Queensland Competition Authority

Decision

Queensland Rail's Draft Access Undertaking

June 2016

Level 27, 145 Ann Street, Brisbane Q 4000
GPO Box 2257, Brisbane Q 4001
Tel (07) 3222 0555
www.qca.org.au

We wish to acknowledge the contribution of the following staff to this report:

The QCA's Queensland Rail team

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EXECUTIVE SUMMARY

Our Decision is to refuse to approve Queensland Rail's 2015 draft access undertaking (DAU) for providing access to its below-rail services. We have issued a secondary undertaking notice in accordance with s. 134 of the QCA Act, which asks Queensland Rail to give the QCA a copy of the amended DAU within 60 days—that is, by 16 August 2016.

Introduction

An approved undertaking for access to Queensland Rail's below-rail services is necessary to provide certainty about the detailed terms and conditions of access.

On 5 May 2015, Queensland Rail submitted its 2015 DAU, in response to an initial undertaking notice that we issued under section 133 of the QCA Act. On 8 October 2015, we released our Draft Decision on Queensland Rail's 2015 DAU. We also invited submissions on the Draft Decision from stakeholders by 24 December 2015 and subsequently provided a period for further submissions by 14 March 2016.

2015 DAU

We have reviewed Queensland Rail's 2015 DAU afresh in accordance with our obligations under section 138(2) of the QCA Act. We have also considered all stakeholder comments we received.

On balance, we have in this Decision broadly adopted the preliminary views we expressed in our Draft Decision on the 2015 DAU.

Our view is that Queensland Rail's 2015 DAU does not appropriately balance the rights and obligations of Queensland Rail with those of access seekers/holders and end customers. The approach in Queensland Rail's 2015 DAU is not appropriate, having regard to the approval criteria in the QCA Act, both across pricing and non-pricing matters.

We require changes to Queensland Rail's 2015 DAU to address these matters, as indicated in this Decision and detailed in Appendices F and G.

Pricing

Pricing for commercial freight services on the West Moreton network is perhaps the most contentious aspect of Queensland Rail's proposal.

The 2015 DAU includes a proposed 2015–16 West Moreton reference tariff for coal-carrying train services, equivalent to $19.41/'000 gross tonne kilometres (gtk). Queensland Rail said this was below its proposed ceiling price of $34.92/'000 gtk, based on a depreciated optimised replacement cost (DORC) valuation, which valued the existing assets in their existing (brownfields) configuration.

Asset valuation methodology

The West Moreton network was constructed in the 19th century for regional traffic. It does not reflect the service potential of a modern engineering equivalent asset, as it was not originally designed for coal transport.

Queensland Rail has spent increasing amounts on maintenance and capital expenditure to cope with coal traffics, as volumes have grown significantly since coal services began in 1996. We have largely accepted these costs as necessary to operate a network as idiosyncratic as the West Moreton network.

The high costs that Queensland Rail incurs to provide services on the West Moreton network highlight the need to examine the age of assets and appropriateness of revaluing them for inclusion in the opening asset value.

In respect of some assets (e.g. wooden sleepers and fences), Queensland Rail has in the past recovered the value of those assets by way of maintenance costs, and the Decision continues this approach. Other assets like tunnels, cuttings and embankments require only incidental further work once they have been built; they are essentially perpetual in nature. The value of those assets, where they are beyond their expected useful lives, is reflected in the value of the network as a whole.

The QCA has broadly adopted its preliminary views on an appropriate asset valuation methodology as outlined in its Draft Decision and has made adjustments to the regulatory asset base (RAB) for the above factors.

Drop in volumes

Queensland Rail's business environment has changed substantially since it submitted its 2013 DAU—with both coal and non-coal volumes having dropped significantly.

The question of how the material spare capacity on the West Moreton network should be treated therefore arises. On this occasion the QCA has not chosen to optimise the assets; rather the QCA's view is that coal traffics should only pay for the paths they can contract to use.

Queensland Rail previously said there was a binding constraint on the number of paths that coal could contract for. It now says there is no legally binding constraint on the paths that coal can contract for. However, Queensland Rail's position does not go to the issue of whether a constraint exists in practice. The QCA's position is that such a constraint exists. The QCA has therefore capped coal traffics' share of common network fixed costs (return on, and of, assets, as well as fixed maintenance and operating costs) to take into account contracting restrictions on coal services. We consider that this appropriately balances the competing interests of access seekers/holders, who should not pay for services they cannot contract, and the interests of Queensland Rail, which seeks a return on its investments.

On this basis, the QCA requires a reference tariff equivalent to $17.92/'000 gtk from 1 July 2016.

Adjustment amount

In its withdrawn 2013 DAU, Queensland Rail proposed an adjustment to reflect any over- or under-recovery of access charges from 1 July 2013 (given the tariffs in the 2008 access undertaking were scheduled to expire on 30 June 2013) to the date when the new tariff was approved. Moreover, Queensland Rail on a range of occasions indicated that it would make such an adjustment, including in its 2013/14 annual report. However, the 2015 DAU did not propose such an adjustment.

Our view is that approving Queensland Rail's proposal would create regulatory uncertainty, which would, among other things, adversely impact on investment.

Having regard to the relevant factors in section 138(2) of the QCA Act, we require the 2015 DAU be amended to include an adjustment amount payable by Queensland Rail for its over-recovery of access charges.

Our Draft Decision proposed an adjustment amount for the West Moreton network. However, having considered stakeholder comments on the Draft Decision and undertaken a further round of submissions, we have determined that an adjustment amount should also apply to the Metropolitan network. This is consistent with the expectation generated by Queensland Rail's earlier representations that there would be an adjustment to reflect any over- or under-recovery of access charges from 1 July 2013—which meant that there would be an adjustment over both the West Moreton and Metropolitan networks.

Stakeholders, including Queensland Rail, also raised concerns with the QCA's proposed approach to implementing the adjustment amount. Having regard to these matters, the QCA has adopted an Adjustment Amount mechanism to address overpayment, which will operate by reference to a comparison between the access charge that a particular access holder actually paid in the period from 1 July 2013 to the date of approval, and the access charge that the access holder would have paid during

that period if the new reference tariff had been in effect at that time (see cl. 7.1 of the QCA's mark-ups to Schedule D of the 2015 DAU in Appendix F of this Decision). This mechanism operates in a similar manner to that proposed by Queensland Rail in relation to adjustment charges for variations to a reference tariff or a reference tariff which becomes effective from a date prior to the QCA's approval of that reference tariff (see cl. 7.1 of Schedule D of the 2015 DAU).

Non-pricing matters

Queensland Rail's 2015 DAU covers a broad range of non-pricing matters, including negotiation processes, reporting obligations and contracting and investment frameworks. The QCA has broadly adopted its preliminary views as stated in the Draft Decision—that is, that in many respects Queensland Rail's proposals skew rights and obligations in its favour and away from access holders and seekers.

We require changes to address this imbalance, including to:

- streamline and rebalance the scope, capacity, negotiation and administrative sections of the 2015 DAU to clarify the dispute resolution process and remove any inappropriate discretionary powers in Queensland Rail's favour
- provide greater transparency in the planning, scheduling and 'day of operations' processes
- apply the operating requirements for train services on Queensland's Rail's infrastructure consistently to all relevant parties
- increase transparency of Queensland Rail's reporting and compliance processes
- enable a better balance in risk allocations across parties in the standard access agreement (SAA)
- embed the right of a customer to fund a network extension and the obligation of Queensland Rail to facilitate a network extension when it agrees terms with a user funder

Legal basis for our Decision

Our decision to refuse to approve Queensland Rail's 2015 DAU has been formed in accordance with the approval criteria in the QCA Act (s. 138(2)). A key aspect of our approach has been to have regard to each aspect of section 138(2).

In some circumstances, there may be tensions between various aspects of this section of the Act, including between the objects clause (ss. 138(2)(a) and 69E), legitimate business interests of Queensland Rail (s. 138(2)(b)), the public interest (s. 138(2)(d)), the interests of access seekers (s. 138(2)(e)) and the pricing principles (ss. 138(2)(g) and 168A). This necessarily involved considering each element before forming a view.

Further information on our approach to assessing Queensland Rail's 2015 DAU is provided in Chapter 10 of this Decision.

The way forward

We have issued Queensland Rail with a secondary undertaking notice in accordance with section 134 of the QCA Act:

- stating our reasons for refusing to approve the 2015 DAU (i.e. as contained in this Decision as well as the amended DAU and SAA); and
- asking Queensland Rail to give us a copy of the amended DAU (and SAA) within 60 days (i.e. by 16 August 2016), unless this period is extended.

If Queensland Rail does not comply with this notice, the QCA may prepare, and approve, a DAU for Queensland Rail's declared service.

INTRODUCTION

Background

Queensland Rail owns and operates a 6,500-kilometre rail network, including the commuter lines in south east Queensland, the West Moreton network, and the Mount Isa and North Coast lines (see Fig. 1). It also operates the state's suburban and long-distance passenger services.[1]

Figure 1 Queensland Rail network

Source: Queensland Rail

[1] Queensland Rail was created in 2010 when the Queensland Government split the former QR Ltd. Queensland Rail owns most of the former QR Ltd rail network in Queensland, apart from the tracks in central Queensland owned by Aurizon Network Pty Ltd (formerly QR Network Pty Ltd).

Declaration for third party access

The services provided by Queensland Rail's intrastate rail network were declared by regulation in 1997, making the services subject to the third-party access provisions of the QCA Act. As a result of that declaration, Queensland Rail, access seekers and access holders gained rights and obligations relating to the negotiation of the terms and conditions of access to Queensland Rail's rail transport infrastructure.

The below-rail (track) network is subject to the access regime established by Part 5 of the QCA Act. It follows a negotiate–arbitrate model, in which the primary responsibility is on the access provider and access seeker to negotiate on price and non-price terms. Part 5 provides for the development of an access undertaking to guide how the access regime should operate.

History of this Decision

Following its creation in 2010, Queensland Rail commenced a process to transition from the 2008 undertaking to one that better reflected its assets and business structure. Some key milestones in the course of that process are as follows:

- March 2012—Queensland Rail submitted the 2012 DAU which sought to replace its 2008 undertaking with a set of requirements more suited to a network operator which is not vertically integrated with an above-rail freight business.
- April 2012—the QCA released an Issues Paper on the 2012 DAU.
- February 2013—Queensland Rail withdrew its 2012 DAU and submitted the February 2013 DAU (the 2013 DAU). In doing so, Queensland Rail indicated that it had revised the 2012 DAU to reflect concerns raised by stakeholders.
- April and May 2013—the QCA hosted a series of workshops on issues in the February 2013 DAU, including above-rail operational issues, West Moreton network pricing, standard access agreements (SAAs), Mount Isa pricing and investment framework matters.
- June 2013—Queensland Rail resubmitted its 2013 DAU and included, for the first time, its proposed reference tariffs for the West Moreton network from 1 July 2013.
- June 2014—the QCA released its consultation paper on western system coal tariffs in the 2013 DAU along with a report on the West Moreton network prepared by its rail consultant, B&H Strategic Services (B&H).
- June 2014—the QCA conducted a workshop with stakeholders on West Moreton network coal tariffs.
- October 2014—the QCA released its 2014 Draft Decision.
- December 2014—Queensland Rail withdrew its June 2013 DAU.
- February 2015—the QCA issued an initial undertaking notice under section 133 of the QCA Act, requiring Queensland Rail to submit a draft access undertaking (DAU) to the QCA within 90 days after receiving the notice.
- May 2015—Queensland Rail submitted a DAU to the QCA, within the time specified in the section 133 notice.
- October 2015—the QCA released its 2015 Draft Decision ('the Draft Decision').

Submissions on the Draft Decision

The QCA received submissions on the Draft Decision from Aurizon, Glencore, Queensland Rail, New Hope and Yancoal.

Queensland Rail considered that large aspects of the QCA's Draft Decision would be beyond power. For instance, Queensland Rail said that we had not correctly applied our approval criteria in section 138(2) by:

- not recognising the over-riding guidance of the objects clause (s. 138(2)(a)) and the pricing principles (s. 138(2)(g))
- not giving adequate regard to Queensland Rail's legitimate business interests (s. 138(2)(b))
- 'trading off' the pricing principles against other factors
- retrospectively applying an adjustment amount.

In contrast, other stakeholders were broadly supportive of many aspects of the Draft Decision, but requested refinements in a range of areas, including on our draft positions on the SAA, the adjustment amount and the pricing principles.

In light of the large amount of new material, on 15 January 2016 the QCA invited stakeholders to make further comments on submissions received through a 'submissions on submissions' process. On 19 January 2016, QCA staff released a staff 'Request for comments' paper and subsequently made the QCA's Queensland Rail tariff model available to stakeholders upon request. Following a request from Queensland Rail on 25 January 2016, the closing date for further submissions was extended to 14 March 2016.

The QCA received seven further submissions, from Aurizon, Glencore, Queensland Rail, New Hope, Queensland Resources Council (QRC), Asciano and Yancoal. These submissions largely responded to the 'Request for comments' staff paper and, for the most part, reiterated existing positions.

Independent economic advice

Professor Flavio Menezes was engaged as an independent expert to report on economic matters related to the West Moreton and Metropolitan tariffs.

Professor Menezes is a Professor of Economics at the University of Queensland, who was previously the Foundation Director of the Australian Centre of Regulatory Economics at Australian National University. He has taught, published and consulted extensively in the areas of competition and regulatory economics.

He provided two reports, 'A regulatory economics assessment of the proposed Western System asset valuation approaches' and 'The economic impact of QR's proposal not to include an adjustment to refund or recoup differences in tariffs', which the QCA published in October 2015 along with the Draft Decision.

We subsequently engaged Professor Menezes to respond to reports by other experts, that commented on his previous reports, and to provide a report on the approach to cost allocation. On 8 April 2016, before Professor Menezes had completed these reports, the Queensland Government appointed him to the QCA Board. Professor Menezes disclosed his interest to a meeting of the QCA on 19 April 2016 and was not present when the QCA considered this Decision at its 14 June 2016 meeting, or when the QCA discussed matters related to the Decision at the April and May meetings.

Professor Menezes' opinions were obtained in his capacity as an independent expert. We also engaged Professor Stephen King of Monash University as an expert to peer review Professor Menezes' reports and conclusions. Professor King is a Professor of Economics at Monash University, a Member of the Economic Regulation Authority of Western Australia (ERA) and a Member of the National Competition Council (NCC).

Professor Menezes' reports and Professor King's peer review of Professor Menezes' reports are available on the QCA's website.

The QCA's considerations

The QCA has considered Queensland Rail's 2015 DAU and stakeholder submissions in accordance with the assessment criteria in section 138(2) of the QCA Act (see Box 1).

