BMA

BHP Mitsubishi Alliance

19 August 2026

Ann Jones
Director of Business Performance
Queensland Competition Authority
Level 27, 145 Ann Street, Brisbane
Queensland 4000
(**Submitted via QCA online submissions form**)

Dear Ann,

Response to Queensland Competition Authority's Draft Decision – Take or Pay Reform

BM Alliance Coal Operations Pty Ltd (**BMA**) appreciates the opportunity to comment on the Queensland Competition Authority's (**QCA**) draft decision dated June 2026 (**Draft Decision**) regarding the proposed commencement of the strengthened take-or-pay trigger under the UT5 2025 Draft Amending Access Undertaking (**UT5 2025 DAAU).** Subject to concerns raised in this submission, BMA continues to support the negotiated UT5 2025 DAAU package and acknowledges the significant effort invested by Aurizon Network and industry participants in developing a balanced outcome.

Summary

A key objective of the strengthened take-or-pay framework is to improve cost causation and reduce the potential for cost socialisation between access holders. BMA continues to support that objective and the broader policy intent underpinning the negotiated reforms.

The negotiated package was developed on the understanding that the revised framework would apply consistently across all access holders. It only subsequently became apparent through the QCA's review process that remaining UT2 access agreements contain provisions that limit the automatic application of UT5 2025 DAAU amendments. Additionally, there are aspects of the UT3 agreement and certain haulage agreements that also require separate transitional arrangements.

This outcome is not a reflection of the policy intent of the negotiated reforms, but rather a consequence of contractual limitations which apply to a subset of legacy agreements that require tailored implementation pathways. As a result, for a limited period, the strengthened take-or-pay framework cannot be implemented uniformly across all access holders.

BMA acknowledges the QCA's observation in the Draft Decision that immediate commencement of the strengthened framework "*could result in costs associated with the UT2 access holder being socialised across the system in certain circumstances",* while the UT2 access agreement remains in force. While the extent of any resulting socialisation impacts remains uncertain, the risk is not merely theoretical. For example, weather-related network disruptions, a recurring feature of the Central Queensland coal network's operating environment, are more likely to trigger take-or-pay obligations. Therefore, immediate commencement would most likely introduce socialisation risk as the strengthened arrangements would not apply consistently across all access holders during the transition period. In BMA's view, deferral is the only implementation option that would fully avoid temporary socialisation risk and is the appropriate outcome in the circumstances. This would maintain consistent treatment across access holders and avoids unnecessary regulatory complexity or the potential for adverse, unintended outcomes for access holders.

Accordingly, for the reasons expanded upon below, BMA supports deferring commencement of the revised take or pay provisions until the expiry of the remaining UT2 and other forms of access agreements requiring separate transitional arrangements.

This is the appropriate outcome where the legacy contractual arrangements are nearing expiry, the intended policy outcome will still be achieved, and deferral provides a simple and predictable pathway that preserves current and future confidence of all stakeholders in both the regulatory framework and in existing contractual rights, in addition to those that may be negotiated in the future.

Regulatory Certainty and Consistency

The UT5 reforms were developed on the expectation that the strengthened take-or-pay framework would ultimately apply on a consistent basis across all access holders. The subsequent identification of surviving UT2 access agreements has created a transitional issue that temporarily prevents uniform implementation of the revised arrangements.

Introducing differentiated commencement arrangements to address this temporary issue would result in different regulatory treatment applying to access holders during the transition period. In particular, UT5 users would potentially be required to adsorb costs from the legacy UT2 arrangements, which would effectively create cross-subsidisation and transfer risk between the groups. This outcome would not be consistent with efficient pricing principles, because charges in the transition period would not necessarily reflect the costs attributable to the relevant users or service.

By contrast, the proposed deferral provides a clear and indiscriminate implementation pathway. It allows the strengthened take-or-pay regime to commence on a common basis following expiry of the remaining UT2 access agreement and avoids the potential for temporary socialisation from the simultaneous operation of different take-or-pay frameworks. The mechanics of any broader consequential amendments resulting from a deferral would be straight forward. The proposed deferral therefore promotes:

- regulatory predictability;
- consistent treatment of access holders;
- implementation simplicity;
- reduced risk of unintended socialisation outcomes; and
- confidence in the operation of Queensland's access framework.

These outcomes are consistent with the principles of sound economic regulation and support the statutory objectives that the QCA is required to consider under s 138 of the *Queensland Competition Authority Act 1997* (**QCCA**), including the promotion of economically efficient outcomes, protection of access holder interests and maintenance of confidence in the regulatory framework.

Respecting Existing Contractual Arrangements

BMA considers that an important consideration in this matter is the need to preserve existing contractual rights and obligations until their expiry. However, preserving those contractual rights should not extend the consequences of that arrangement to other access holders through temporary socialisation or transitional regulatory mechanisms. This would unfairly require other access holders subsidise costs they did not cause and cannot control.

In BMA's view, application of the factors in s 138 of the QCAA requires a balancing of:

- respecting the operation of existing contractual arrangements; and
- extending the consequences of those arrangements to non-parties or creating differentiating treatment across remaining central Queensland coal network users.

The former preserves confidence in the certainty outcomes of negotiated agreements and recognises the commercial positions agreed by the relevant parties. The latter risks creating an expectation that regulatory mechanisms may be used to spread the consequences of a legacy contractual position across the wider network, even where other parties neither negotiated for nor benefit from those contractual protections.

BMA further notes that similar issues can arise where regulatory reforms interact with existing contractual arrangements. For example, the QCA's proposed treatment of UT3 access agreement provisions also attempts to accommodate differences arising from historical contractual arrangements during a transitional period in its treatment of end of year adjustments. In this instance the socialisation risk is greater if the voluntary, fee free relinquishment provisions (a transitional mechanism introduced prior to the commencement of UT5 2025 DAAU) are taken up by users. Similarly, the transitional arrangement introduced to resolve the interaction with haulage agreements are examples where preservation of existing commercial arrangements results in an effective socialisation of costs. While the circumstances are different, both situations illustrate the challenges associated with implementing system-wide reforms where legacy contractual rights continue to operate.

In BMA's view, where there is a clear and certain solution available through a short-term deferral, the appropriate regulatory response is to preserve those contractual rights for their remaining duration while ensuring that the consequences of those rights are not transferred to other access holders through socialisation or transitional regulatory mechanisms. This is particularly relevant where one of the primary objectives of the strengthened take-or-pay reforms is to improve cost causation and reduce the potential for socialisation between users.

Regulatory Precedent

The approach adopted by the QCA in resolving this matter may also be of broader significance to future undertaking assessments. While the immediate financial impact of the proposed transitional arrangements may or may not be material, the issue is significant because of the precedent it establishes.

If, despite the existence of a surviving contractual constraint, the costs and consequences of that constraint can be temporarily socialised across other users to facilitate immediate implementation of a reform, a precedent would be established that legacy contractual arrangements can alter cost outcomes for non-parties who participate in the network.

Such an approach creates uncertainty as to how future reforms are implemented where transitional contractual constraints exist. Stakeholders may have reduced confidence that existing contractual rights and obligations are not disturbed in a manner that preserves established cost allocation principles during transition periods.

By contrast, a short deferral would establish a certain precedent that regulatory reforms should be implemented on a consistent basis once any temporary contractual constraint has ceased, unless there is a compelling reason to depart from that approach.

Conclusion

BMA considers that deferral represents the most certain and equitable implementation pathway and is consistent with the broader objective and purpose of the QCCA and the matters the QCA is required to consider under s 138 of the QCAA.

Yours sincerely

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Port and Rail Access
BMA