

Submission to Queensland Competition Authority Request for Comments on Stakeholder Submissions to the 2015DAU Draft Decision

14 March 2016



Contents

Overview.....	3
Reliance on Regulatory Precedent	4
Matters Relevant to Calculation of Adjustment Charges	6
A reference tariff did not apply for the FY14 and FY15 period	6
Retrospectivity is consistent with the Transfer Notice	7
Adjustment Charges should be calculated on a consistent basis to the approved 2015DAU	8
Adjustment Charges for the Metropolitan Network require a retrospective tariff.....	9
Summary of Aurizon’s Position on Adjustment Charges	9
Relevance of the 87 Train Path Constraint	10
A Ministerial Direction is not required if it is in Queensland Rail’s commercial interests to apply the constraint	11
Queensland Rail commercially imposed the capacity constraint.....	12
Implications of Preserved Train Paths	12
Coal Industry participants are unable to respond to the lifting of a self-imposed constraint	13
Transitional arrangements are necessary to provide the coal industry relief to respond to the relaxation of the 87 train path constraint	14
Summary of Aurizon’s position of the 87 weekly train paths constraint.....	14
Standard Access Agreement, Operating Requirements Manual, and Queensland Rail’s inclusion of additional drafting concerning environmental issues	15

Overview

Aurizon Operations (**Aurizon**) welcomes the opportunity to respond to the Queensland Competition Authority's (**QCA**) request for comments on stakeholder submissions on matters raised in submissions to the QCA's draft decision (**Draft Decision**) on Queensland Rail's 2015 Draft Access Undertaking (**2015DAU**).

Aurizon has actively participated in what has become a protracted and lengthy regulatory process. In order to restrict the number of additional matters the QCA will need to have regard under section 138(2) of the *Queensland Competition Authority Act 1997 (QCA Act)* Aurizon has sought to only address those matters identified in the QCA's request for comments paper and only to the extent that Aurizon considers the matter as not minor or inconsequential.

This submission concludes that:

- Queensland Rail and access holders should be able to rely on regulatory precedent in relation to the Western System reference tariff and variations from those precedents should occur only where there is a material change in circumstances;
- Determination of an adjustment charge based on retrospective consideration of the approved 2015DAU is consistent with regulatory precedent and should be permissible given Queensland Rail's acknowledgement through statements in its FY14 Annual Report and the applications to extend the 2008 Access Undertaking (**2008AU**) between May 2013 and May 2014 that the access charges for FY14 and FY15 were based on a transitional tariff; and
- The requirement for a legally binding Ministerial Direction to limit contracted coal carrying train services to 87 train paths per week is not necessary for the QCA to allocate costs on that basis. It can be reasonably concluded that Queensland Rail applied this restriction to its commercial dealings with access seekers and that the QCA's methodology is consistent with the requirements of the 2015DAU.

Aurizon is concerned that there remains significant differences in views on substantive regulatory principles to determine the Western System Reference Tariff and the underlying assumptions regarding risk allocation between the QCA, the access provider and end users. Importantly, the material change in planning assumptions that arise as a result of the relaxation of the 87 weekly train paths constraint will have a significant impact on access seeker and access holder resources and business planning. The lateness and the significance of the change in such a critical assumption should not be understated.

Importantly, the relaxation of the 87 weekly train paths constraint has consequential impacts to the sustainability of future agricultural services and the ongoing economic viability of regional rail infrastructure in South West Queensland. The QCA should clarify the exact nature of any hard and soft constraints to coal producers being able to fully contract the 112 train paths, particularly in the context of the paths which are preserved for general freight and agriculture under section 266A of the *Transport Infrastructure Act 1994*.

Reliance on Regulatory Precedent

The importance of regulatory predictability through application of precedent established by previous regulatory determinations on stakeholder decisions is empirically demonstrated in the report prepared by Professor Menezes regarding the economic impact of Queensland Rail's proposal not to include an adjustment to refund or recoup differences in tariffs. However, Aurizon also recognises that regulatory principles may need to be adjusted over time to reflect material changes in circumstances.