Box 1: The legal framework

The QCA may approve the 2015 DAU only if the QCA considers it appropriate to do so having regard to each of the matters set out in the QCA Act:

> *The Authority may approve a draft access undertaking only if it considers it appropriate to do so having regard to each of the following (s. 138(2)) —*
>
> *(a) the object of Part 5 of the QCA Act; which is to promote the economically efficient operation of, use of and investment in, significant infrastructure by which services are provided, with the effect of promoting effective competition in upstream and downstream markets (s. 69E);*
>
> *(b) the legitimate business interests of the owner or operator of the service (s. 138(2)(b));*
>
> *(c) if the owner and operator of the service are different entities—the legitimate business interests of the operator of the service are protected (s. 138(2)(c));*
>
> *(d) the public interest, including the public interest in having competition in markets (whether or not in Australia) (s. 138(2)(d));*
>
> *(e) the interests of persons who may seek access to the service, including whether adequate provision has been made for compensation if the rights of users of the service are adversely affected (s. 138(2)(e));*
>
> *(f) the effect of excluding existing assets for pricing purposes (s. 138(2)(f));*
>
> *(g) the pricing principles mentioned in section 168A; which in relation to the price of access to a service are that the price should:*
>
> *(i) generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved (s. 168A(a));*
>
> *(ii) allow for multi-part pricing and price discrimination where it aids efficiency (s. 168A(b));*
>
> *(iii) not allow a related access provider to set terms and conditions that discriminate in favour of the downstream operations of the access provider or a related body corporate of the access provider, except to the extent the cost of providing access to other operators is higher (s. 168A(c)); and*
>
> *(iv) provide incentives to reduce costs or otherwise improve productivity (s. 168A(d)); and*
>
> *(h) any other issues the authority considers relevant.*

It is not open to the QCA to approve an access undertaking that does not include the matters required by section 137. These are:

> *(1) an expiry date (s. 137(1));*
>
> *(2) provisions for identifying, preventing and remedying conduct by an access provider that provides, or proposes to provide, access to itself or a related body corporate that unfairly differentiates in a material way between access seekers (in negotiations (s. 137(1A)(a)(i)) and access holders (in providing the service (s. 137(1A)(a)(ii))); and*
>
> *(3) provisions preventing an access provider that provides, or proposes to provide, access to itself or a related body corporate recovering, through the price of access, costs that are not reasonably attributable to the provision of the service (s. 137(1A)(b)).*

Sections 137(2) and 138A set out matters that may be included in an access undertaking.

Our Decision

Our Decision is to refuse to approve Queensland Rail's 2015 DAU.

In this Decision we have explained our views and have set out those amendments that we consider necessary before we can approve Queensland Rail's proposed 2015 DAU. Relevantly, where matters are not in dispute, the QCA has generally adopted the positions contained in its Draft Decision. For these matters, an elaboration of the QCA's positions is contained in the Draft Decision.

Structure

This Decision follows the structure of the 2015 DAU:

- Chapter 1: Application and scope—the extent to which the 2015 DAU applies to the entirety of Queensland Rail's declared service as well as ring-fencing and non-discriminatory treatment obligations.
- Chapter 2: Negotiation and capacity management—the negotiation framework between Queensland Rail and access seekers.
- Chapter 3: Pricing rules—the rules for setting access charges under the access undertaking.
- Chapter 4: Operating requirements—the rules for how Queensland Rail will demonstrate capacity, coordinate maintenance and schedule and operate trains.
- Chapter 5: Reporting—the approach to reporting and audit of costs, performance and compliance with the undertaking.
- Chapter 6: Administrative provisions—provisions relating to, among other things, dispute resolution and tariff reporting.
- Chapter 7: SAA—the structure and terms of the standard access agreement (SAA).
- Chapter 8: Reference tariffs—the approach to the reference tariffs for the West Moreton network and the Metropolitan network. The chapter also addresses the issue of an adjustment amount to reflect the previous over-recovery of access charges by Queensland Rail.
- Chapter 9: Investment framework, planning and coordination—Queensland Rail's obligation to permit, but not fund, an extension to the network to facilitate the execution of an access agreement.
- Chapter 10: Legislative framework—how we have applied our legislated obligations in making our Decision.

Secondary undertaking notice

On 17 June 2016, the QCA issued Queensland Rail with secondary undertaking notice under section 134 of the QCA Act. The QCA asks Queensland Rail Limited to give to the QCA a copy of the amended 2015 DAU within 60 days of receiving this Notice (i.e. by 16 August 2016) or, if the period is extended under section 134(2A) of the QCA Act, the extended period.

1 APPLICATION AND SCOPE

Part 1 of the Queensland Rail's 2015 DAU contains provisions on the scope of access, non-discriminatory treatment of above-rail operations, and the term of the undertaking.

Our Decision accepts many aspects of Queensland Rail's proposals, but has also made changes to Part 1, including to:

- *clarify the extent to which the undertaking will apply to Queensland Rail's activities*
- *provide that descriptions of the infrastructure to which the undertaking will apply are up to date*
- *provide for a separation of process between disputes to which the QCA Act apply and those to which the QCA Act does not apply*
- *enhance ring-fencing obligations.*

Introduction

Scope and administrative matters are addressed in an approved access undertaking to provide certainty to access seekers negotiating access to a declared service, while protecting the legitimate business interests of the service provider. These matters include the scope of access covered by the undertaking, as well as provisions for non-discriminatory treatment.

On balance, we have in this section of the Decision broadly adopted the preliminary views we expressed in the Draft Decision in relation to Part 1 of Queensland Rail's 2015 DAU on application and scope.

Key issues are summarised in Table 1 below. Matters that require a more detailed explanation are discussed in Sections 1.1 to 1.8.

Table 1: Summary of key positions and decision—application and scope

Summary of the 2015 Draft Decision	*Queensland Rail's position*	*Other stakeholders' position*	*QCA Decision*
1. General review mechanism			
No proposal on a general review mechanism of the approved undertaking was presented before the Draft Decision.	Disagreed with New Hope's proposal of a general review mechanism (see right).	New Hope considered that a review mechanism was necessary.	See Section 1.1.
2. Definition of access			
The definition of access means the non-exclusive right to use a specified part of the network.	Accepted the Draft Decision.	New Hope and Glencore disagreed and said that the definition is too narrow.	See Section 1.2.
3. Scope of the access undertaking			
The access undertaking applies where Queensland Rail (or its successor, assign or subsidiary) is the railway manager.	Disagreed with our definition of 'Network' and with New Hope's proposal to support connecting private infrastructure.	New Hope supported the Draft Decision; however, it suggested amendments to support connecting private infrastructure, and	See Section 1.3.

Summary of the 2015 Draft Decision	*Queensland Rail's position*	*Other stakeholders' position*	*QCA Decision*
		provisions to allow the QCA to require a standard connection agreement.	
4. Line diagrams			
Queensland Rail will notify stakeholders before making material amendments to the line diagrams, and provide a dispute process if stakeholders question the accuracy of the line diagrams.	Disagreed with the Draft Decision, and considered that the dispute process should not be extended to access holders.	New Hope supported the Draft Decision.	See Section 1.4.
5. Non-discriminatory treatment			
Queensland Rail to clearly set out how it will be prevented from unfairly differentiating between access seekers and access holders.	Disagreed with the Draft Decision and said that the QCA is beyond power.	New Hope supported the Draft Decision. Asciano supported the Draft Decision, however they said that it could be strengthened.	See Section 1.5.
6. Ring-fencing			
The QCA may require Queensland Rail to submit a DAAU implementing ring-fencing arrangements.	Disagreed and said that our proposed provisions are ambiguous, outside of power and uncertain.	New Hope supported the Draft Decision. Asciano disagreed with the Draft Decision.	See Section 1.6.
7. Maintenance			
The Draft Decision clarified Queensland Rail's obligation to maintain the network.	Disagreed and said that we are beyond power and in direct conflict with section 119 of the QCA Act.	No comments.	See Section 1.7.
8. Term of the Undertaking			
The Draft Decision proposed to accept the 2015 DAU term from the date of approval to 30 June 2020.	Accepted in principle.	Not opposed.	See Section 1.8.

1.1 Review mechanism

The Draft Decision did not discuss a general review mechanism to review the undertaking after it was approved.

Stakeholders' submissions

New Hope said that such a general review mechanism was needed to appropriately protect access seekers and access holders.[2]

Queensland Rail disagreed with New Hope's amendments to introduce a general review mechanism and submitted that this was beyond powers under the QCA Act.[3]

QCA analysis and Decision

The QCA does not accept the need for a general review mechanism.

We note New Hope's position that:

- Many provisions of the approved access undertaking will be new and untested
- The impact of small changes (e.g. traffic mix, capital expenditure requirements and train configuration) on a low-volume network will be more material compared to a high-volume network like the central Queensland coal network (CQCN)
- Access holders and access seekers bear the asymmetric risks of a longer-term access undertaking, as Queensland Rail is allowed to submit a voluntary draft amending access undertaking (DAAU) at any time, while access holders and access seekers cannot reopen an approved undertaking
- The current disagreements over adjustment amounts may lead to unanticipated consequences.[4]

That said, we consider a general review provision to open an approved access undertaking may create regulatory uncertainty for all parties. The proposed provision is also overly broad and the trigger criteria are somewhat subjective.

We note that the DBCT 2010 access undertaking contains a general review mechanism. However, that undertaking was to be for five years, while the new access undertaking for Queensland Rail has a shorter duration, with it terminating on 30 June 2020. Further, the DBCT provision was a voluntary inclusion by DBCT whereas Queensland Rail opposes such a provision. In the Draft Decision we proposed that Queensland Rail strengthen the audit provisions and proposed other checks and balances intended to mitigate against monopolistic behaviour. We have also, in this Decision (see Section 1.5 below), strengthened the unfair discrimination clauses in the 2015 DAU in order to prevent the kind of behaviour that New Hope's proposal is seeking to cure. Given this, we do not consider a general review mechanism as proposed by New Hope is necessary.

Additionally, we note that under section 139 of the QCA Act, we may require Queensland Rail to submit a DAAU if we consider the approved access undertaking needs to be amended to be consistent with a provision of the QCA Act. We consider this provision provides sufficient

[2] New Hope, sub. 23: 5–6.
[3] Queensland Rail, sub. 33: 53.
[4] New Hope, sub. 23: 5–6.

protection in the event of an unexpected and significant change in circumstances that would render the undertaking inconsistent with a provision of the QCA Act.

1.2 Definition of access

The Draft Decision proposed to accept Queensland Rail's 2015 DAU definition of 'access' to mean 'the non-exclusive right to use a specified part of the 'network' for the purposes of operating train services'. While the Draft Decision definition of 'network' differed from that in the 2015 DAU, both versions reflected the term 'network' as referring to 'rail transport infrastructure as defined in the Transport Infrastructure Act' (TI Act).[5]

Queensland Rail accepted the Draft Decision.[6]

New Hope and Glencore said the definition of access should be widened by generally reinstating clause 2.1(b) of the 2008 access undertaking.[7] This would involve a detailed list of matters for which access should be provided, rather than our Draft Decision approach of defining access by reference to the TI Act.

We have adopted our Draft Decision position that 'access', through the definition for 'network', should be aligned to rail transport infrastructure as defined in the TI Act. This is how the facility of rail transport infrastructure is defined in the QCA Act for the declared service.

We consider 'access to a network' should be aligned to how this term is defined in the TI Act—so that there is consistency in definitions thereby reducing uncertainty. For this reason, rail transport infrastructure should be aligned to the definition in the TI Act. By aligning the definition, access essentially includes the access to facilities necessary for operating a railway, such as railway track, bridges, communication systems, marshalling yards, overhead electrical power supply systems.

For clarification purposes, we have provided examples of these facilities in our footnote to the definition of network in clause 7.1 in Appendix F consistent with the services in the TI Act.

Summary 1.1

The 2015 DAU's definition of 'Network' must include a footnote that provides examples of rail transport infrastructure.

See the definition of 'network' in Appendix F.

1.3 Scope of the access undertaking

Queensland Rail proposed in its 2015 DAU that the undertaking apply to Queensland Rail where it is a railway manager, except in the circumstance where it was providing railway manager services to the owner of the infrastructure and the terms of the contract with the owner did not allow Queensland Rail to comply with aspects of the 2015 DAU.

In the Draft Decision we said that the 2015 DAU should apply to all rail transport infrastructure for which Queensland Rail (or its successor, assign or subsidiary) is the railway manager,

[5] QCA, October 2015 proposed DAU, cl. 7.1.
[6] Queensland Rail, sub. 33: 53.
[7] New Hope, sub. 23: 4. Glencore, sub. 25: 6.

consistent with the declared service in section 250(1)(b) of the QCA Act and the definition of network.

Stakeholders' submission

Queensland Rail submitted that our definition of network is concerning, and that we have no statutory power to seek to regulate future successors, assigns, or subsidiaries of Queensland Rail through the 2015 DAU.[8]

New Hope supported the Draft Decision. However they have suggested amendments to support connecting private infrastructure, and provisions to allow the QCA to require a standard connection agreement during the term of the undertaking (should the need arise).[9,10] Queensland Rail disagreed with New Hope's suggested amendments and said they are unnecessary and inappropriate, and beyond powers under the QCA Act.[11]

QCA analysis and Decision

We have adopted our Draft Decision position.

We disagree with Queensland Rail's position that we have do not have power to regulate future successors, assigns, or subsidiaries of Queensland Rail. This is because the declared service under section 250(1)(b) of the QCA Act includes rail transport infrastructure for which Queensland Rail or a successor, assign or subsidiary of Queensland Rail is the railway manager. Given the Act provides this definition, we repeat our Draft Decision analysis that the access undertaking should also apply when Queensland Rail, or a successor, assign or subsidiary of Queensland Rail, is the railway manager.

We also disagree with New Hope's position, as the QCA Act and parts of our amendments to the 2015 DAU already address their concerns as follows:

- The 'Extension Access Principles' section in Schedule I of the amended DAU identifies the principles of negotiation if access seekers or access holders want to build a rail connection (a form of an extension) from the mainline to its private infrastructure
- Queensland Rail is already required to negotiate access to the network in good faith under section 100 of the QCA Act, and any dispute in relation to the connection of private infrastructure to the network in order to gain access to the network is likely to be considered either an access dispute or an extension related dispute.

We note also that in the amendments we provided pursuant to our 2015 Draft Decision clause 1.2.1(b)(i)(C)(1) in the 2015 DAU was not deleted. This was an oversight. For our required amendments to be effective, this particular subclause should also be deleted.

[8] Queensland Rail, sub. 26: 87–88.
[9] New Hope, sub. 32: 39.
[10] New Hope, sub. 23: 4–5.
[11] Queensland Rail, sub. 33: 52–53.

Summary 1.2

The 2015 DAU must apply to all rail transport infrastructure for which Queensland Rail (or Queensland Rail's successor, assign or subsidiary) is the railway manager, consistent with the declared service in section 250(1)(b) of the QCA Act.

See clauses 1.2.1 and 7.1 in Appendix F.

1.4 Line diagrams

Queensland Rail proposed in its 2015 DAU to use 'reasonable endeavours' to publish line diagrams that are accurate in all material respects.

The Draft Decision accepted the proposal; however, we proposed to require Queensland Rail to notify stakeholders before making material amendments to the line diagram, and to provide a dispute resolution process to access holders and access seekers.

