Ockerby.

84. In contrast, Dr Hird and Mr Ockerby place an overwhelming emphasis on a flawed view of the purpose of market definition under criterion (b), which gives rise to an abstract, theoretical approach that is divorced from the practical and commercial reality on the CQCN. The adoption of such a path causes Dr Hird and Mr Ockerby to overlook the core focus of the market definition process, ie, an inquiry as to the closeness and strength of potential substitutes.

[56] QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 39.

3. Criterion (a)

85. In this section I comment briefly on NQXT's contention as to the relevant counterfactual for assessing the effect of declaration and on the implications of terminal and rail network capacity for the QCA's assessment of criterion (a).

3.1 Relevant counterfactual

86. For the reasons I explain below, I disagree with NQXT's contention that the historical circumstances and outcomes associated with access to NQXT provide reliable evidence as to a likely future state of the world without declaration.

87. By way of summary, NQXT states that:[57]

> NQXT has never been declared. This means that the **only cogent and reliable evidence of the likely future state of the world without declaration is the status quo**. If the QCA proposes to engage in reasoning or to adopt conclusions that depend upon a future state of the world that differs materially from the status quo, it must explain why the evidence of actual commercial conduct and market outcomes over the past decade is not reflective of the likely future terms of access or conduct. [emphasis added]

88. In my opinion, this contention is misplaced, because the historical circumstances that applied at NQXT differ significantly from those that are likely to apply in a future without declaration.

89. Throughout its relevant history, access to NQXT has been substantially governed by a well-developed contractual framework that was negotiated between third party users and a terminal owner that was not vertically integrated in the coal market supply chain. For example, the QCA explained that:[58]

> The legacy user agreements were entered into with NQBP, a government-owned corporation, and were later transferred to NQXT in 2011 as part of the Adani Group's lease of the Terminal. Therefore, NQXT has been bound by legacy agreement terms to date, with contract renewal negotiations being its first opportunity to establish new contract terms for incumbent users.

90. Further, the generally prevailing framework for accessing NQXT established:[59]

    a. a cost-based framework for the determination of the price for access;

    b. a contractually-established dispute resolution process;

    c. requirements on NQXT to demonstrate that the fixed and variable handling charges represent a reasonable charge having regard to the efficient operation of the Terminal; and

    d. involvement from users in the determination of terminal regulations.

91. Notwithstanding this well-developed contractual framework, each of the five-yearly resets of the terminal infrastructure charge (TIC) have been subject to dispute resolution proceedings in which the applicable arbitral determination resulted in the QCoal users paying a materially lower TIC than was proposed by NQXT. Further, in August 2020 the Queensland Supreme Court determined that the

[57] NQXT, *Submission in response to QCA's Draft Recommendation not to declare the coal handling service at the North Queensland Export Terminal*, 12 June 2026, para 32.

[58] QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 64.

[59] NQXT, *Submission in response to QCoal Pty Lt and Byerwen Coal Pty Ltd's application for a recommendation to declare the coal handling service at the North Queensland Export* Terminal, 26 August 2025, annexure MBS3, clauses 4.7, 7, 13 and schedule 7.

Adani Group had failed to demonstrate that the handling charges for FY18 and FY19 were reasonable,[60] a decision that was subsequently over-turned by the court of appeal.[61]

92. Further, for the substantial part of the historical period over which access to NQXT has been governed by the legacy contract, there was no related-party of the Adani Group acquiring the service provided at NQXT. In contrast, in both my criterion (a) report and my June 2026 report I identify a range of economic reasons by which NQXT would, going forward, understandably seek to self-preference its related parties in the pursuance of maximising Adani Group profit, to the detriment of current or potential third party users of the NQXT service.

93. I note that, while the risks to third party users of the NQXT service increased markedly upon the Carmichael mine commencing production for export in 2021, its ownership by the Adani Group for many years prior would also have been likely to colour the decisions of prospective third party terminal users. Further, even before the Carmichael coal mine commenced production, the arrangements by which it was to access NQXT gave rise to court proceedings in which NQXT was found to have engaged in unconscionable conduct,[62] before that finding was overturned by the Queensland Court of Appeal.[63]

94. The Queensland Court of Appeal stated that NQXT was contractually entitled to prefer the interests of a related party, as well as its own interests, over the interests of other terminal users.[64] This statement also underlines the conclusions in my June 2026 report that: [65]

    a. any rational buyer of later-stage tenements would likely be significantly concerned by the unconstrained ability and incentive for NQXT to self-preference its related parties; and

    b. that these risks would materially decrease the value placed on later-stage tenements by third parties.