In arguing against the retrospective application of reference tariffs, Queensland Rail notes that:

The assertions by the QCA that Queensland Rail has received or paid adjustment amounts is incorrect in relation to adjustment payments because Queensland Rail has never paid an adjustment amount in the past, and is materially inaccurate in respect of adjustment payments received because the only adjustment amount Queensland Rail has received was passed directly through to [QR Network] as the railway manager at the time to which the adjustment related. Queensland Rail has never retained the benefit of any adjustment payment¹.

While it may be correct that Queensland Rail did not receive the adjustment amount approved by the QCA, this is of little practical relevance to customers of the same declared service who paid those amounts. The horizontal separation of Queensland Rail from the Central Queensland Coal Network (CQCN) has not resulted in a material change in circumstances that would allow regulatory precedent to be invalid in its application to Queensland Rail. Queensland Rail has not demonstrated how any change in ownership, noting that the Western System has remained owned and managed by a Government owned corporation, would warrant the cessation of such a significant regulatory precedent.

Queensland Rail's position on the adjustment charges is also materially inconsistent with its own views on the weight which should be given to the 2010 draft decision on the Western System asset valuation. It would appear disingenuous to simultaneously seek to bind the QCA to one material aspect of the 2010 draft decision while rejecting another.

Queensland Rail's submission has not acknowledged the fundamental basis for the rejection of the prior valuation. Aurizon has expressed significant concerns across multiple submissions since 2013 that the regulatory principles which are applied to the determination of the Western System reference must produce a stable, predictable and sustainable pricing framework. The initial 2013DAU included a material increase in both infrastructure maintenance and asset replacement expenditure relative to forecasts included in the 2010 draft decision². The total infrastructure expenditure in the 2010 draft decision averaged approximately \$27 million per annum compared to the 2013DAU which proposed a total average infrastructure expenditure of \$54 million per annum (both values are in FY16 dollars). The QCA has not ignored the regulatory precedent but correctly noted that the precedent needed to be reviewed in light of a material change circumstances.

In summary, Queensland Rail has not identified the material change in circumstances that would preclude the determination and application of retrospective tariffs. Aurizon considers that in light of the material variation in infrastructure management costs that the QCA has correctly identified two options:

1. Retain the original valuation and approve efficient infrastructure management costs commensurate with the assumed infrastructure standards; or

¹ Queensland Rail (2015) Submission in Response to QCA's Draft Decision on the 2015 DAU, December, pp. 13-14.

² The pricing decision in Schedule F of the 2010 Draft Decision was incorporated into a draft amending access undertaking for the 2008AU to which the transfer notice applies.

2. Make appropriate adjustments to the DORC valuation and approve the actual efficient infrastructure management costs which reflect the actual infrastructure standards.

Aurizon supports the QCA's position to take the latter approach to improve the robustness and reliability of the building block estimates due to their closer proximity to Queensland Rail's actual costs.

Matters Relevant to Calculation of Adjustment Charges

As noted in the previous section, Queensland Rail does not support the application of adjustment charges and the retrospective determination of tariffs. Aurizon's response to the draft decision noted methodology and equity issues with how the QCA sought to give effect to the principle of retrospective tariffs.

Queensland Rail and the New Hope submissions raise additional matters including:

- The approval of a reference tariff for FY14 and FY15;
- The statutory obligations associated with the transfer notice;
- The inconsistent application of the form of regulation with respect to pre and post FY16 periods;
- The consideration of adjustment charges associated with the use of the metropolitan system.

The section provides additional information that Aurizon deems is relevant to the QCA's consideration of each of these points.

A reference tariff did not apply for the FY14 and FY15 period

Queensland Rail's submission argues that:

Queensland Rail is lawfully entitled to be paid, and is obliged to set, access charges based on the 2008AU reference tariffs until a replacement access undertaking is approved by the QCA³.

The access provider has correctly noted that it is required to comply with the 2008AU. However, the access undertaking does not explicitly preclude the QCA from making a retrospective tariff determination under that undertaking and to calculate adjustment charges accordingly.