Stakeholders' submissions

Queensland Rail said:

- The QCA had no statutory power to extend the dispute process to access holders;
- Line diagrams did not define the scope of the declared service of the network to which the undertaking related; and
- The accuracy of the line diagrams could not reasonably be regarded as affecting competition in above-rail markets and it was unclear why access seekers or, in particular, access holders would ever need to rely on the line diagrams.[12]

New Hope supported the Draft Decision and said that the line diagrams represented, in practical terms, parts of the network which Queensland Rail acknowledged were regulated under the undertaking.[13,14]

QCA analysis and Decision

Save for the amendment discussed below, we have adopted our Draft Decision position in relation to line diagrams.

We disagree with Queensland Rail's position for the following reasons:

- An access undertaking can include an obligation on the owner or operator to comply with the decisions of the QCA in relation to disputes about matters stated in the undertaking. This also supports the object of Part 5 as investment in the network and effective market competition is likely to be promoted by regulatory certainty arising from a stated dispute resolution process for an access holder in an access undertaking; and
- While the line diagrams may not strictly define the scope of the declared service of the network to which the undertaking relates, they are used by various parties to ascertain the railways for which Queensland Rail is the railway manager. For this reason, we consider line diagrams to be relevant to the identification of rail infrastructure which is subject to the

[12] Queensland Rail, sub. 26: 88.
[13] New Hope, sub. 23: 3.
[14] New Hope, sub. 32: 39.

declared service. This is recognised by Queensland Rail in clause 1.2.3(a) of its 2015 DAU drafting.

However, in addition to the proposed amendments in the Draft Decision which we have adopted in this Decision, we have amended clause 6.1.2(b) of the undertaking to clarify which disputes between an access holder and Queensland Rail can be determined under the undertaking. We have also clarified clause 6.1.4 to provide for a separation of process between access disputes under Part 5 Division 4 of the Act and other disputes. We consider that this decision is appropriate after having regard to all of the factors in section 138(2) of the QCA Act; including, after having regard to the interests of access seekers, access holders and the legitimate business interests of Queensland Rail (s. 138(2)(b), (e), (h)).

Summary 1.3

The 2015 DAU must provide that Queensland Rail will notify stakeholders before making material amendments to the line diagrams, and provide a dispute process if stakeholders question the accuracy of the line diagrams.

See clauses 1.2.3, 6.1.2 and 6.1.4 in Appendix F.

1.5 Non-discriminatory treatment

Queensland Rail proposed in its 2015 DAU to acknowledge its obligations under sections 100, 104, 125 and 168A(c) of the QCA Act. The 2015 DAU did not contain further provisions or obligations in this respect.

The Draft Decision proposed an amendment that would require Queensland Rail to clearly set out how it will be prevented from unfairly differentiating between access seekers and access holders, consistent with sections 100, 104, 125, 137(1a) and 168A(c) of the QCA Act.

Stakeholders' submissions

Queensland Rail disagreed with the Draft Decision and said that it was unnecessary to duplicate the provisions of the QCA Act. It also stated that we had left out parts of the QCA Act provisions when duplicating, which had the effect of distorting and extending the intent of the QCA Act provisions. Queensland Rail said that as such the proposed amendment was beyond power.[15]

Both New Hope and Asciano supported the Draft Decision, although New Hope suggested that the provisions could be strengthened.[16, 17, 18]

QCA analysis and Decision

The QCA has reviewed its draft position in light of further submissions. We accept it is not necessary to duplicate the provisions in the QCA Act which apply in any event. Consistent with this approach we have deleted the priority given to the obligations in the DAU, and instead extended the acknowledgement to the permissions (in some case conditional permissions) allowed to Queensland Rail by the QCA Act.

[15] Queensland Rail, sub. 26: 88.
[16] New Hope, sub. 23: 3.
[17] New Hope, sub. 32: 39–40.
[18] Asciano, sub. 28: 10–11.

Summary 1.4

The non-discrimination provisions in the 2015 DAU must:

(a) include an acknowledgement by Queensland Rail of the permissions (in some cases conditional permissions) allowed to Queensland Rail by the QCA Act

(b) delete the priority given to the provisions of the undertaking.

See clause 1.3 in Appendix F.

1.6 Ring-fencing

Queensland Rail's 2015 DAU proposed that if Queensland Rail gained interests in markets upstream or downstream from the below-rail services that were in competition with third parties in those markets, then Queensland Rail would inform the QCA and submit to the QCA a DAAU setting out its ring-fencing obligations.

The Draft Decision considered Queensland Rail's 2015 DAU drafting provided insufficient certainty to access holders and access seekers. As such, we proposed amendments to set out a clear trigger for when, and the process by which, Queensland Rail would amend the undertaking to include ring-fencing arrangements.

Stakeholders' submissions

Queensland Rail said the QCA's amended 2015 DAU drafting (cl. 6.5) was ambiguous, uncertain, and outside of power.[19]

New Hope supported the Draft Decision.[20] Asciano disagreed with the Draft Decision and said that some level of separation was required to minimise the potential for cost shifting and cross-subsidisation between Queensland Rail's businesses. As a result, it considered the ring-fencing obligations from the previous access undertaking should be retained.[21]

QCA analysis and Decision

After reviewing all of the stakeholder comments in relation to the proposed ring-fencing provisions we have decided to adopt Queensland Rail's original proposal (cl. 2.2.3), with some minor amendments to address the main concerns that were outlined in the Draft Decision.

As discussed in the Draft Decision, Queensland Rail's existing operational structure means ring-fencing issues are unlikely to affect competition, as Queensland Rail's passenger operations do not compete with other above-rail operators. Further, we do not consider that this is likely to change during the term of this undertaking.

However, we still have the following concerns in relation to Queensland Rail's proposed ring-fencing provisions:

- Queensland Rail has not offered to provide the ring-fencing provisions before any hypothetical entry into an above-rail market; and
- Timeframes in relation to Queensland Rail's proposed lodgement of a DAAU are not clear.

[19] Queensland Rail, sub. 26: 90–91.
[20] New Hope, sub. 23: 3.
[21] Asciano, sub. 28: 8–9.

Because of this, we do not consider it appropriate to approve Queensland Rail's proposed clause 2.2.3 on ring-fencing appropriate in accordance with s. 138(2), including by reference to subsections (a), (d), (e) and (h). Rather, we require Queensland Rail to amend that clause to provide that Queensland Rail will inform the QCA if the stated interests are 'likely' to arise during the term of the undertaking. Further, we have amended the provision to state that Queensland Rail must inform the QCA as soon as reasonably practicable if the stated interests are likely to arise.

We consider that our required amendments to clause 1.3, coupled with the unfair differentiation and enforcement provisions under the QCA Act, will act to offset our concerns.

With these changes, we consider Queensland Rail's ring-fencing arrangements, combined with sections 104, 150A, 150AA and 153 of the QCA Act, and clause 1.3(d) in our proposed DAU, address Asciano's concerns.

We consider that the required amendments are appropriate after having regard to section 138(2) of the QCA Act in that they provide a balance between protecting the legitimate business interest of Queensland Rail and mitigating against monopoly behaviour likely to adversely affect competition in upstream and downstream markets.

Summary 1.5

The ring-fencing arrangements in the 2015 DAU must provide that Queensland Rail will inform the QCA if the relevant interests in upstream and downstream markets are 'likely' to arise during the term of the undertaking (in addition to informing the QCA if the such interests 'do' arise); and, that Queensland Rail will inform the QCA as soon as reasonably practicable.

See clause 2.2.3 in Appendix F.

1.7 Maintenance

In its 2015 DAU submission, Queensland Rail proposed to acknowledge its obligation to maintain the network within the SAA.

The Draft Decision proposed to accept that this obligation remain in the SAA, but sought to clarify Queensland Rail's obligation to maintain the network—that is, Queensland Rail has to comply with the network management principles (NMP), operating requirements manual (ORM) and interface risk management plan (IRMP). We also proposed introducing a definition of maintenance work in the SAA, to mean 'any works involving maintenance, repairs to, renewal, replacement and associated alterations or removal of, the whole or any part of the Network and includes any inspections or investigations of the Network'.

Stakeholders' submissions

Queensland Rail disagreed with the Draft Decision to include the term 'replacement' in the definition of maintenance work and said it was beyond power and in direct conflict with section 119 of the QCA Act.[22]

[22] Queensland Rail, sub. 26: 71.

QCA analysis and Decision

We note that the term 'replacement' forms part of the definition of 'extension' in the QCA Act and it was not our intention for the treatment of maintenance to have an impact on Queensland Rail's extension obligations. To avoid any possible confusion, we have therefore adopted a definition of maintenance that excludes the term 'replacement'. These obligations are discussed further in Chapter 9.

Separately, given maintenance of the network is integral to access and safety, we consider it appropriate that Queensland Rail's maintenance obligation is clarified and implemented in the access undertaking itself. We have therefore included an overarching maintenance obligation on Queensland Rail in the body of the access undertaking linked to the definition of 'Below Rail Services' (the definition of 'Below Rail Services' has also been amended to clarify Queensland Rail's maintenance obligations).

We consider that, after having regard to all of the factors listed in section 138(2) of the QCA Act, it is appropriate that Queensland Rail accept a more explicit responsibility for the maintenance of the network. Queensland Rail sells access to the network and recovers access charges for the maintenance of the network. Therefore, it is a principal role of Queensland Rail to maintain the network to a level that is (at least) capable of providing the contracted access rights.

This is appropriate, having regard to Queensland Rail's legitimate business interests, the interests of access seekers, access holders and the public interest (s. 138(2)(b), (d), (e), (h)). Proper maintenance of the network is also important for the safe operation of the network. It also promotes the object of Part 5 by clarifying the delineation of rights and obligations of the various stakeholders.

Summary 1.6

The 2015 DAU must specifically provide that Queensland Rail will provide below rail services and Queensland Rail's maintenance obligations in the definition of 'below rail services' must be clarified.

See clauses 1.2.2 and 7.1 in Appendix F.

1.8 Term of the undertaking

Stakeholders did not oppose our Draft Decision to accept the term of the access undertaking proposed in the 2015 DAU. The QCA refers to and adopts section 1.5 of the Draft Decision.

Summary 1.7

Queensland Rail to maintain that the term of the undertaking commences from the date of its approval and terminates on 30 June 2020.

2 NEGOTIATION PROCESS

The third party access regime in the QCA Act is underpinned by a 'negotiate–arbitrate' approach to regulation. A negotiation framework that promotes successful negotiation, and hence facilitates access, is a key component of an access undertaking.

An effective negotiation framework enables appropriate information exchange between parties, enables parties to negotiate in a timely manner and on reasonable terms, provides a transparent and predictable process for allocating limited available capacity, and protects an access provider from negotiating with parties that have no genuine interest in gaining access.

The framework seeks to balance the interests of access seekers and access holders, and the legitimate business interests of an access provider so as to promote the efficient operation of, use of, and investment in, the relevant declared infrastructure, and the public interest.

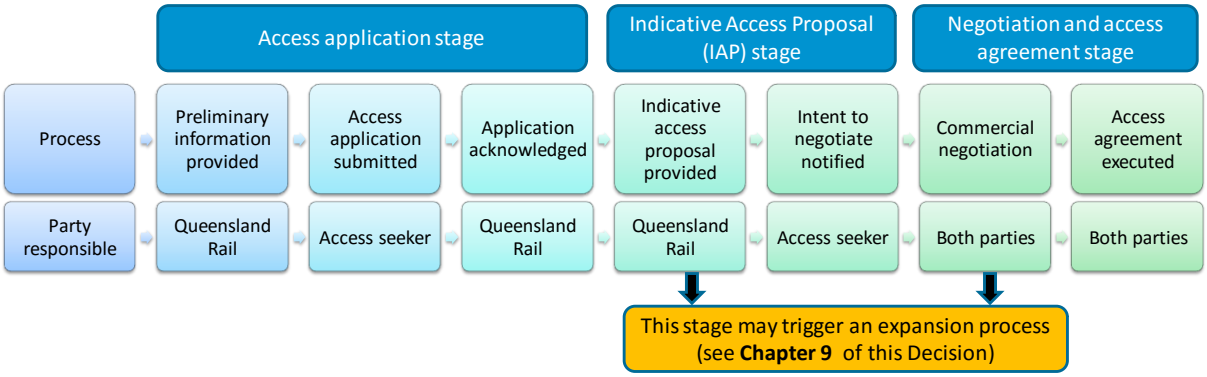
On this basis, we have proposed amendments to the negotiation process which we require before approving the 2015 DAU. Key areas where this Decision differs from the Draft Decision include:

- *The requirement for an end user to provide train operations information when making an access application has been removed*
- *The definition of a 'renewal' now allows for an access seeker to reduce their capacity requirements.*

Introduction

Part 2 of Queensland Rail's 2015 DAU proposes the framework for parties to negotiate with Queensland Rail to reach agreed terms and conditions in the form of an access agreement.[23] It also includes the process and the rules for allocating limited available capacity and outlines the responsibilities of Queensland Rail and access seekers during different stages of the negotiation process (see Figure 2).

Figure 2 Overview of the proposed negotiation framework



The key issues are summarised below in Table 2. Matters that require detailed explanation are discussed in Sections 2.1 to 2.5.

[23] The access agreement has been typically executed by Queensland Rail and a rail operator. However, the 2015 DAU proposes to allow an access agreement also be executed in a tripartite form by Queensland Rail, a rail operator and, if required, a rail operator's end customer (see Chapter 7 of this Decision).

Table 2: Summary of the key positions and Decisions—the negotiation process

Summary of the 2015 Draft Decision	*Queensland Rail's position*	*Other stakeholders' position*	*QCA Decision*
1. Information exchange			
Queensland Rail's information requirements should be more flexible and consistent with the QCA Act.	Accepted.	Asciano and New Hope supported the proposed amendments. New Hope and Yancoal suggested some amendments.	See Section 2.1.1.
Obligations to provide cost and pricing information to access seekers during a negotiation must be consistent with the QCA Act, including the obligation to provide appropriate capacity information.	Accepted its obligation to provide information but said that elements of that information should only be upon request, as many access applications do not require all information listed in the QCA Act.	New Hope and Glencore supported the proposed amendments but wanted greater disclosure.	See Section 2.1.2.
2. Timeframe			
A party seeking an extension to a timeframe may reasonably justify it and the other party may not unreasonably withhold its consent.	Accepted in principle.	New Hope supported the proposed amendments but suggested amendments.	See Section 2.2.
3. Refusal to provide access			
Access can be refused on the grounds of concurrent requests only in the case of duplicate access requests.	Accepted in principle.	New Hope supported the proposed amendments but requested additional amendments.	See Section 2.3.
Access can be refused for passenger safety, only if Queensland Rail acts reasonably in assessing the impact and complies with non-discrimination provisions.	Disagreed on the basis that Queensland Rail's safety requirements should not be subject to dispute.	No comments.	See Section 2.3.
An access seeker can seek to extend the time it has to demonstrate it satisfies prudential requirements.	Accepted in principle.	New Hope supported the proposed amendments.	See Section 2.3.
Proposed to not approve Queensland Rail's proposal to recover costs when negotiations do not end up in an access agreement.	The DAU should reflect the principle of cost recovery.	New Hope considered Queensland Rail's right to recover costs unwarranted.	See Section 2.3.