95. In my opinion, the historical circumstances that have governed access to NQXT stand in stark contrast to the features of the new agreement proposed by NQXT that I identify in my June 2026 report, which include a material increase in price, degraded quality and certainty of access, and limited recourse to dispute resolution.[66]

96. Similarly, the QCA notes that:[67]

> … the new standard agreement includes a number of provisions that may reflect the exercise of market power by NQXT if imposed on users. These include terms and conditions that reflect an imbalance in the rights and obligations of the parties, [redacted], as well as governance and transparency around [redacted]

97. Accordingly, I agree with the QCA that a future without declaration of NQXT is likely to be very different from the historical circumstances and outcomes associated with NQXT, and disagree with both NQXT's contention to the contrary and the economic reasoning that underpins NQXT's contention.

[60] *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2020] QSC 260.

[61] *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2021] QCA 187.

[62] *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2020] QSC 260.

[63] *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2021] QCA 187.

[64] *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2021] QCA 187, para 156.

[65] Houston, G, *Review of QCA draft recommendation for declaration of coal handling service at NQXT*, 12 June 2026, paras 235-236.

[66] NQXT, *Submission in response to QCoal Pty Lt and Byerwen Coal Pty Ltd's application for a recommendation to declare the coal handling service at the North Queensland Export* Terminal, 26 August 2025, annexure MBS5, clause 11.

[67] QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 67.

3.2 Capacity on the Newlands system

98. I explain in my June 2026 report that the QCA's assessment of criterion (a) is influenced significantly by its view that:

a. facilitating third party access to NQXT will promote the profitability of the Adani Group; and

b. this overriding incentive can be expected to govern NQXT's conduct in relation to third parties seeking access to uncontracted terminal capacity during the declaration period.

99. In that same report I described the basis for my opinion that the Adani Group's conduct is not, and will not in the future, be guided by an overriding incentive to maximise throughput by third parties.[68]

100. Even if such an incentive did exist, its role in the Adani Group's decision-making would diminish as uncontracted capacity reduces. Further, the QCA explains that:[69]

> …the most likely circumstances in which NQXT would face an incentive to refuse or significantly restrict third party access to the Terminal would be if the Terminal is capacity constrained and/or the rail system is capacity constrained.

101. I highlight in my June 2026 report that NQXT is expected to approach its nameplate capacity towards the end of the declaration period and, further, that dependable capacity is even lower, typically 85 to 95 per cent of nameplate capacity according to Wood Mackenzie.[70] Further, Wood Mackenzie forecasts that throughput is expected to exceed and continue to grow beyond NQXT's nameplate capacity after the declaration period.[71] These considerations imply that NQXT is likely to be capacity constrained within the declaration period.

102. Reinforcing this conclusion, NQXT's submission to the QCA highlights that the availability of uncontracted capacity at NQXT is likely to be further diminished by constraints on the Newlands system. NQXT explains that:[72]

> Even the Terminal's current nameplate capacity of 50 mtpa cannot be utilised given these rail constraints.

103. Mr Smith, General Manager of NQXT Pty Ltd, further explains that:[73]

> The Deliverable Network Capacity (or **DNC**) of the Newlands System has been independently assessed at approximately 38 to 41 mtpa by the Independent Expert under Aurizon's UT5 Undertaking. The most recent CQCN Annual Capacity Assessment Report for 2026 (**2026 ACAR**) identifies current maximum system capacity across the Newlands and GAPE rail systems as 39.8 mtpa. [emphasis in original]

104. In my opinion, in the context of Wood Mackenzie's updated forecasts, this evidence adds further weight to the likelihood that NQXT will be capacity constrained in the future, which:

a. reinforces my opinion that the Adani Group's conduct is not, and will not in the future, be guided by an overriding incentive to maximise throughput by third parties; and

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[68] Houston, G, *Review of QCA draft recommendation on declaration of the coal handling service at NQXT*, 12 June 2026, para 17 and section 4.

[69] QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 57.

[70] Houston, G, *Review of QCA draft recommendation on declaration of the coal handling service at NQXT*, 12 June 2026, para 79.

[71] Houston, G, *Review of QCA draft recommendation on declaration of the coal handling service at NQXT*, 12 June 2026, para 80.

[72] NQXT, *Submission in response to QCA's Draft Recommendation not to declare the coal handling service at the North Queensland Export Terminal*, 12 June 2026, para 101.

[73] Smith, M, *Supplementary statement in response to request for declaration*, 12 June 2026, para 50.

b. brings into relevance the circumstance in which the QCA said NQXT would face an incentive to refuse or significantly restrict third party access.[74]

[74] See: QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, pp 57-58.