The primary reasons for these provisions not being utilised within the period in which the 2008AU applied is the extension Draft Amending Access Undertakings (DAAU) did not approve a reference tariff. That is, the extension DAAUs did not approve a reference tariff for the FY14 and FY15 years but simply amended the terminating date.

The access charges in the access agreement were escalated in accordance with the terms of the agreement and not on the basis of an approved tariff for that period. This is consistent with:

- the extension DAAU applications between May 2013 and May 2014 which referred to access charges being based on transitional reference tariffs⁴;
- Queensland Rail's acknowledgement in its 2014 annual report that the access charges would need to be retrospectively amended to reflect the QCA's final determination; and

The access revenue for the contracted paths on the West Moreton system is determined with reference to coal tariffs under the access undertaking approved by the Queensland Competition Authority (QCA). A transitional reference tariff is in place from 1 July 2013 to 30 June 2014 and is based on the old tariff which expired 30 June 2013, escalated by CPI. The final tariff, yet to be

³ Ibid, p.14

⁴ The extension application letters includes reference to transitional tariffs for the period of 1 July 2013 to 31 December 2014.

approved by QCA, will be backdated to 1 July 2013. For the 2014 financial report, management estimated the value of access revenue relating to the West Moreton system based on available information as at reporting date⁵.

- Aurizon Operations is not aware of any correspondence between the access provider and access seekers or access holders advising that the proposed access charge in an indicative access proposal or the variation notice of an access charge in access agreement is based on an approved reference tariff for the FY14 and FY15 periods.

Aurizon maintains the view that the access charges for coal carrying train services for the FY14 and FY15 periods were based on transitional reference tariffs.

Retrospectivity is consistent with the Transfer Notice

In relation to the transfer notice, Queensland Rail argues:

The transfer notice specifically refers to the reference tariffs under the 2008AU continuing to apply to Queensland Rail. Queensland Rail's access agreements with access charges based on the reference tariffs continue to apply access charges based on those reference tariffs.

Queensland Rail is obliged to comply with the 2008AU even though it was not its access undertaking and to therefore contract for access based on the reference tariff under the 2008AU⁶.

Aurizon does not support the argument that the 2008AU is not Queensland Rail's access undertaking and therefore it should not be constrained by the principles included in that undertaking. The 2008AU undertaking was developed and approved for the entire Queensland narrow gauge network. For example, would this argument be relevant if the CQCN was placed in a different legal entity and the Western System been retained by the same Government owned corporation (as opposed to the creation of a new Government owned corporation). The answer is almost certainly no and therefore Queensland Rail's argument should only be relevant where it would also be applicable to the counterfactual.

Notwithstanding whether Queensland Rail should be entitled to develop and submit its own access undertaking it is apparent from the consistency of the drafting of the 2015DAU with the 2008DAU that Queensland Rail acknowledges that tariffs may have retrospective effect given the similarity of the adjustment charge provisions.

2008AU Adjustment Charge Provisions⁷

If:

(a) this Undertaking specifies that a Reference Tariff is applicable or effective from a date prior to the date on which that Reference Tariff was approved by the QCA; or

⁵ Queensland Rail (2014) Annual Report, pp. 32

⁶ Ibid, p.17

⁷ Schedule F, Part A, Clause 2.3.1

(b) the QCA approves a variation of a Reference Tariff in accordance with Clause 2.2 and that variation applies from or takes effect on a date prior to the date on which the QCA approves the variation,

QR Network is entitled to recover from or will reimburse to, as applicable, each relevant Access Holder the amount ("Adjustment Amount") which is the sum of

2015 DAU Adjustment Charge Provisions⁸

If:

(i) this Undertaking specifies that a Reference Tariff is applicable or effective from a date prior to the QCA's approval of that Reference Tariff; or

(ii) the QCA approves a variation of a Reference Tariff and that variation applies from or takes effect on a date prior to the QCA's approval of the variation,

Queensland Rail is entitled to recover from or will reimburse to, as applicable, each relevant Access Holder the amount (Adjustment Amount) which is the sum of

Aurizon maintains that the retrospective determination of the Western System reference tariff is consistent with the provisions and intention of the transfer notice, the 2008AU and the proposed 2015 DAU.