Summary of the 2015 Draft Decision	*Queensland Rail's position*	*Other stakeholders' position*	*QCA Decision*
4. Competing access requests			
If a customer does not nominate a train operator, Queensland Rail should negotiate with all operators who are negotiating with that customer.	No comment.	New Hope supported the proposed amendments.	See Section 2.4.1.
The queuing mechanism should be consistent with 2008 and 2010 access undertaking principles; transitional provisions should address mutually exclusive applications received before approval date of this undertaking.	No comment.	New Hope supported the proposed amendments but suggested some additional amendments.	See Section 2.4.2.
5. Access renewal rights			
Priority should be given to a renewing access holder for train services carrying coal or other bulk minerals that satisfy the conditions in the undertaking and should include transitional provisions.	Accepted in principle.	Yancoal and New Hope said renewal rights should also be granted when an access seeker chose to reduce its capacity requirement. Glencore said the definition of renewal should be broadened.	Section 2.5.
The 2015 DAU should set out the renewal application process when there is no competing access application and the access charge calculation mechanism for a non-reference access renewal.	Accepted in principle.	New Hope said the requirement for Queensland Rail to review capacity availability for an access request should be removed for renewing access seekers.	See Section 2.5.

2.1 Information exchange

The 2015 DAU sets out two forms of information exchange during the negotiation process:

- information required by Queensland Rail from an access seeker
- information provided by Queensland Rail to an access seeker.

2.1.1 Information required by Queensland Rail

Schedule B of the 2015 DAU specifies the information requirements for an access application, by either a rail operator or an end customer.

The Draft Decision proposed amendments to the information requirements in the 2015 DAU to enable a customer to apply for access rights independently of a rail operator. We also required

amendments to provide that the information requirements are within the bounds of the approved undertaking.

Stakeholders' submissions

Queensland Rail accepted the proposed amendments to Schedule B 'in principle' and gave no specific comments or amendments.[24] Glencore[25], Asciano[26] and New Hope[27] supported the Draft Decision. Yancoal[28], Glencore[29] and New Hope also proposed a number of amendments aimed primarily at distinguishing the information that should be required from an end user access seeker from that to be required from an operator access seeker.

QCA analysis and Decision

We have adopted those parts of the Draft Decision regarding Queensland Rail's proposed information requirements from an access seeker during a negotiation process, but have made some drafting amendments in Schedule B of the amended DAU in response to Yancoal's, Glencore's and New Hope's submissions.

Specifically, we agree that detailed rail operation information such as section run times, minimum dwell times and short-term storage requirements (cls. 5.1(g), (h) and (j) of Schedule B)) may not be available to an end user access seeker until an above-rail operator is contracted. For this reason, we have moved these requirements to clause 5.3 in Schedule B which applies to the information required from operator access seekers.

[24] Queensland Rail, sub. 26, Annexure 7: 1.
[25] Glencore sub. 25: 5.
[26] Asciano, sub. 28: 7.
[27] New Hope, sub. 23: 7.
[28] Yancoal, sub. 27: 4.
[29] Glencore, sub. 25: 6.

Summary 2.1

The 2015 DAU's information requirements relating to an access seeker during the negotiation process must be as follows:

(a) The information requirements and the negotiation process should enable an end customer to apply for access rights and to execute an access agreement independently of a rail operator.

See clause 2.7 and the definition of 'end user access seeker' in clause 7.1, both of which are in Appendix F. See also Schedule B to Appendix F.

(b) The information requirements for access applications should be in accordance with the undertaking.

See clauses 2.1.1 and 7.1 in Appendix F.

(c) The information that Queensland Rail requires regarding an access seeker's ability to use the access rights the access seeker is seeking, should be narrowed down.

See clauses 3 and 5.3 in Schedule B to Appendix F.

(d) Rail operation information in relation to sectional run times, minimum dwell times and short-term storage requirements should be provided by access seekers who are rail transport operators, rather than end user access seekers.

See clauses 5.1 and 5.3 in Schedule B to Appendix F.

2.1.2 Information provided by Queensland Rail

The QCA Act lists the information Queensland Rail must give an access seeker, including information about the access price (and the pricing methodology), costs (including capital, operating and maintenance) and asset values (and the asset valuation methodology). Such information could alternatively be given in the form of a reference tariff.

Queensland Rail proposed providing technical, operating and commercial information to an access seeker at different stages of the negotiation process, subject to confidentiality obligations.

In the Draft Decision we accepted Queensland Rail's proposal to specify in the undertaking the technical and operating information it will provide to an access seeker. However, we considered Queensland Rail's proposal created significant uncertainty about the provision of cost, pricing and capacity information and was inconsistent with its obligations under section 101 of the QCA Act. We therefore proposed amendments requiring Queensland Rail to provide such information to facilitate balanced negotiations.

Stakeholders' submissions

Queensland Rail[30] accepted the proposed amendments in principle but asked that elements of the information specified in section 101(2) of the QCA Act only be provided on request. Asciano[31] and New Hope[32] supported the proposed amendments but New Hope said that the drafting of clause 2.7.2(a)(i)(A), which specifies that Queensland Rail must supply information

[30] Queensland Rail, sub. 26, Annexure 7: 2.
[31] Asciano, sub. 28: 7.
[32] New Hope, sub. 23: 8.

that is reasonably required by the access seeker in accordance with section 101(1) of the QCA Act, unless that information is available elsewhere, should be amended. Glencore[33] asked that Queensland Rail's disclosure requirements be expanded.

QCA analysis and Decision

We have adopted our Draft Decision position in regard to Queensland Rail's obligation to provide information to an access seeker, but have made some drafting amendments to the DAU in response to New Hope's submission.

Specifically, we have amended clause 2.7.2(a)(i)(A) to clarify that Queensland Rail can only expect an access seeker to obtain relevant information from other sources if that information is accessible free of charge and without restriction.

We note Glencore's view that the QCA should be more specific about the information that Queensland Rail should provide to an access seeker. Given that Queensland Rail's obligations under section 101(2) include a number of the items requested by Glencore (e.g. information about the way in which the price is calculated, asset value and system capacity), and given that clause 2.7.2(a)(i)(A) (which allows an access seeker to request additional information) is subject to a reasonableness test, we do not consider such detail is necessary.

We have also rejected Queensland Rail's proposal that it only be required to supply elements of the information listed in section 101(2) on request on the basis that:

- it was unclear which aspects of the information requirement Queensland Rail was referring to; and
- Queensland Rail has not provided evidence that the information would not be required by an access seeker (or a particular type of access seeker) in order to prepare and negotiate their access request.

Restrictions on disclosure and disputes

The QCA required in QR Network's 2010 undertaking that it include a provision that prevented QR Network from restricting an access seeker or its customer from disclosing contract terms to the QCA (cl. 6.5.5(a)).

We consider that a similar restriction on Queensland Rail would promote the efficient operation and use of Queensland Rail's network and be in the interests of access seekers, access holders and their customers (s. 138(2)(a), (e), (h)). So, while such a restriction may not advance the legitimate business of Queensland Rail, we consider it is appropriate to require such a provision having regard to all the approval criteria in section 138(2).

We have therefore required amendments in clause 2.2.2(c) of Appendix F to prevent Queensland Rail from restricting the ability of access seekers, access holders or their customers to raise disputes with the QCA, or to disclose to the QCA the terms of an access agreement or a change to the number of contracted train services the description of which accords with the reference train service.

[33] Glencore, sub. 25: 5.

Summary 2.2

The 2015 DAU must provide that:

(a) Queensland Rail provide cost and pricing information in an indicative access proposal, consistent with its obligations under section 101(2) of the QCA Act and an initial estimate of access charges.

See clauses 2.4.2 and 2.7.2 in Appendix F.

(b) Confidentiality obligations do not apply where parties are required to disclose information under the QCA Act.

See clauses 2.2.2 and 2.7.2(a) in Appendix F.

(c) Appropriate capacity information be provided to an access seeker. This includes providing a DTP which contains sufficient information about possibly relevant train services and also an MTP.

See clause 2.4.2 and Schedule A to Appendix F.

(d) Queensland Rail can only expect an access seeker to obtain information, which Queensland Rail can otherwise provide, if that information is obtainable by the access seeker at no cost and without restriction.

See clause 2.7.2(a)(i)(A) in Appendix F.

(e) Queensland Rail may not restrict the ability of access seekers, access holders or their customers to raise disputes with the QCA, or to disclose to the QCA the terms of an access agreement or a change to the number of contracted train services the description of which accords with the reference train service.

See clause 2.2.2(c) in Appendix F.

2.2 Timeframes

Queensland Rail proposed in the 2015 DAU timeframes for different stages of the negotiation process, and provided for departures from those timeframes in certain circumstances. It also proposed penalties for access seekers that failed to meet key timeframes in the negotiation process.

In the Draft Decision we accepted Queensland Rail's proposed timeframes for the different stages of the negotiation process. However, we considered Queensland Rail's proposal of allowing an extension to some of those timeframes did not provide an appropriate balance between the interests of Queensland Rail and access seekers. We therefore proposed amendments in Part 2 of the 2015 DAU to adequately balance the interests of all parties.

Stakeholders' submissions

Queensland Rail[34] accepted the amendments proposed in the Draft Decision in principle and did not propose any further changes. New Hope[35] suggested that a clause be added to oblige Queensland Rail to justify to other access seekers in a queue how long an access negotiation was taking, if a queuing access seeker considered the negotiation period excessive.

[34] Queensland Rail, sub. 26, Annexure 7: 3.
[35] New Hope, sub. 23: 8.

QCA analysis and Decision

We have adopted our Draft Decision in regard to the timeframes relevant to each different stage of the negotiation process (see section 2.2 of the Draft Decision).

We do not accept New Hope's suggestion that Queensland Rail should be obliged to justify to other access seekers in a queue how long a negotiation is taking. The undertaking contains a number of provisions that require negotiations to be undertaken within a given timeframe, including clause 2.5.1 that allows Queensland Rail to terminate negotiations with an access seeker if it has not responded to an indicative access proposal within three months. It may not advance the legitimate business interests of Queensland Rail to extend negotiations unless it considers a successful outcome highly likely. Moreover, we do not consider it in Queensland Rail's legitimate business interests for such a burden to be imposed (s. 138(2)(b)).

Summary 2.3

The 2015 DAU must provide that if the party seeking an extension to a timeframe (in the contexts of providing an indicative access proposal; an intent to negotiate; a negotiation period; and the execution of an access agreement) the other party cannot unreasonably withhold its consent to the extension request.

See clauses 2.3.2 (deletion), 2.4.1, 2.5.2, 2.5.3, 2.7.1(b)(ii)(c) and clause 2.9.5 in Appendix F.

2.3 Refusal to provide access

In the 2015 DAU, Queensland Rail proposed that it be able to:

- cease negotiations in certain circumstances
- recover its costs where an access application did not result in an access agreement.

The Draft Decision accepted that Queensland Rail should be entitled to refuse access in certain circumstances to protect its legitimate business interests. However, we had concerns with the discretion the 2015 DAU gave Queensland Rail in refusing access in some of the proposed circumstances. We proposed amendments accordingly, to adequately balance Queensland Rail's legitimate business interests and the interests of access seekers.

With respect to cost recovery, we found Queensland Rail's proposal deficient, as it was not transparent and it was unclear if the costs recovered would be limited to the efficient incremental costs of providing the service. We invited Queensland Rail to submit an alternative proposal that sought to recover efficient incremental costs and avoids double dipping.

Stakeholders' submissions

Queensland Rail accepted in principle that its ability to refuse to provide access on the grounds of concurrent access requests should be limited to duplicate access requests[36], and the requirement that an access seeker be able to extend the period to demonstrate it has satisfied the prudential requirements.[37] However, Queensland Rail rejected the amendment which

[36] Queensland Rail, sub. 26, Annexure 7: 3.
[37] Queensland Rail, sub. 26, Annexure 7: 2.

required it to 'act reasonably' when rejecting an access request on passenger safety grounds.[38] Queensland Rail did not provide an alternative cost recovery proposal.[39]

New Hope[40] said that an access seeker should be able to justify why the separate requests were not duplicates before Queensland Rail ceased negotiations on one of them and that Queensland Rail should be required to explain why it considered a request to be a duplicate.

QCA analysis and Decision

We have adopted our Draft Decision position in regard to the 2015 DAU's refusal to provide access provisions (see section 2.3 of the Draft Decision).

The QCA does not accept Queensland Rail's submission that including the words 'acting reasonably' may result in Queensland Rail's rail safety requirements being 'watered down, disputed or replaced'. Including these words is intended to provide access seekers with clarity on how safety regulations are imposed, given their application can materially affect the access seeker's operations.

We note that Queensland Rail has not provided the redrafting of its cost recovery provisions as requested in our Draft Decision, but has simply stated that the QCA has accepted the principle that when access negotiations do not result in an access agreement being finalised, Queensland Rail has the right to recover its costs from an access seeker. This statement by Queensland Rail is not correct as it presumes that we would automatically accept cost recovery in these cases.

The Draft Decision deleted the cost recovery provisions that had been drafted by Queensland Rail on the basis that they did not make clear that only the efficient incremental cost of the negotiations could be recovered, and that those provisions could potentially allow double dipping.

Queensland Rail has not made a compelling case on the matters raised in the Draft Decision. Moreover, there are likely to be significant difficulties in establishing a cost-recovery framework that transparently demonstrates that Queensland Rail is only recovering efficient costs and which provides a robust and transparent mechanism to address concerns about potential double-dipping.

An inappropriately constructed framework carries risks, including that it would impact on the ability of access seekers to seek access to the declared service, which would be inappropriate having regard to section 138(2)(a), (d), (e) and (h). The QCA is therefore not prepared to approve a cost recovery mechanism.

We have not applied New Hope's proposed amendment that would require Queensland Rail to explain why it considers a request to be duplicate when it ceases to negotiate with an access seeker on this basis. We note that clause 2.8.1(a)(iv)(A) already provides that Queensland Rail must provide reasons to an access seeker if it intends to cease negotiations on this basis, and clause 2.8.1(a)(iv)(B) provides an opportunity for the access seeker to respond.

We consider that this gives the access seeker sufficient information before negotiations actually cease with regard to duplicate requests. We have, however, amended clause 2.8.1(a)(iv)(B) to make it clear that if the access seeker is able to demonstrate that the requests are not duplicate, Queensland Rail should proceed with the concurrent requests.

[38] Queensland Rail, sub. 26, Annexure 7: 3.
[39] Queensland Rail, sub. 26, Annexure 7: 4.
[40] New Hope, sub. 23: 8.

Summary 2.4

The 2015 DAU must provide as follows:

(a) Refusal to provide access on the grounds of concurrent requests should be limited to duplicate access requests, provided the access seeker is given a reasonable explanation and a reasonable opportunity to respond before Queensland Rail refuses to deal with the access seeker in respect of those duplicate requests.