A1. Instructions

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21 July 2026

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Dear Mr Houston

Instructions – Access Declaration North Queensland Export Terminal Facility

1 As you know we act for QCoal Pty Limited and Byerwen Coal Pty Limited, together the QCoal Users, in relation to their application to have the coal handling service provided at the North Queensland Export Terminal declared for third party access under the *Queensland Competition Authority Act 1997* (Qld) (**the Application**).

2 We refer to:

(a) your prior reports submitted to the Queensland Competition Authority (**QCA**) in connection with the Application, dated 13 June 2025, 21 October 2025 and 12 June 2026;

(b) the QCA's draft recommendation in respect of the Application published on 26 March 2026 (**Draft Recommendation**); and

(c) the submissions and evidence lodged with the QCA on 12 June 2026 in response to the Draft Recommendation, including the submissions and evidence lodged by NQXT Pty Ltd (**NQXT**) and the report of Dr Tom Hird and Mr Jason Ockerby of CEG (the **June Submissions**).

Instructions

3 We instruct you to prepare a further report for the purpose of assisting the QCA in its assessment of whether to recommend that the coal handling service provided at NQXT (the **Service**) be declared.

4 Your duty is to assist the QCA and not the QCoal Users in preparing your report.

5 Your instructions are to express your independent opinion, within the confines of your expertise as an economist, on the matters raised by the June Submissions and to review and comment on the economic matters raised in the June Submissions that are relevant to the QCA's assessment of criteria (a) and (b) in section 76(2) of the QCA Act.

Documents Provided

6 We have provided or made available to you the following documents and materials:

(a) the Draft Recommendation;

(b) your earlier reports referred to in paragraph 2(a) above, and the materials provided to you in connection with those reports;

(c) the submissions and evidence lodged by the QCoal Users, NXQT and Aurizon Network on 12 June 2026 in response to the Draft Recommendation;

(d) the report of Dr Hird and Mr Ockerby dated 12 June 2026; and

(e) the supplementary statement of Mr Mark Smith dated 12 June 2026.

Expert independence

7 Although your report is not being prepared for use in court proceedings, we request that in undertaking this engagement you comply with the duties and requirements of an expert for court proceedings as set out in rules 429F to 429H of the *Uniform Civil Procedure Rules 1999* (Qld) (**UCPR**), as if those duties and requirements applied to these instructions. A copy of rules 429F to 429H and Schedule 1C of the UCPR (**Experts' Code of Conduct**) is enclosed with these instructions.

8 Those duties provide that your obligation to act independently in assisting the QCA overrides any other obligations that you may have to any party or to any person who is liable for your fees and expenses.

9 Consistent with these requirements, we request that your report include written confirmation that:

(a) you have read, and agree to be bound by, the Experts' Code of Conduct to the extent that it imposes duties and obligations on you relevant to your role as an expert in your assistance of the QCA;

(b) the factual matters stated in the report are, as far as you know, true;

(c) you have made all inquiries considered appropriate;

(d) the opinions stated in the report are genuinely held by you;

(e) the report contains references to all matters you consider significant; and

(f) you understand your duty to the QCA and you have complied with that duty.

10 In addition, please enclose or include in your report the following:

(a) a statement of the questions you have been asked to consider as set out in this letter;

(b) the factual premise or premises upon which your report proceeds; and

(c) the documents and other materials which you have been provided with and instructed to consider in the preparation of your report.

11 Please let us know if you have any questions or if you require any further information.

Yours sincerely
Arnold Bloch Leibler

Stephen Lloyd
Partner

Schedule 1C Code of conduct for experts

rule 425, definition *code of conduct*

Part 1 Preliminary

1 Purpose of code

(1) The purpose of this code of conduct is—

(a) to state an expert's obligations under the following provisions of chapter 11, part 5—

(i) rule 429A;

(ii) rule 429B(1), (2), (5) and (6);

(iii) rule 429F;

(iv) rule 429H;

(v) rule 429K(1) and (2); and

(b) otherwise to state an expert's obligations in relation to an order made, or a direction given, by the court.

(2) In this code of conduct, the information included in square brackets after a rule heading is a reference to the comparable rule under chapter 11, part 5.

(3) The brackets and information do not form part of these rules.

2 Application of code

(1) This code of conduct applies to an expert who is appointed to give opinion evidence, whether orally or in a report, in a proceeding.

Note—

Rule 429F requires the expert to comply with the requirements under this code of conduct.

(2) In a provision of this code of conduct that refers to a direction given under rule 428 requiring 2 or more experts to hold a conference and prepare a joint report, a reference to a joint report is a reference to a report about the conference that states—

(a) the matters, if any, on which the experts agree; and

(b) the matters, if any, on which the experts disagree and the reasons for any disagreement.