Adjustment Charges should be calculated on a consistent basis to the approved 2015DAU

Queensland Rail notes that the QCA's approach to the determination of the adjustment amounts is inconsistent with the QCA's decision on the form of regulation:

The QCA's view that it is appropriate to apply adjustments for under and over recoveries in the context of a revenue cap model fails to recognise that the current Queensland Rail reference tariffs are governed by a price cap model⁹.

Aurizon agrees with the concerns raised by Queensland Rail regarding the consistency of regulatory principles. Determining an allowable revenue amount for the FY14 and FY15 periods and calculating adjustment amounts solely with reference to the revenue earned is to impose a quasi-revenue cap. This can be contrasted with the application of a forward looking price cap.

As a general principle, and as persistently advocated by Aurizon, adjustment charges should be calculated on the basis of the approved tariff and take or pay arrangements should they have applied from the commencement date. There are potentially revenue amounts within the QCA's calculated adjustment amounts that Queensland Rail may have been permitted to retain if the same circumstances applied after the approval date.

Aurizon maintains its view that the adjustment amounts should be calculated by having regard to the outcomes that would have prevailed had the tariffs and take or pay capping had retrospective effect in order to ensure consistency with the forward looking regulatory framework.

⁸ Schedule A, Clause 6.1(a)

⁹ Queensland Rail (2015) Submission in Response to QCA's Draft Decision on the 2015 DAU, December, p. 13

Adjustment Charges for the Metropolitan Network require a retrospective tariff

Access charges for the use of the metropolitan network have not, and nor are they proposed to be, based on a cost based approach. As a consequence this potentially negates the ability to determine adjustment amounts using the same methodology employed by the QCA for the Western System.

Aurizon considers there is no compelling arguments as to why adjustment charges would be applicable for the Western System but not also appropriate for the Metropolitan Network. As the adjustment charge is intended to reflect the difference between the applied access charge and the charge which would have applied had the tariff had retrospective effect, this principle should be applied consistently across the Western System and Metropolitan Network.

The determination of adjustment charges for the Metropolitan Network should have regard to the difference between the applied access charges and those that would have applied if the tariff had commenced on 1 July 2013.

Summary of Aurizon's Position on Adjustment Charges

This section demonstrates that the determination of adjustment amounts should be calculated with reference to the consistent application of the approved tariff and take or pay arrangements. This is consistent with the legislative intent, regulatory precedent and the access provider's own commercial conduct.

As recommended in Aurizon's response to the draft decision these adjustment amounts should be calculated on the commencement of the tariff from 1 July 2013 (whether it has retrospective effect or is calculated on the financial impacts had it been retrospectively applied) and recovered or reimbursed to relevant access holders in a manner which recovers or returns only those amounts and is consistent with Queensland Rail's legitimate business interests.

Relevance of the 87 Train Path Constraint

A key determinant of the Western System reference tariff is the allocation of costs between coal and non-coal services which reflect the historical capacity available to be contracted by coal carrying train services. The economic premise of this allocation is that in the absence of the constraint there would be sufficient demand for additional coal services and users are being denied the scale efficiencies associated with allocating capacity to its highest marginal use. That is, users are not being financially disadvantaged by the access provider's decision to allocate capacity to services which would not make the same contribution to common cost as a coal service.