See clause 2.8.1 in Appendix F.

(b) Refusal to provide access on the grounds of passenger safety should be subject to Queensland Rail acting reasonably in assessing the impact on passenger safety and complying with the non-discriminatory provisions.

See clause 2.8.2 in Appendix F.

(c) An access seeker should be able to seek to extend the time it has to demonstrate satisfaction of the prudential requirements by reasonably justifying the extension, and Queensland Rail, should act reasonably in considering whether to agree to such an extension. Queensland Rail must also act reasonably in assessing whether an access seeker satisfies the prudential requirements.

See clause 2.8.3 in Appendix F.

(d) The cost recovery proposal should be deleted.

2.4 Competing access requests

Generally, competing access seekers are categorised into two groups—that is, access seekers:

- seeking access rights in respect of competitive tendering—such as train operators seeking access rights to serve the same customer for the same haulage task; or
- seeking access rights in respect of mutually exclusive paths—such as train operators seeking access rights to provide different haulage tasks when there is insufficient capacity to meet their access requirements.

These two categories of access seekers are considered in turn below.

2.4.1 Competitive tendering

The 2015 DAU sets out how Queensland Rail will deal with competing access seekers that seek access rights for the same traffic task.

The Draft Decision accepted Queensland Rail's proposal to explicitly outline the process it will follow for dealing with access seekers that compete for the same haulage task, but required that the process be amended to allow for potential train operators to negotiate the price and other terms of access with Queensland Rail, to present this to the end customer, and to allow the end customer to select the operator(s) they wish to engage.

Queensland Rail made no comment and New Hope supported the Draft Decision.[41]

[41] New Hope, sub. 23: 9.

Our analysis and position remain the same as set out in the Draft Decision. Therefore, we have adopted the Draft Decision in relation to dealing with competing access requests (see section 2.4.1 of the Draft Decision).

Summary 2.5

On dealing with competing access requests, the 2015 DAU must provide that if a customer does not nominate a train operator as its preferred operator, Queensland Rail should negotiate with all train operators who are negotiating a potential haulage agreement with that customer, and should offer each an access price and the terms and conditions of access. Queensland Rail should then negotiate and execute an access agreement with the train operator who reasonably demonstrates that it will be appointed by the relevant customer.

See clause 2.6 in Appendix F.

2.4.2 Competition for mutually exclusive paths

The 2015 DAU sets out how Queensland Rail will deal with multiple access seekers seeking access rights for different traffic tasks when there is insufficient available capacity to fulfil their access requests—that is, when access applications are mutually exclusive.

The 2015 DAU proposes a queuing mechanism to determine which access seeker will be allocated access rights. The order of a queue will initially be based on the access application date; however, Queensland Rail may change that order in various circumstances.

In our Draft Decision we accepted Queensland Rail's proposal to use a queuing mechanism for granting access rights to mutually exclusive access applications, but amended its proposal to more adequately balance the legitimate business interests of Queensland Rail and the interests of access seekers.

Queensland Rail did not comment on the proposed amendments, while New Hope[42] supported the proposed amendments, but asked that their application to the West Moreton network be clarified to ensure that in the West Moreton system the queue could only be reordered to place an access seeker with a term of at least 10 years ahead of an application of less than 10 years.

We accept New Hope's comment that clarity is required in how the order of multiple applications for coal-carrying train services on the West Moreton network in a queue may be changed. The intent of the Draft Decision was that for such train services, a queue could only be reordered to place an application that sought a term of at least 10 years ahead of another application that sought a term of less than 10 years. We have clarified that in our amended drafting of clause 2.9.2(i)(iv) in the 2015 DAU.

[42] New Hope, sub. 23: 10.

Summary 2.6

For mutually exclusive access applications, the 2015 DAU must provide as follows:

(a) The queuing mechanism for allocating limited available capacity to mutually exclusive access applications be consistent with the principles reflected in the 2010 access undertaking.

See clause 2.9.2 in Appendix F.

(b) Transitional provisions be included in the undertaking to deal with mutually exclusive access applications received before the approval date of this undertaking.

See clause 6.4 in Appendix F.

2.5 Access renewal rights

The 2015 DAU sets out the process for allocating access rights in situations where a queue includes an application from an existing access holder seeking to renew its access rights—that is, where a renewing access holder competes with a new access seeker for the same access rights.

The 2015 DAU enables an end customer or its nominee to apply for renewal rights. The 2015 DAU proposes that the renewing access holder 'may' get priority over a new access seeker in executing an access agreement, if the access rights being renewed are for coal-carrying or other bulk-mineral-carrying train services and satisfy certain other conditions.

In the Draft Decision we proposed amendments to the process for allocating access rights to better balance the legitimate business interests of Queensland Rail and the interests of access seekers/holders.

Stakeholders' submissions

Queensland Rail[43] accepted our proposed amendments in principle. New Hope[44] supported our proposed amendments but proposed a number of amendments aimed at simplifying the access renewal process and providing renewing access holders with more certainty. Glencore[45] and Yancoal[46] said that clause 2.9.3(b) and the definition of renewals were unduly narrow in their application and did not provide sufficient protection for 'renewals' for customers with sunk costs. Yancoal[47] also said that Queensland Rail should not be permitted to advise a renewing customer that there was insufficient capacity and that it should be possible to seek a renewal of part of an access right held under an existing access agreement. Glencore separately asked that renewal rights should extend to intermodal operations.[48]

QCA analysis and Decision

We have broadly adopted the Draft Decision in regard to access renewal rights but we have made a number of additional amendments to those proposed in the Draft Decision.

[43] Queensland Rail, sub. 26, Annexure 7: 5.
[44] New Hope, sub. 23: 10.
[45] Glencore, sub. 35: 3.
[46] Yancoal, sub. 27: 4.
[47] Yancoal, sub. 35: 3.
[48] Glencore, sub. 25: 3.

New Hope has proposed three amendments to the access right renewal provisions which seek to:

- remove the ability for Queensland Rail to advise that insufficient capacity exists;
- allow a renewing access right holder to elect to renew only part of an existing access right; and
- require Queensland Rail to notify an access holder of the need to renew.

We agree that, all other things being equal, Queensland Rail should have the capacity to accommodate a renewing access request, and that therefore it is unnecessary to require Queensland Rail to provide a capacity analysis (cls. 2.4.2(b) and 2.7.2(a)(vii)) and information on whether it is willing to fund any extensions required (cl. 2.7.2(b)). However, while we have made amendments (see cl. 2.7.2(e)) to this effect, we note that, to the extent that a renewal requires asset replacements to maintain existing capacity, the cost of these asset replacements would be expected to be reflected in the pricing of a renewing access seeker, under the terms of the renewal pricing framework.

Similarly, we have amended the definition of a renewal in response to comments from New Hope, Yancoal and Glencore, to make it clear that if a renewing access holder elects to renew only a portion of its access rights, this should be treated as a renewal. However, we note that, to the extent that Queensland Rail can show that this reduction results in a material change in cost or risk, there is scope for the access price to reflect this change.

We have not applied Glencore's suggestion that an application which includes a change to an origin or destination that is not likely to impact on other access holders or access seekers should still be treated as a renewal. This is because provisions associated with renewals are primarily designed to protect an access seeker's sunk costs and these protections do not necessarily apply if an access seeker chooses to switch production from one operation to a similar operation even if that operation is nearby. In making this decision, we have had regard to our final decision on UT4 for Aurizon Network[49] which includes a clause which allows for changes to origin and/or destination when renewing an access agreement. However, we note that the clause is tailored to the specific characteristics of the Aurizon network which are not currently features of the Queensland Rail network. For example, a change in terminal at either Gladstone or Dalrymple Bay ports could be classified as a change in destination but would effectively require the same paths—this scenario does not currently occur on the Queensland Rail network.

We also do not consider it necessary to extend the renewal provisions to cover intermodal services (as requested by Glencore). We note that if an application for intermodal services was not first in the queue and other existing or renewing services were dependent on that intermodal service for their continued operation, Queensland Rail may prioritise that application with reference to clause 2.9.2(j)(ii). This is because clause 2.9.2(j)(ii) allows a queue to be reordered on the basis of the effects that an application for intermodal services may have on contribution to common cost including 'revenue that would reasonably be expected to reduce or be eliminated as a consequence of Queensland Rail not providing access for that train service'.

We have not applied New Hope's proposal that Queensland Rail be required to notify an access holder of the need to renew. We consider that the management of the access contracts would

[49] QCA 2016b, Appendix A, cl. 7.3.

be part of the normal business requirements of an access holder and we do not consider it advances Queensland Rail's legitimate business interests for such a burden to be imposed.

Summary 2.7

The 2015 DAU must provide as follows:

(a) Queensland Rail should give priority to a renewing access holder for coal-carrying or other bulk-mineral-carrying train services that satisfy the conditions in the undertaking (i.e. those relating to contract period, nature of access rights sought and timeframes for submitting renewal application).

(b) The access rights renewal process should reflect the amendments summarised in Table 2.7 of the Draft Decision and discussed above (e.g. Queensland Rail's obligation to offer terms consistent with the undertaking and the standard access agreement, unless the parties agree otherwise) including setting out the process that will apply to a renewal application when there is no competing access application consistent with the process noted in the Draft Decision and the provisions for the calculation of access charges for a renewal access seeker where no reference tariff applies, which requires access charges to be calculated consistently with the renewal pricing rules as required in Part 3 of Appendix F.

(c) In relation to a renewing access request, Queensland Rail does not need to provide a capacity analysis or information regarding extensions.

(d) The definition of 'renewal' should be amended so that a renewal access seeker can seek less train paths than its existing access agreement and, if the renewal access agreement is otherwise substantially equivalent to the expiring access agreement it will still be treated as a 'renewal'.

(e) For the purposes of giving priority rights, transitional provisions are included in the undertaking to deal with renewal applications for coal-carrying or other bulk-mineral-carrying train services received before the approval date of this undertaking for which negotiations have not concluded.

See the definition of renewal and renewal access seeker and clauses 2.4.2, 2.7.2, 2.9.3, 2.9.4(a), 6.4 and 7.1 in Appendix F.

3 PRICING RULES

Part 3 of Queensland Rail's 2015 DAU sets out principles for developing access charges.

In considering Queensland Rail's proposed 'pricing principles' for inclusion in the access undertaking the QCA has had regard to the criteria in s. 138(2) of the QCA Act.

We consider the proposed 'pricing principles' require amendments to provide greater clarity and balance in the way Queensland Rail sets access charges. These are discussed below.

This Decision differs from the Draft Decision in a few key areas. This Decision:

- *allows for changes in cost or risk, as well as differences in cost or risk, to be reflected in access charges*;
- *adopts a renewal pricing mechanism that allows for variations to renewing train services if variations are due to supply chain efficiency improvements*;
- *renames the 'pricing principles' as the 'pricing rules' to avoid confusion with the pricing principles in the QCA Act; and*
- *further increases obligations on Queensland Rail to provide details of its pricing methodology.*

Introduction

The pricing rules[50] in this chapter are designed to guide the development of access charges by Queensland Rail. The pricing rules do not bind the setting of a reference tariff by the QCA, which must be set having regard to section 138(2) of the QCA Act.[51]

These pricing rules are also relevant if either Queensland Rail or an access seeker brings a dispute to the QCA for an access determination. Relevantly, as the pricing rules form part of the access undertaking, the QCA cannot make an access determination that is inconsistent with them.

The pricing rules are of particular use to Queensland Rail and access seekers in negotiating tariffs for non-reference train services.[52] They also provide constraints on the setting of access charges by Queensland Rail.

For clarity, the pricing rules do not constrain the operation of the pricing principles in the QCA Act (s. 168A). Moreover, section 168A is one of a range of matters that the QCA must have regard to when deciding an access dispute. For the purposes of the 2015 DAU, the QCA considers that by providing certainty and clarity in relation to the setting of access charges, the pricing rules discussed in this chapter, and contained in Part 3 of the DAU, are appropriate

[50] Queensland Rail's 2015 DAU and our Draft Decision used the term 'pricing principles'. To avoid confusion with the pricing principles in the QCA Act (i.e. s. 168A), this Decision uses the term 'pricing rules' to reflect that these are rules within the DAU, and not requirements under the QCA Act. The distinction between s. 168A and what were previously called 'pricing principles' in the DAU is acknowledged by Queensland Rail (Queensland Rail, sub. 26: 55).

[51] We have clarified this in our mark-up to the 2015 DAU (Appendix F) including by amendments to cls. 3.0, 3.5(c) and the definition of 'reference tariff'.

[52] For example, the pricing rules would apply to train services on the Mount Isa line. They would also apply to coal-carrying train services on the West Moreton or Metropolitan networks, but mainly to reflect the cost or risk difference where those train services vary from the reference train service.

having regard to the public interest (s. 138(2)(d)) and the interests of persons who may seek access as well as access holders (s. 138(2)(e), (h)).

In our 2015 Draft Decision, we indicated a number of amendments that we required before we would accept Part 3 of the 2015 DAU as appropriate. Queensland Rail has rejected or questioned the majority of our required amendments.

We have broadly adopted our Draft Decision views on our approach to Part 3 of Queensland Rail's 2015 DAU on pricing rules.

The key issues are summarised below in Table 3. Matters that require a more detailed explanation are discussed in Sections 3.1 to 3.8.

Table 3 Pricing rules in the 2015 DAU

Summary of the 2015 Draft Decision	*Queensland Rail's position*	*Other stakeholders' position*	*QCA Decision*
1. Hierarchy of pricing rules			
Revenue adequacy should not be given primacy ahead of other pricing rules.	Disagreed; the proposed ranking potentially obliged Queensland Rail to set a price that did not achieve revenue adequacy.	Asciano and New Hope supported the Draft Decision; Aurizon supported it in principle but questioned whether the proposed ranking could conflict with the RAB review provisions.	See Section 3.1.
2. Revenue adequacy			
The definition of revenue adequacy should remove the reference to return on assets.	Disagreed.	Queensland Rail should not achieve revenue adequacy using an asset valuation approach that provided windfall gains/recovery of inefficient costs.	See Section 3.2.
3. Limits on price differentiation (within the same market)			
Queensland Rail may differentiate prices in relation to similar train services within the same market only in certain limited circumstances.	Disagreed.	Stakeholders largely supported our Draft Decision, but some requested additional amendments.	See Section 3.3.
4. Pricing and revenue limits			
Queensland Rail may set prices below the floor revenue limit subject to QCA approval.	Had concerns about the QCA's drafting.	Stakeholders agreed with our amendments except Glencore who had concerns regarding the calculation of the ceiling revenue limit.	See Section 3.4.
5. Asset valuation methodology for negotiating access charges			
Flexibility should be allowed on methodology for asset	Disagreed. Allowing flexibility in determining the asset valuation	New Hope, Yancoal and Aurizon supported	See Section 3.5.