Part 2 Duty to comply with orders and directions

3 Duty to comply with court's orders and directions

(1) An expert must comply with an order made, or a direction given, by the court.

(2) Without limiting subrule (1), if the court gives a direction under rule 428 requiring 2 or more experts to hold a conference and prepare a joint report, the experts must hold the conference, and prepare the joint report, in compliance with the direction.

Part 3 Experts' conferences and joint reports

4 Application of part

This part applies if the court gives a direction under rule 428 requiring 2 or more experts to hold a conference and prepare a joint report.

5 Experts' conference and joint report [r 429A]

(1) In holding the conference and preparing the joint report, the experts—

(a) must exercise independent judgement; and

(b) must endeavour to reach an agreement on any matter on which they disagree; and

(c) must not act on any instruction or request to withhold or avoid reaching an agreement.

(2) Unless the court directs otherwise, the experts must—

(a) hold the conference in the absence of the parties or their agents; and

(b) prepare the joint report without reference to, or instructions from, the parties or their agents.

(3) The experts must give the joint report to the parties—

(a) if the court has given a direction about the period within which the report is to be given—as directed by the court; or

(b) otherwise—as soon as practicable after the conference has concluded.

(4) This rule is subject to rule 6.

6 Permitted communications between experts and parties [r 429B(1), (2), (5) and (6)]

(1) Any of the experts may, in writing—

(a) ask the parties for information that may assist the proper and timely conduct or conclusion of the conference or preparation of the joint report; or

(b) inform the parties of any matter adversely affecting the proper and timely conduct or conclusion of the conference or preparation of the joint report.

(2) A communication mentioned in subrule (1) must—

(a) be made jointly to all of the parties; and

(b) state—

(i) whether or not all of the experts agree on the terms of the communication; and

(ii) if all of the experts do not agree on the terms of the communication—the matters on which the experts disagree.

(3) The experts must, within 2 business days after a request is made under rule 429B(4), give a progress report about the progress of the conference or the joint report.

(4) The progress report must state—

(a) whether or not all of the experts agree on the terms of the report; and

(b) if all of the experts do not agree on the terms of the report—the matters on which the experts disagree.

Part 4 Giving of evidence by experts and related matters

7 Duty of expert [r 429F]

(1) The expert has a duty to assist the court.

(2) The expert—

(a) is not an advocate for a party to the proceeding; and

(b) must not accept instructions from any person to adopt or reject a particular opinion.

(3) The expert's duties under this rule override any obligation the expert may have to—

(a) any party to the proceeding; or

(b) any person who is liable for the expert's fees or expenses.

8 Requirements for report [r 429H]

(1) A report prepared by the expert must be addressed to the court and signed by the expert.

(2) The report must include the following information—

(a) the expert's qualifications;

(b) all material facts, whether written or oral, on which the report is based;

(c) the expert's reasons for each opinion expressed in the report;

(d) references to any literature or other material relied on by the expert to prepare the report;

(e) for any inspection, examination or experiment conducted, initiated, or relied on by the expert to prepare the report—

(i) a description of what was done; and

(ii) whether the inspection, examination or experiment was done by the expert or under the expert's supervision; and

(iii) the name and qualifications of any other person involved; and

(iv) the result;

(f) if there is a range of opinion on matters dealt with in the report—a summary of the range of opinion, and the reasons why the expert adopted a particular opinion;

(g) if the expert believes the report may be incomplete or inaccurate without a qualification—the qualification;

(h) a summary of the conclusions reached by the expert;

(i) a statement about whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion.

(3) If the expert believes an opinion expressed in the report is not a concluded opinion, the report must state, where the opinion is expressed, the reason for the expert's

belief.

Examples of reasons why an expert may believe an opinion is not a concluded opinion—

- insufficient research
- insufficient data

(4) The expert must confirm in the report that—

(a) the expert has read, and agrees to be bound by, the code of conduct; and

(b) the factual matters stated in the report are, as far as the expert knows, true; and

(c) the expert has made all inquiries considered appropriate; and

(d) the opinions stated in the report are genuinely held by the expert; and

(e) the report contains reference to all matters the expert considers significant; and

(f) the expert understands the expert's duty to the court and has complied with the duty.

9 Supplementary report following change of opinion [r 429K(1) and (2)]

(1) Subrule (2) applies if the expert changes, in a material way, an opinion in a report prepared by the expert under chapter 11, part 5 (an ***earlier report***).

(2) Unless the expert knows the proceeding has ended, the expert must, as soon as practicable after the change of opinion, give written notice of the change of opinion, and the reason for the change, to—

(a) if the expert is a court-appointed expert—the registrar; or

(b) otherwise—the party who appointed the expert.

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