Queensland Rail's response to the draft decision advises that there is no binding constraint on the number of train paths that are available for coal services and therefore the tariff should be based on forecast volumes to ensure the access provider is able to recover its efficient costs. In support of this premise Queensland Rail provides legal advice which concludes that:

Queensland Rail has however received various items of correspondence from the Department of Transport and Main Roads (DTMR) which refer to, or which might arguably be seen to impliedly refer to, the number of train paths available for coal trains in the Metropolitan Network; and

None of those letters constitutes a Ministerial Direction or provides any evidence that a Ministerial Direction has been given which would have the effect of creating an 87 train path constraint.¹⁰

Aurizon welcomes the conclusion that Queensland Rail is not subject to a constraint that would preclude it from contracting for additional coal train services from the Western System. However, it is also concerning that the coal industry participants may not be in a position to take advantage of this change in commercial strategy and that the change in internal policy only arises as a consequence of the QCA's intervention in the determination of the reference tariff. There are also potential implications if the access provider has received access applications for access rights above the 87 path constraint and Queensland Rail has not negotiated in good faith given the admission in the legal advice that:

It follows that in its capacity as an access provider to a declared service, Queensland Rail is legally obliged under the Queensland Competition Authority Act 1997 to negotiate with access seekers for the provision of access without regard to the purported 87 train path constraint¹¹.

Aurizon does not consider the presence of a legally binding constraint on the available capacity to be the sole matter relevant to the use of 87 train paths as the basis for cost allocation. The QCA is also required to have regard to other matters it considers relevant including:

- a Ministerial Direction may not be required where the imposition of the constraint is in Queensland Rail's commercial interests;
- Queensland Rail's commercial conduct is consistent with the capacity constraint;
- the additional obligations associated with preserved train paths and the broader implications of the decision on agricultural train services;
- the ability of the coal industry to respond to the lifting of the capacity constraint; and

¹⁰ Ibid, p. 356

¹¹ Ibid, p. 359

- the transitional arrangements associated with protecting the interests of access holders with rights to use the service.

This section addresses each of these matters.

A Ministerial Direction is not required if it is in Queensland Rail's commercial interests to apply the constraint

Queensland Rail relies on the fact that it has not received a Ministerial Direction under section 12 of the *Queensland Transit Authority Act 2013 (QTAA Act)* requiring it to apply a constraint of 87 train paths for coal carrying train services through the metropolitan network. However, this also presumes that it would have been necessary for Queensland Rail to receive such a notice for the 87 train path constraint to have any effect.

There are a range of issues associated with the reliance on the constraint being legally binding on Queensland Rail including:

- the relevant Act on which the DTMR correspondence was received is the *Government Ownership Corporations Act 1993 (GOC Act)*;
- Queensland Rail did not seek a direction from the Minister on the grounds that constraining the capacity of coal carrying train service to 87 train paths was not in its commercial interests (which it clearly would have been under previous undertakings)¹²; and
- the Shareholding Minister may have no reason to issue a Direction where it is in Queensland Rail's commercial interests to apply the 87 train path constraint.

Aurizon notes that it may have been, and may continue to be in Queensland Rail's commercial interests to apply the 87 weekly train paths constraint as:

- increasing the number of contracted coal train services above 87 may crowd out a number of agricultural services which when considered objectively may make a commensurate contribution to common costs over the complete haulage distance,
- increasing the number of contracted coal train services above 87 may crowd out a number of agricultural and general freight services which may strand a substantial amount of rail infrastructure in south west Queensland and be detrimental to the continued economic viability and maintenance of the TSC for regional rail infrastructure; and
- Queensland Rail has a strong commercial interest in the long term capacity of the Metropolitan Network for passenger services and it may be commercially reasonable to restrict the number of coal train services to preserve the ability to modify passenger schedules and frequencies.

Aurizon contends that application of the 87 weekly train paths constraint may not require a Ministerial Direction under section 12 of the QTAA Act for the QCA to apply the constraint in the allocation of costs between coal and non-coal services. Queensland Rail has submitted no factual materials to support the conclusion that the relevant Minister would have been required to issue a Direction or that it

¹² Under section 115 of the GOC Act 1993 the Shareholding Minister must request the board to advise them whether, in its opinion, complying with the direction would not be in the commercial interests of the GOC or any of its subsidiaries.

communicated to DTMR in response to cited correspondence that the imposition of the constraint would not be in its commercial interests.