Summary of the 2015 Draft Decision	*Queensland Rail's position*	*Other stakeholders' position*	*QCA Decision*
valuations.	approach was inconsistent with regulatory practice.	the Draft Decision.	
6. Pricing for access rights at renewal (non-reference tariff services)			
Queensland Rail should provide more certainty to renewing access seekers in relation to pricing.	Disagreed.	Stakeholders generally agreed with our Draft Decision. Glencore had concerns about locking in existing methodologies and proposed changes to the renewal provisions.	See Section 3.6.
7. Rate of return			
Weighted average cost of capital (WACC) of 6.93%; the final dates for setting the risk free rate and debt margin to be determined.	Said risk-free rates were higher in previous periods.	Yancoal and New Hope supported the proposed methodology for setting the WACC.	See Section 3.7.
8. Take-or-pay arrangements			
Queensland Rail may apply a pre-determined take-or-pay rate for reference tariff users, but not for non-reference tariff users.	No comment on this issue.	Glencore said that there should be a pre-determined rate for non-reference tariff take-or-pay. Other stakeholders were largely concerned with the rate of take-or-pay in relation to reference tariff users (discussed in Chapter 8 of this Decision).	See Section 3.8.

3.1 Hierarchy of pricing rules

Previous access undertakings that applied to Queensland Rail's declared service included a hierarchy of pricing rules. These rules were designed to address conflicts that may arise when applying the pricing rules in an access undertaking to develop access charges. The hierarchy was explicitly included in the 2008 access undertaking and implicitly in the 2001 access undertaking.

To address any conflicts between the pricing rules in the 2015 DAU, the Draft Decision proposed the 2015 DAU include a hierarchy of pricing rules as follows:

(1) limits on price differentiation as between access seekers/holders (within a market) in accordance with clause 3.3 of the DAU;

(2) pricing limits (between different markets) in accordance with clause 3.2 of the DAU;

(3) network utilisation in accordance with clause 3.1.2 of the DAU; and

(4) revenue adequacy in accordance with clause 3.1.1 of the DAU.

Stakeholders' submissions

Queensland Rail did not support our Draft Decision, on the basis that ranking revenue adequacy last 'obliges Queensland Rail to potentially set a price that does not achieve revenue adequacy' and this was fundamentally inconsistent with the pricing principles set out in section 168A(a) of the QCA Act.[53] In Queensland Rail's opinion, revenue adequacy should be first in the hierarchy.

Glencore,[54] Asciano[55] and New Hope[56] supported the proposed hierarchy, while Aurizon supported elevating the 'limits on price differentiation' above revenue adequacy. However, Aurizon said that the elevation of pricing limits above revenue adequacy was potentially inconsistent with the RAB review provisions (in Schedule E). These provisions state that existing asset values cannot be reduced unless it can be shown that prices would reduce demand or the asset could be bypassed.[57]

QCA analysis and Decision

We have adopted our Draft Decision position on the hierarchy of pricing rules[58] for access pricing except that we have changed the name from 'pricing principles' to 'pricing rules' as noted above (see section 3.1 of the Draft Decision).

We do not accept Queensland Rail's arguments about the pricing rules in the context of section 168A.

One of the pricing principles is that the price of access to a service should generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved. But the considerations relevant to whether to approve the 2015 DAU are broader than just the pricing principles. We do not agree that the QCA Act precludes the inclusion, in an access undertaking, of pricing rules with a hierarchy which could have the effect of requiring Queensland Rail to accept a price that would not generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved.

A hierarchy of pricing rules in the order outlined provides certainty to access seekers and access holders about which rule will prevail in the event of a conflict. Relevantly, we do not support placing revenue adequacy first in the hierarchy as it may enable Queensland Rail to achieve revenue adequacy without observing the constraints on price differentiation (i.e. by unfairly discriminating between access seekers to maximise revenues). We also consider that the price limits should take precedence over revenue adequacy. This is to preclude Queensland Rail from charging more than the stand-alone cost of a service in order to achieve revenue adequacy.

We disagree with Aurizon's point that the proposed ranking of the pricing rules was potentially inconsistent with the RAB review provisions in Schedule E. In any event we note that the RAB review provisions would only apply when there is a regulated access charge and changes to

[53] Queensland Rail, sub. 26: 55.
[54] Glencore, sub. 30: 4.
[55] Asciano, sub. 28: 11.
[56] New Hope, sub. 23: 11.
[57] Aurizon, sub. 20: 22.
[58] We have adopted the term 'pricing rules' to avoid confusion with the pricing principles in s. 168A of the QCA Act.

regulated access charges must be made with reference to section 138(2) of the QCA Act and not the pricing rules.

Summary 3.1

The 2015 DAU must:

- **(a) rename the 'pricing principles' in the DAU to the 'pricing rules'**
- **(b) provide for a hierarchy of pricing rules in the following order:**
  - **(i) limits on price differentiation**
  - **(ii) pricing limits**
  - **(iii) network utilisation**
  - **(iv) revenue adequacy.**

See Part 3 in Appendix F.

3.2 Revenue adequacy

In the Draft Decision we rejected Queensland Rail's definition of revenue adequacy on the basis that it was seeking a minimum return not just on investments, but also on assets, which it proposed to value universally using its preferred DORC valuation approach.[59]

Stakeholders' submissions

Queensland Rail said the QCA's proposed drafting had the effect of completely rewriting and changing the meaning of what is required by section 168A(a) of the QCA Act, by:

(a) providing Queensland Rail with a revenue that was no more than sufficient to meet the efficient costs of providing access when the wording of the Act specified that the expected revenue should be 'at least enough' to meet the efficient costs

(b) allowing the QCA to make unspecified, unqualified and non-reviewable 'adjustments' to either Queensland Rail's revenue or its efficient costs

(c) including the return on investment referred to in section 168A(a) of the QCA Act as part of the efficient costs and therefore, as drafted, subject to 'adjustment', rather than a separate return as required by section 168A(a).[60]

New Hope supported the QCA's proposed amendment.[61]

QCA analysis and Decision

The language of Queensland Rail's drafting of the revenue adequacy provision departs in a number of respects from the language of section 168A(a). We do not consider these departures are appropriate in the circumstances.

The language of Queensland Rail's draft referred to Queensland Rail being 'entitled to earn' revenue. We have adopted drafting which refers to 'expected revenue'. This is more consistent with the language of 168A(a) and is appropriate because the risk of recovering less revenue

[59] QCA 2015: 50.
[60] Queensland Rail, sub. 26: 11.
[61] New Hope, sub. 23: 12.

than expected is something that is factored into the calculation of the appropriate 'return on investment commensurate with the regulatory and commercial risks involved'. Further, we do not accept that Queensland Rail has an 'entitlement' to such an amount.

To address these points, we have amended the wording of the revenue adequacy provisions (cl. 3.1.1). Rather than stating that Queensland Rail is 'entitled to earn revenue' the clause now provides for Queensland Rail to set access charges based on the revenue it is expected to generate (and the TSC payments that it is expected to receive). The expected revenue should be at least enough to meet the efficient costs of providing access and should include a return on investment commensurate with the regulatory and commercial risks involved.

We have also rephrased the reference to how Queensland Rail might allocate any excess revenue so that it is consistent with the forward-looking nature of this clause.

Further, we have made amendments to clarify when Part 3 applies and when the reference tariff applies and to which train services it applies (cl. 3.0 of Appendix F) (see also Chapters 8 and 10).

Summary 3.2

The 2015 DAU must provide that the revenue adequacy pricing rule is subject to the hierarchy of pricing rules and so that access charges and TSC payments are set to generate expected revenue that is at least enough to meet the efficient costs of providing access and includes a return on investment commensurate with the regulatory and commercial risks involved. Also, where Queensland Rail is expected to earn excess revenues Queensland Rail may seek to reduce TSC payments rather than access charges. We have also clarified how and when Part 3 applies.

See Schedule D, clause 2(b) of 2015 DAU (amended and moved to clause 3.0) and clauses 3.0, 3.1.1, 3.2.3, 3.5 and the definition of 'reference tariff' in Appendix F.

3.3 Limits on price differentiation

Queensland Rail proposed to be able to vary the methodology, rates and other inputs for calculating access charges between access seekers in accordance with the price differentiation limits in clause 3.3 of the 2015 DAU.

Queensland Rail's proposed provisions allow for Queensland Rail to apply different access charge methodologies to different access seekers according to whether or not a reference tariff applies to the relevant access seeker.

We considered in the Draft Decision that the 2015 DAU provided Queensland Rail with excessively broad discretion to engage in price differentiation within markets where a reference tariff did not apply.

Stakeholders' submissions

Queensland Rail did not support the Draft Decision and maintained its original proposal.[62]

[62] Queensland Rail, sub. 26: 56–62.

Glencore said that it had major concerns about the lack of transparency in relation to Queensland Rail's pricing and the excessively high prices that Queensland Rail was able to achieve due to its monopoly power.[63]

New Hope supported the Draft Decision but said that the QCA should have the power to require the development of new reference tariffs.[64] Asciano, Aurizon and Yancoal supported the Draft Decision.[65] However, Aurizon said that the limits on price differentiation should be amended slightly to provide for competitive neutrality where an access seeker funded an extension.[66]

QCA analysis and Decision

The QCA considers that the 2015 DAU provides Queensland Rail with an excessively broad discretion to differentiate access charges within markets where a reference tariff does not apply. This could possibly lead to improper differentiation, which is not appropriate having regard to section 168C.[67] We consider that this level of discretion is not appropriate, with regard to each of the factors listed in section 138(2).

Queensland Rail's legitimate business interests (including the ability for efficient price differentiation) are one of the factors to be considered by the QCA pursuant to section 138(2) of the QCA Act. However, unbalanced discretion for Queensland Rail in relation to access charges may distort competition in related markets through inefficient price differentiation between different train operators or end markets (s. 138(2)(a) and (d).

We require the 2015 DAU to be amended to set out more appropriately the circumstances in which price differentiation is permitted, including when there are changes in TSC payments through each individual access agreement. The 2015 DAU should also provide that price differentiation breaches are able to be remedied when they occur.

In this regard, we have adopted our Draft Decision position, except for a number of additional changes discussed below.

Permitted access charge differentiation within a non-reference tariff market

We require Queensland Rail to amend its 2015 DAU such that differentiating access charges between access seekers within the same non-reference-tariff market is limited to situations where:

- there are differences or changes in the cost or risk to Queensland Rail of providing the below-rail service
- available capacity is demonstrably insufficient to meet all access seekers' requests, permitting the quotation of a maximum access charge (as provided by cl. 3.1.2 of the 2015 DAU).

We consider it would be inappropriate if Queensland Rail could also price discriminate within a market (as Queensland Rail proposed) on the basis of:

[63] Glencore, sub. 25: 1.
[64] New Hope, sub. 23: 12–13.
[65] Yancoal, sub. 27: 1; Aurizon, sub. 20: 19, Asciano, sub. 28: 11.
[66] Aurizon, sub. 20: 20.
[67] Section 168A(c) permits price discrimination when 'it aids efficiency'.

- Queensland Rail being unable to commercially provide access at the current access charges (for example, due to changes in the TSC payments)[68]; or
- changes in circumstances that have a material effect on the ability of access holders to pay access charges.[69]

Differences and changes in cost and risk

After reviewing the stakeholder submissions on these matters, we remain of the view that the above criteria for access charge differentiation could result in Queensland Rail being able to differentiate between access seekers (or holders) in the same market due to a broad and overly discretionary range of commercial matters which may be relevant to Queensland Rail but which may not necessarily be relevant to the provision of access. This type of price differentiation is not efficient, as anticipated in section 168A(b) of the QCA Act.

In this regard we have adopted our Draft Decision position.

However, we agree with Queensland Rail's submissions that for non-reference-tariff train services there should be a mechanism by which there can be a higher degree of flexibility to re-open access charges under access agreements, to allow for changes in cost or risk over the life of an access agreement.[70]

We consider that the provisions in the 2015 DAU which allow Queensland Rail to adjust access charges during the life of an access agreement (for differences in costs or risks to Queensland Rail of providing access) are in accordance with the same principle which allows differentiation in access charges at the time of contracting (for differences in costs or risks to Queensland Rail of providing access) in non-reference tariff markets. Therefore, in this Decision we have reinstated the relevant parts of clauses 3.3 and 3.6 which allow for differentiation over time. If those costs or risks are relevant, reasonable and related to the provision of access, we consider that they form a legitimate basis for price discrimination.

Given the increased obligations on Queensland Rail to provide information in relation to its use of these provisions, our changes provide that if an access seeker or access holder feels aggrieved about the use of these clauses, they can initiate a dispute. We consider that these changes provide an appropriate balance between Queensland Rail's interests in being able to price flexibly to adjust for cost and risk, and the interests of access seekers and access holders in having more transparent access charges (s. 138(2)(a), (b), (d), (e), (g), (h)).

New Hope said that the QCA should be able to require Queensland Rail to develop a new reference tariff.[71] We do not accept that it is appropriate to include this power within the 2015 DAU. This is because we have substantially increased the ability for access seekers to negotiate efficiency improvements in their relevant access agreements, both at the initial negotiation stage and during the term of the access agreement (see also Chapter 7 of this Decision).

If an access seeker or holder considers that a new reference tariff should be developed, it is open to those parties to bring an access dispute on the matter under Division 5, Part 5 of the QCA Act and the QCA may consider the appropriateness of implementing a new reference tariff. Alternatively, Queensland Rail can develop a new reference tariff which will be subject to the QCA's approval.

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[68] Queensland Rail, sub. 26: 58.
[69] Queensland Rail, sub. 26: 60.
[70] Queensland Rail, sub. 26: 58, 68.
[71] New Hope, sub. 23: 12, 14.

To restrict the application of the proposed clauses to appropriate cases, we have also included amendments in addition to those we proposed in the Draft Decision. These further amendments to clause 3.6 are similar to the Indicative Access Proposal information provisions,[72] in that they require Queensland Rail to detail how it is applying a differentiation in access charges. This is appropriate having regard to Queensland Rail's legitimate business interests (s. 138(2)(b)), the pricing principles (s. 168A), as well as being in the interests of access seekers and access holders by decreasing information asymmetry (s. 138(2)(e), (h)).

Quoting maximum access charges

Queensland Rail included in its 2015 DAU a clause (cl. 3.1.2(b)(iii)) which entitles Queensland Rail to charge less than a maximum access charge despite quoting a maximum access charge in situations where capacity is constrained. The clause also states that for the purposes of determining the ceiling revenue limit, the access charge for the relevant access seeker is assumed to be the maximum access charge.

We consider that this is a substantially reasonable provision, given that, if capacity is constrained, Queensland Rail should have the right to seek to maximise its access charges (subject to the pricing limits), while also having the choice to charge less than the maximum.

However, we also agree with New Hope that the wording of clause 3.1.2 which entitles Queensland Rail to price at the maximum access charge if the network is capacity constrained should be amended.

The current drafting states that Queensland Rail can price at maximum access charge if available capacity is 'potentially' insufficient to satisfy requests for access rights. New Hope has asked that this be strengthened so that the clause will apply only when available capacity is 'demonstrably' insufficient. We consider this amendment would provide that access seekers receive information that is important to the negotiation process in a timely manner. Importantly, this information would be expected to be readily available; therefore, we consider that the strengthening of the provision would not be onerous to Queensland Rail.