Queensland Rail commercially imposed the capacity constraint.

The previous section discussed whether a Ministerial Direction would be required for Queensland Rail to not contract long term access rights for coal carrying train services above an 87 weekly train path constraint. Aurizon is of the view that this is not a necessary condition where Queensland Rail's commercial conduct is consistent with the DTMR advice.

Aurizon notes that Queensland Rail's submissions supporting the 2013DAU and the 2015DAU acknowledge that the reference tariff had been developed on the assumption of an 87 train path constraint. Aurizon has also received correspondence from Queensland Rail in relation to the ability to contract for services above the 87 train path constraint in which the access provider confirms that it is unable to do so. Aurizon may provide copies of this correspondence to the QCA following the written permission from Queensland Rail or in response to Notice from the QCA in accordance with section 185 of the QCA Act.

The 2015DAU effectively established the reference tariff for coal carrying train services as the Maximum Access Charge for the purpose of the Network Utilisation provisions in section 3.1.2. These provisions also require that:

If Queensland Rail chooses to allocate Available Capacity to an Access Seeker for an Access Charge less than the Maximum Access Charge; and

Another Access Seeker is willing to pay an Access Charge equal to the Maximum Access Charge;

then when determining the a Ceiling Revenue Limit in accordance clause 3.2.3 for Train Services using that constrained section of the Network, the Access Charge for the Access Seeker is assumed to be the Maximum Access Charge.

In the absence of a legally binding constraint then it can be reasonably concluded that Queensland Rail has chosen to restrict the number of train paths it makes available for coal carrying train services. The application of costs on the basis of the 87 train path constraint is consistent with the requirements of 2015DAU.

Implications of Preserved Train Paths

Under section 266A of the Transport Infrastructure Act 1994 (**TIA Act**), a railway manager is not permitted to allocate a train path that has been preserved for one traffic type to a different traffic type without the consent of the chief executive of DTMR. The preserved train paths are any train paths that were allocated (not necessarily contracted) for the provision of passenger and non-coal services on the commencement date of that section.¹³

Therefore, by definition, any train path that was not contracted by a coal carrying train service at the commencement date of 8 September 2010 is a preserved train path. Queensland Rail's submission does not provide relevant details regarding the number of preserved train paths under section 266A or what changes to preserved train paths have occurred since the commencement of that section.

¹³ The section commenced with the assent of the Motor Accident Insurance and Other Legislation Amendment Act 2010.

Aurizon notes that the preserved train paths were established in the public interest to promote an appropriate level of capacity certainty for the needs of the agricultural sector. The proclamation that there is no capacity constraint on the number of coal carrying train paths (up to the limits of the infrastructure) is of significant relevance to agricultural supply chains and Queensland Rail should clearly specify of the 112 train paths:

- The number of preserved train paths for agricultural services;
- The number of train paths it intends to make available for coal carrying train services; and
- By subtraction, the number of train paths it proposes to make available for non-coal services.

Coal Industry participants are unable to respond to the lifting of a self-imposed constraint

The ability of the coal industry to respond to the lifting of the self-imposed 87 weekly train paths constraint is impaired by the limitations of the supply chain to substantially increase coal production levels or to install complimentary capacity. It is unreasonable for Queensland Rail to assume that it can lift the constraint and the coal industry would be able to contract for additional train paths.

Of particular concern is that the coal industry and stakeholders have incurred considerable time, cost and resources in seeking to identify options for improving the productivity of existing train paths in reliance on the 87 weekly train paths constraint. For example, the 87 weekly train paths constraint is also a key assumption underpinning the coal revenue projections in the Inland Rail business case. It is apparent that Queensland Rail does not have a sound appreciation of its ability to influence the decision making of other supply chain participants.

In order to increase the number of contracted coal services the coal industry participants will need to consider:

- Whether there is sufficient demand to support an increase in production levels and that the coal price is sufficient to warrant the additional fixed cost obligations;
- Commissioning of appropriate studies to consider whether further infrastructure upgrades and network extensions to support additional mining operations are required;
- Rollingstock resource requirements to support the increase in contracted train service and sourcing of additional plant and equipment capable of operating within the 15.75 tonne axle load infrastructure constraint; and
- Whether expansion of port capacity is required to accommodate the additional train services and an increase in nominal throughput.