Queensland Rail wanted this clause to also be applicable where a non-reference-tariff user is renewing under the renewal pricing provisions. We do not consider that this provision is appropriate in the renewal pricing circumstances. The QCA's required renewal mechanism and pricing provisions are intended to provide price and access security to access holders who have substantial sunk costs and require rail access to avoid these assets becoming stranded.

Because of the operation of the renewal mechanisms, any capacity constraint will not be caused by the renewing access seeker which (if it is a renewing access seeker) has its relevant access rights preserved. The network utilisation pricing provisions can apply to those access seekers who are seeking access to the remaining train paths in the relevant system, rather than to the renewing access seeker.

Material changes in circumstances

Queensland Rail said that the ability to differentiate access charges between access holders (during the life of an access agreement) due to the prevailing economic circumstances (cl. 3.3(b)(ii)(B)(3) of the 2015 DAU) was in the interests of access seekers and access holders—on the basis that it would allow Queensland Rail to adjust access charges down if the economic

[72] See cl. 2.4.2 of the QCA's mark-ups to the 2015 DAU in Schedule F of this Decision, and Chapter 2 of this Decision.

circumstances prevailing at the time when the access charges are being determined had materially deteriorated.[73]

Despite Queensland Rail's commentary on the operation of the relevant clause, its drafting of the clause is sufficiently open to allow precisely the anti-competitive behaviour which we consider to be inappropriate. That is, Queensland Rail could use the provision to assess, at its discretion, an access holder or access seeker's ability to pay and then increase charges to those users that Queensland Rail considered were more profitable.[74]

Although it may advance the interests of Queensland Rail to apply higher access charges to more profitable network users, the use of the clause to differentiate in this manner would be an inappropriate use of monopoly power and would be sufficiently detrimental to the efficient operation of the network to outweigh Queensland Rail's interests in retaining that ability (s. 138(2)(a), (d), (e), (g) and (h)). Therefore, having regard to all the criteria in section 138(2), we do not consider it appropriate to approve Queensland Rail's proposal. We adopt our Draft Decision in this regard.

In relation to Aurizon's submission regarding competitive neutrality in the context of extensions, we do not consider the pricing rules need to be amended to provide for competitive neutrality when an access seeker funds an extension. Pricing rules facilitate variations between tariffs provided there is a legitimate reason for the variation; they do not simply mean that users pay the same tariff. If Queensland Rail was able to demonstrate that an expansion would not be able to generate sufficient revenue (along the whole corridor) to cover the cost of funding the expansion assets, and the incremental operating and maintenance costs of providing that access, then a higher access charge might be justified. The net impact of the expansion traffic on Queensland Rail would be expected to be a key component of both the access charge and funding agreement negotiations for an expansion.

Changes in TSC Payments

We require Queensland Rail to amend its 2015 DAU to remove the ability for Queensland Rail to differentiate between access seekers or between access seekers and access holders within a non-reference tariff market on the basis of changes to Queensland Rail's TSC payments.

We adopt our Draft Decision in this regard.

We consider that it is reasonable for Queensland Rail to recover its efficient costs and return on investment in accordance with section 168A(a) and its legitimate business interests (s. 138(2)(b)), though the appropriateness of any outcome must be considered in the context of all of the factors in section 138(2).

Our key concern is that Queensland Rail's 2015 DAU provides discretion for it to differentiate access charges between users within the same market on the basis of changes in TSC payments, which affect the market uniformly. This basis for price differentiation could result in adverse competition and efficiency impacts which run counter to the public interest in having efficient and competitive markets.

However, changes in the TSC payments do affect Queensland Rail's cost of providing the service. Because of this, we said in our Draft Decision that it is appropriate to allow Queensland to adjust the access charges for changes to TSC payments via the material change provisions in

[73] Queensland Rail, sub. 26: 60.
[74] See also QCA 2015: 51–52.

each individual access agreement. We maintain that this is the appropriate mechanism to make adjustments following changes to TSC payments.

Queensland Rail considers that if changes in TSC payments are accounted for solely by making adjustments according to material change provisions within the standard access agreement, it will have the unintended effect of not allowing Queensland Rail to receive at least its efficient cost of providing the service.[75]

We note that the QCA Act does not require section 168A(a) to be complied with in some absolute way (see Chapter 10). In any event, Queensland Rail has not substantiated its position, other than to say that the material change provision may not be completely effective because the consequences of a reduction in TSCs may not have taken effect under an existing access agreement (which is being used as a comparator) at the time Queensland Rail may be negotiating a new access agreement.[76]

We do not accept this argument from Queensland Rail. The differences in cost or risk are particular to Queensland Rail; that is, if the cost of providing access has increased from the costs incurred when the first access charges were negotiated (say, due to decreased TSC payments), then it does not matter whether the material change provisions have reflected that change in a comparative access agreement—the cost to Queensland Rail of providing access is different to when the first access agreement's access charges were negotiated. Further, as noted above, we have also reinserted the changes in cost or risk mechanism and allowed for Queensland Rail to have more flexibility to adjust access charges over the life of an access agreement.

Further, in response to Queensland Rail's submission that it may not be able to cover its efficient costs and provide an appropriate return on assets when there is a reduction in TSC payments, we note the material change provisions of the standard access agreement provide that Queensland Rail has the ability to adjust the access charges to account for reduced TSC payments. This provides a check on Queensland Rail's discretion and inefficient discrimination, but still allows for Queensland Rail to adjust particular access charges if a TSC reduction materially affects access charges. We consider that this is sufficient to protect Queensland Rail's legitimate business interests (s. 138(2)(b)) as well as the interests of access seekers and holders (s. 138(2)(e)).

As noted above, we consider a more appropriate way to justify different access charges is to assess the implications in regard to each individual access holder, based on TSC payments being a material change event within the relevant access agreements.

In this way, the onus will be on Queensland Rail to justify the extent to which reductions in TSC payments have a net financial impact on the cost or risk to Queensland Rail of providing access to the affected access holder/seeker. Stakeholders other than Queensland Rail agreed with this reasoning.[77]

Importantly, if TSC payments that are related to one particular system are reduced, the change affects the cost of providing service to each access holder within that system equally. We disagree with Queensland Rail and do not consider that a change which affects the costs related

[75] Queensland Rail, sub. 26: 59.

[76] Queensland Rail, sub. 26: 59; see also cl. 18 (especially cl. 18.2 (Adjustment for material change)) of the QCA's 2015 SAA, which provides that the access charges can be adjusted to cancel out the net financial effect of, amongst other things, a reduction in TSC payments.

[77] See New Hope, sub. 23: 12–13; Aurizon, sub. 20: 19–20; Glencore, sub. 25: 1; Yancoal, sub. 27: 1.

to providing a service to all access holders should be used to discriminate amongst those access holders in a relatively discretionary manner.

We consider that, in Queensland Rail's proposal, Queensland Rail's legitimate business interest in being able to discriminate between access seekers and between access seekers and access holders is outweighed by the risk of inefficient (and possibly monopolistic) price discrimination (s. 138(2)(a), (b), (d), (e), (g) and (h)). That is particularly the case, given that Queensland Rail's legitimate business interest in generating expected revenue to meet at least its efficient costs and an appropriate return on investment is capable of being addressed via the material change provisions within the SAA (s. 138(2)(b)).

Preventing or hindering access

We included in our Draft Decision a requirement that the 2015 DAU prohibit setting access charges for the purpose of preventing or hindering access by third party access seekers.

Queensland Rail and Aurizon said that the particular provision was unnecessary, given that similar restrictions are provided by the QCA Act.[78]

We agree that section 104 of the QCA Act prohibits Queensland Rail from preventing or hindering access (except as otherwise provided in an access undertaking (s. 104(6)); additionally, section 168A(c) requires that prices are not used to discriminate in favour of related parties of Queensland Rail unless justified by a difference in risk or cost). Therefore, Queensland Rail cannot engage in conduct that prevents or hinders access by a third party without offending these statutory obligations (unless otherwise provided by virtue of section 104(6)).

We therefore agree with stakeholders that the provision is not necessary and have removed it from the pricing rules part of the undertaking.

Remedying price differentiation breaches

As per the Draft Decision we require that the 2015 DAU provide for an access holder to have its access charge amended in the event Queensland Rail breaches its limitations on price differentiation. In this regard we have adopted the Draft Decision. We have also added some extra remedial provisions.

In Queensland Rail's 2015 DAU a price differentiation breach was to be remedied by reliance on a 'most favoured nation'[79] clause within an access agreement. These provisions aim to provide an access holder with a mechanism to require Queensland Rail to levy the same access charges that Queensland Rail levies on another access holder, if the latter access charges were calculated in contravention of the price differentiation provisions. However, reliance on these provisions is problematic in the event that another access holder is not aware that Queensland Rail contravened its obligations. That is, information asymmetry may nullify the utility of these provisions.

To address this shortcoming, our Draft Decision added a provision to the access undertaking that provides a means by which price differentiation breaches can be identified across all access holders. Monitoring was to be achieved through the compliance audit provisions contained in Part 5 of our mark-ups to the 2015 DAU. In this Decision, we have also included a new

[78] Queensland Rail, sub. 26: 56–57; Aurizon, sub. 20: 19–20.

[79] The 'most favoured nation' clauses are commonly used provisions which provide that if a subsequent party negotiates a more advantageous outcome in its contractual negotiations, a previous contracting party can require that it receive the same outcome.

'consequences of contravention' clause (cl. 3.9 in Appendix F), which will provide a mechanism for breaches of the pricing rules, including breaches of the differentiation provisions, to be remedied more directly than by reliance just on the most favoured nation clause.

Our approach recognises the legitimate business interests of Queensland Rail in being able to differentiate access charges, but provides checks and balances on this ability, thereby protecting the interests of access seekers who may not have access to information about prices charged to other access holders. We consider that the required amendments are appropriate, as they balance Queensland Rail's ability to differentiate access charges with a direct ability of an access holder to remedy a breach of the limits on price differentiation (s. 138(2)(a), (b), (d), (e), (g)).

Summary 3.3

The limits on price differentiation in the 2015 DAU must provide follows:

(a) Where a reference tariff does not apply, differentiating access charges between access seekers and between access seekers and holders in respect of train services for the same commodity in the same geographical area should be limited to situations where:

(i) there are differences or changes in the cost or risk to Queensland Rail of providing access

(ii) available capacity is demonstrably insufficient to meet all access seeker requests, permitting the quotation of a maximum access charge for the purposes of the ceiling revenue limit but allowing Queensland Rail to charge below the maximum access charge.

(b) Where a reference tariff does apply, differentiating access charges between access seekers and between access seekers and holders to reasonably reflect differences in the cost or risk to Queensland Rail of providing access for that train service (the description of which does not accord with the reference train service) compared to the specified reference train service.

(c) Queensland Rail and an access seeker should be able to require a reasonable and balanced rate review provision (in an access agreement) to adjust access charges for differences in costs or risks to Queensland Rail of providing access to different reference tariff train services or in respect of non-reference tariff train services transporting the same commodity within the same geographical area. Queensland Rail is required to detail how it is applying a differentiation in access charges in the context of the application of a rate review provision.

(d) Information regarding price differentiation breaches should be widely disseminated to access holders.

(e) The consequences of a breach of Part 3 of the undertaking should be made clear through the inclusion of a remediation clause as well as by allowing the QCA to require Queensland Rail to levy the same access charges as it does for another like access holder or offer an access charge that neutralises the effect of the breach.

(f) Queensland Rail agrees to promptly provide the QCA with all information requested by the QCA to enable the QCA to determine whether any contravention of Part 3 has occurred.

(g) Access charges can be adjusted over time to reflect changes in the relative cost or risk to Queensland Rail of providing access to a particular access holder.

See clauses 3.0, 3.1.2, 3.3, and 3.6 and 3.9 in Appendix F for these and number of other related or consequential amendments.

3.4 Pricing and revenue limits

In its 2015 DAU, Queensland Rail proposed to apply:

- a ceiling revenue limit for access charges for train services (or groups of train services) so that access seekers do not pay for the services above the stand-alone cost of providing access; and
- a floor revenue limit reflecting the incremental cost of providing access to an individual train service or combination of train services, but providing Queensland Rail with absolute discretion to charge train services less than the floor revenue limit.

Our Draft Decision agreed that a floor and a ceiling revenue limit should apply. However, we did not accept that Queensland Rail should have an absolute discretion to charge train services less than the floor revenue limit.

Stakeholders' submissions

Queensland Rail opposed several of the QCA's required amendments to the 2015 DAU and said that a number of the QCA's amendments were not explained within the 2015 Draft Decision.[80]

Asciano supported the Draft Decision but said that the 'issue could be better addressed via stronger ring fencing, improved cost transparency and regulatory determined prices'.[81] Other stakeholders agreed with the Draft Decision, except Glencore, which raised concerns with the ceiling limit.[82]

QCA analysis and Decision

We consider that the 2015 DAU should provide that access charges for non-reference tariff train services are set between floor and ceiling revenue limits, but that any proposal to price below the floor level should be subject to QCA approval to avoid any inefficient price discrimination. For reference tariff train services, the approved ceiling revenue limit will apply (see chapter 8).

We adopt our Draft Decision in this regard.

Definition of pricing limits

Queensland Rail said that there was insufficient reasoning for including a definition of pricing limits (cl. 3.2.1) in the QCA's Draft Decision. This clause was intended to supplement the ceiling and floor revenue limits. However, following a review of the amended pricing limit and price differentiation clauses, we no longer consider it necessary have so have not insisted on its inclusion.

Calculation of pricing limit

Glencore[83] said that the ceiling limit could not realistically be calculated, and Asciano said that transparency needed to be improved. To this end, we have significantly increased the obligations on Queensland Rail to provide information in relation to asset values underpinning the calculation of access charges—in the case of both initial negotiations and renewals (See Chapter 2 of this Decision). If a stakeholder considers that Queensland Rail has breached these provisions, it remains open to them to lodge a dispute.

[80] Queensland Rail, sub. 26: 62–65.
[81] Asciano, sub 28: 11.
[82] See New Hope, sub. 23: 13; Aurizon, sub. 20: 18–22; Yancoal, sub. 27: 1; Glencore, sub. 25: 1.
[83] Glencore, sub. 25: 1.

Queensland Rail did not comment on our requirement to have the QCA approve any proposal to set access charges below the expected incremental cost of providing access (i.e. the floor revenue limit). Other stakeholders agreed with our amendments.[84]

Definition of evaluation period

Queensland Rail said that the changes made to the definition of 'evaluation period' suggested that the QCA applied the term in setting reference tariffs.[85] This is not the intention of the change nor do we consider that our proposed amendments to the 2015 DAU allowed for the QCA to unilaterally set additional reference tariffs. However, we have had regard to, amongst other things, the point made by Queensland Rail and not maintained our proposed amendments.

We have had regard to Queensland Rail's legitimate business interests and appropriately addressed them by accepting that Queensland Rail should have the ability to price below the incremental costs of providing access if it so chooses and the price is approved by the QCA (s. 138(2)(b)).