Essentially, the supply chain's forward looking planning decisions need to be fundamentally re-evaluated to reflect the material change in below rail capacity assumptions. Aurizon is of the view that it is desirable, and likely to be in the public interest, that Queensland Rail seeks to improve its revenue outcomes by actively improvements in the productivity of the existing 87 weekly train paths while continuing to support the rail capacity requirements of regional Queensland, rather than pursue arbitrary and short term revenue outcomes.

The practical effect of removing the 87 train path constraint is that access holders with existing rights to use the service would be required to bear the financial consequences of Queensland Rail's commercial decisions and capacity signals it has provided the market until such time as the market can structurally adjust to the change in such a significant planning assumption. In regard to the matters the QCA is

required to consider under section 138A of the QCA Act, Queensland Rail should not be able to rely on protecting its legitimate business interests where the consequences are directly attributable to the access provider's own decisions.

Transitional arrangements are necessary to provide the coal industry relief to respond to the relaxation of the 87 train path constraint

If Queensland Rail does seek to remove the 87 weekly train paths constraint, it is necessary to provide an appropriate transitional period to allow the coal industry to undertake the activity described above and to make use of the additional contract capacity. The length of this period should represent an appropriate balance between Queensland Rail's legitimate business interests and providing an appropriate incentive to the coal industry to expeditiously utilise the available capacity.

Aurizon is of the view that the transitional period should be reflected as a review event clause which would allow consideration of whether the transitional period should cease or be extended having regard to Queensland Rail's promotion of increased utilisation of the declared service (i.e. Queensland Rail has made genuine efforts to attract and support additional demand through the conduct of appropriate studies and negotiations in a timely manner).

Summary of Aurizon's position of the 87 weekly train paths constraint

This section has identified that:

- The QCA is not required to rely on a legally binding direction to apply the 87 train path constraint;
- The QCA's draft decision is consistent with Queensland Rail's election not to allocate capacity to coal carrying train services and to not require non-coal services to pay an access charge consistent with the Maximum Access Charge for the constrained section;
- The exact number of train paths available to coal carrying train services is uncertain and is likely to be less than 112 due to the committed non-coal train paths that are subject to the Preserved Train Paths requirements in the TIA Act; and
- The coal industry is unable to contract for the maximum number of train paths in the short term and transitional arrangements are necessary to allow the coal industry to respond to a material change in the supply chain planning assumptions.

Standard Access Agreement, Operating Requirements Manual, and Queensland Rail's inclusion of additional drafting concerning environmental issues

In its submission Queensland Rail has made the following amendments:

1. Deletion of the requirement in the ORM for Queensland Rail to provide particulars of noise complaints

Aurizon Operations disagrees with the proposed changes to Clause 2.1 (c) of the ORM regarding the provision of complaint information. Providing a summary rather than the particulars of complaints will not ensure the most appropriate consideration of the complaints in any Interface Risk Assessment.

2. Ability to amend the Operating Requirements Manual (ORM) via a mechanism in the Standard Access Agreement (SAA)

Aurizon Operations has considered the position of the QCA and QR, and support the view that the ORM should not be able to be modified via a provision in the SAA. Changes to the ORM have the potential to significantly impact to Operators and Customers, and therefore it is most appropriate to have the protections from the DAAU process for amending the ORM.

3. Addition of wording regarding the absence of Baseline Environmental Data

In Queensland Rail's mark-up of the draft ORM, Queensland Rail included wording (Clause 2.2 (e)) stating that where no Baseline Environmental Data is available, the Network will be taken to meet all Environmental Standards for the purpose of assessing any future environmental impacts. Aurizon Operations supports the removal of the wording and the requirement for additional environmental controls to be based on an understanding of the existing environmental conditions.