Ceiling revenue limit equation

Queensland Rail raised concerns about the inclusion in the ceiling revenue limit equation of a variable for an adjustment amount (AAt). Queensland Rail said that the Draft Decision did not discuss the need for or purpose of AAt.[86]

We note that the adjustment amount was discussed in detail in chapter 8 of the Draft Decision. Moreover, Queensland Rail and stakeholders provided submissions in response to that discussion and the QCA's final position is contained in Chapter 8 of this Decision. As part of this Decision, our technical amendments have revised how the adjustment amount will be implemented. We no longer consider a variation to the ceiling revenue limit as an appropriate mechanism for the adjustment amount and instead consider that an adjustment amount mechanism is appropriate. Therefore, we have removed 'AAt' from the ceiling revenue limit formula in Part 3 and drafted clause 7.1 of Schedule D to Appendix F.

Approved ceiling revenue limit

Queensland Rail queried the inclusion of the term 'approved ceiling revenue limit'.[87] The rationale for including this concept and the relevant calculation are discussed in Chapter 8 of this Decision (the amount is included in Schedule D to Appendix F).

Summary 3.4

The pricing and revenue limits in the 2015 DAU must provide as follows:

(a) A clear methodology to implement floor revenue limits should be included.

(b) If Queensland Rail proposes to price access below the floor revenue limit it should seek the QCA's approval beforehand.

See clause 3.2 in Appendix F.

[84] See, for example, New Hope, sub. 23: 13.
[85] Queensland Rail, sub. 26: 63.
[86] Queensland Rail, sub. 26: 63–64.
[87] Queensland Rail, sub. 26: 62–63.

3.5 Asset valuation methodology for negotiating access charges

Section 168(A) states that the price of access to a service should 'include a return on investment commensurate with the regulatory and commercial risks involved' (s. 168A(a)). However, the legislation does not expressly state how to calculate the amount of an 'investment'.

In order to perform our statutory functions, we consider the appropriate way to value the investment is with reference to the factors in section 138(2) of the QCA Act and the specific characteristics of the markets served by Queensland Rail. For example, in Queensland Rail's monopoly markets the value of assets should be calculated independently of the prices that are set. However, within markets in which Queensland Rail is not a monopoly provider, such as competitive intermodal transportation, market prices are more likely to shape appropriate asset prices.

The Draft Decision did not accept Queensland Rail's proposal that the asset valuation methodology for setting a ceiling revenue limit be limited to a depreciated optimised replacement cost methodology. Rather, we proposed to maintain sufficient flexibility in access negotiations on asset valuations for the appropriate asset valuation approach to be determined for a given circumstance.

Stakeholders' submissions

Queensland Rail said that 'consistency and certainty demand the setting and consistent application of a specific valuation methodology'[88] when setting a value for an asset. They also said flexibility about the valuation methodology would be contrary to good regulatory practice and contrary to the object of Part 5 of the Act because an ever-changing asset valuation approach for assets used to provide a declared service failed to promote the economically efficient use of those assets.[89]

Asciano[90] and New Hope[91] supported the QCA's view that the method of asset valuation should be selected to suit the particular circumstances.

QCA analysis and Decision

We disagree with Queensland Rail's statement that a specific valuation methodology should be set, and then applied to the determination of all opening asset valuations. As noted in section 3.6 of the Draft Decision, imposing a uniform asset valuation process risks generating inappropriate valuations of Queensland Rail's infrastructure, given the varied traffic types and mixes.

We also disagree with Queensland Rail's statement that allowing flexibility in the choice of asset valuation approach will result in 'ever changing' asset valuations. For reference tariff train services the asset value has been set having regard to section 138(2) of the QCA Act (see Chapter 8). For non-reference tariff train services, the value is to be agreed between the access seeker and Queensland Rail. If a value cannot be agreed it is open for the parties to bring a dispute to the QCA, in which case the QCA can determine the appropriate value.

Accordingly, we have adopted the Draft Decision approach and we require Queensland Rail to remove the requirement in the 2015 DAU that only a DORC methodology be used for valuing

[88] Queensland Rail, sub. 26: 67.
[89] Queensland Rail, sub. 26: 67.
[90] Asciano, sub. 28: 11.
[91] New Hope, sub. 23: 15.

assets when setting the ceiling revenue limit. It should instead provide for a methodology appropriate for the circumstances.

Summary 3.5

The 2015 DAU must remove the requirement that the asset value which is to be used to determine a ceiling revenue limit be set solely on the basis of a depreciated optimised replacement cost methodology.

Instead the value of the assets used to calculate the reference tariff (including where relevant the approved ceiling revenue limit) is set by reference to the regulatory asset base approved by the QCA. For the ceiling revenue limit for non-reference tariff train services, the value of the assets is to be as agreed by the access seeker and Queensland Rail or, failing agreement, as determined by the QCA.

See clause 3.2.3(c) and Schedule D, clause 4 in Appendix F.

3.6 Pricing for access rights at renewal

Queensland Rail proposed that terms for access charges for renewed access rights be based on the same methodology, rates and other inputs for calculating the access charge as were used under the existing access agreement.

However, Queensland Rail said this was subject to the following preconditions:

- There were no other competing applications for the same commodity in the same geographic area (cl. 3.3(c)(i));
- Access rights being renewed were consistent in all respects with the existing access agreement—namely, for the same commodity, same number of train services and same train characteristics and description (cl. 3.3(c)(ii)); and
- No reference tariff applied (cl. 3.3(c)(iii)).

Queensland Rail also wanted to be able to vary existing access charges based on:

- differences of, and changes to, cost or risk;
- material changes in circumstances that impacted on an access holder's ability to pay; or
- changes that resulted in Queensland Rail being unable to commercially provide access in that geographic area.[92]

The Draft Decision accepted the need to implement a contract renewal pricing mechanism, but required amendments to Queensland Rail's approach so that the scope and application of the provisions provided greater certainty for renewing access holders and Queensland Rail.

Stakeholders' submissions

Queensland Rail raised a number of concerns in relation to the QCA's proposed amendments.[93]

Other stakeholders largely supported the QCA's proposed amendments but said that the definition of a renewal access seeker should be less rigid;[94] Queensland Rail should be required

[92] See QCA 2015, section 3.3.
[93] Queensland Rail, sub. 26: 61-2.

to provide information in relation to the calculation of its access charges;[95] and the QCA should be able to require Queensland Rail to develop a new reference tariff.[96]

Glencore reiterated its concerns with an approach which may lock in an existing methodology, rate and inputs. It also said that renewal rights should extend to intermodal services and that what constituted a renewal should be more flexible.[97] New Hope asked that the network utilisation provisions be strengthened to ensure Queensland Rail was able to justify setting maximum access charges when it considered that the network was capacity constrained.[98] Asciano said it had ongoing concerns with the pricing of the Mount Isa line and that an alternative approach should be developed 'which limits Queensland Rail's monopoly power in relation to Mount Isa rail line access pricing, while ensuring an appropriate level of Queensland Rail performance'.[99]

QCA analysis and Decision

We require Queensland Rail to amend the non-reference tariff renewal pricing provisions to more evenly balance the negotiating position between Queensland Rail and a renewing non-reference-tariff access holder.

Our intention is to have regard to the sunk costs of access holders whilst allowing Queensland Rail flexibility in relation to the relevant access charges with a view to generating expected revenue that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved. We have also relaxed the definition of 'renewal' in Chapter 2 of this Decision. In addition to the changes to the definition of 'renewal', we consider that a renewing access seeker should be able to change its train service description if that change supports supply chain improvements. This will allow for renewal access agreements that seek to renew a portion of the previous access rights and also make changes to their train service description due to supply chain improvements to still benefit from the renewal pricing mechanism.

Our key amendments to Queensland Rail's proposed renewal pricing mechanism are summarised in Table 4. Where the amendments have not changed from the Draft Decision, we have also adopted the relevant parts of that Draft Decision (see section 3.7 of the Draft Decision).

[94] Aurizon, sub. 20: 20–21; Yancoal, sub. 27: 4.
[95] Aurizon, sub. 20: 21; Glencore, sub. 25: 2.
[96] New Hope, sub. 23: 14.
[97] Glencore, sub. 25: 2–3.
[98] New Hope, sub. 23: 11–12.
[99] Asciano, sub. 28: 12.

Table 4 QCA key amendments to the proposed contract renewal pricing mechanism

2015 DAU proposal	*Required amendment*	*Rationale*
Price differentiation should be allowed in a broad range of circumstances.	Price differentiation will be limited to differences and changes in cost or risk factors between the expiring access agreement and the renewed access agreement.	Differences or changes in the cost or risk to Queensland Rail are a legitimate basis for varying access charges (see Section 3.3 above). Decreases in costs or risks to Queensland Rail should also be reflected. Queensland Rail should provide details of how it calculated the access charges; access seekers can lodge a dispute if required.
Renewal access agreements without a competing access application should be provided with the renewal pricing mechanism.	All non-reference tariff renewal access agreements are provided with the renewal pricing mechanism, not just those without a competing access application.	It is appropriate that the renewal pricing applies to all renewal access seekers where the renewal access agreement is substantially similar to protect that renewal access seeker's sunk costs.
A mechanism should apply at renewal of access agreements.	The renewal pricing mechanism will be provided on a one-off basis to provide the access seeker with an incentive to match the access agreement term with its expected payback period.	The renewal pricing mechanism is intended to provide certainty to underpin future investment. At the same time, a one-off renewal right allows scope for Queensland Rail to seek more favourable terms from alternative access seekers in the future.
Renewal access agreements should have, in all respects, the same characteristics as the existing access agreement.	Where an access application would be classed a 'renewal' but for changes to the train service description due to operational or supply chain improvements (e.g. increased payload, longer trains or reduced cycle time initiatives) the renewal pricing mechanisms will still apply, but there will be a contribution to common costs so that Queensland Rail is no worse off than under the existing access agreement.	We have broadened the definition of 'renewal' in Chapter 2 of this Decision. This will broaden the circumstances under which the renewal pricing mechanism will operate. In addition to those changes we require that if there are further changes to the train description, due to supply chain improvements, the renewal access seeker will still have the benefit of the renewal pricing mechanism. A fair contribution towards Queensland Rail's common costs is required. This amendment is required to enable a fair allocation of the benefits from operational improvements and provide for Queensland Rail's recovery of common costs (of providing the service to other access holders).

The major changes required to the renewal pricing provisions are covered in greater detail in the following discussion.

One-off application right

Queensland Rail has noted some ambiguity in relation to the QCA's drafting related to any renewal right being a one-off right.[100] Other stakeholders did not comment on this aspect of the Draft Decision. We acknowledge that there is scope for the clause to be interpreted incorrectly and have made amendments to address this. The intention of the QCA is that each non-reference-tariff access holder that is seeking to renew its access agreement(s) can only have the benefit of the provision once per access agreement.

[100] Queensland Rail, sub. 26: 61.

This 'one-off' use of the renewal pricing mechanism provides an appropriate balance between the interests of a renewal access seeker and Queensland Rail. It gives the access seeker some certainty around its renewal pricing,[101] but encourages the access seeker to renew on a long-term basis, matching the access agreement term with its expected payback period. This should provide Queensland Rail with greater revenue certainty, and balances Queensland Rail's legitimate business interests with those of access holders (s. 138(2)(b), (e), (h)).

Renewal pricing—differences in cost or risk

Queensland Rail also said that the QCA's proposed amendments may not allow Queensland Rail to amend the access charges for a renewing access holder because exactly the same access rights are being renewed; therefore, there will be no differences in the costs or risks between the expiring and renewed access agreements.[102]

We have made some amendments in addition to those proposed in the Draft Decision, to clarify that the access charges may be varied to account for differences in the nature of the costs or risks between the expiring and the renewed access agreement, as well as changes in the costs or risks between the expiring and the renewed access agreement.

Glencore said that the 'existing inputs' for the purposes of the renewal pricing should be those from the last long-term access agreement between the parties as the current inputs often reflected short term arrangements that were subject to higher prices.[103] We consider that the strengthened information provisions, coupled with the renewal pricing differentiation clauses will make negotiations fairer and more transparent. For example, the strengthened information obligations on Queensland Rail (see below) should make it clear whether or not an aspect of cost or risk priced into previous short-term access agreement is taken into account when negotiating a renewal. Any disagreement could form the basis of an access dispute.

We consider that our Decision is consistent with the negotiate-arbitrate model and is appropriate after having regard to all of the factors in section 138(2) of the QCA Act.

Renewal pricing information

Asciano[104] said that a new pricing approach should be developed to limit Queensland Rail's monopoly power. Glencore said that Queensland Rail should be required to disclose its existing methodology, rates and other inputs for calculating the pricing under the existing access agreement.[105]

We note that Queensland Rail has obligations under the QCA Act to provide precisely the kind of information referred to by Glencore when negotiating access (s. 101). If Glencore considered that it had not been provided with that information in the past it was open to Glencore to bring a dispute under the QCA Act.

In the Draft Decision we also increased the access charge information requirements on Queensland Rail (see especially cls. 2.4.2(e) and 2.7.2(vi) in Appendix C of the Draft Decision). In this Decision, we consider that it is appropriate to further reinforce the information provisions by providing that, if Queensland Rail relies on clause 3.3(e),[106] it must also provide details of

[101] Noting that their rights to capacity are protected as per Section 2.5 above.
[102] Queensland Rail, sub. 26: 61.
[103] Glencore, sub. 25: 2.
[104] Asciano, sub. 28: 12.
[105] Glencore, sub. 25: 2; sub. 30: 2–3.
[106] Clause 3.3(f) in the 2015 DAU outlines how Queensland Rail can price differentiate a renewal access seeker's access charges (for non-reference-tariff trains).

how that clause has been applied. We consider that this strikes an appropriate balance between Glencore's concerns and Queensland Rail's legitimate business interests (s. 138(2)(b), (e)). That is, Queensland Rail is able to adjust for differences in risk or cost, but these adjustments must be substantiated. If a renewal access seeker disagrees with the reasons for an increase, it is open to it to bring a dispute.

Queensland Rail also said that if capacity was constrained at renewal, the renewal price should be allowed to vary to reflect limitations on capacity. We do not agree with Queensland Rail for the reasons set out in Section 3.3 above.

We consider these changes will promote the economically efficient operation of the network and are in the public interest as they promote transparency in price setting (s. 138(2)(a), (b), (d), (e), (g), (h)).

Supply chain improvements

In the Draft Decision we inserted an exception to the requirement that the renewal access agreement be identical for the renewal access pricing provisions to apply. We provided that the renewal pricing provisions could still apply if the train services varied from the expiring access agreement due to supply chain improvements. However, this was still subject to Queensland Rail not being any worse off in relation to common costs under the renewed access agreement (see cl. 3.3(g) in Appendix C of the Draft Decision and cl. 3.3(f) in Appendix F).

Queensland Rail considered that the QCA's drafting of this clause was unclear.[107] Aurizon and Glencore said that the Draft Decision amendments were overly restrictive by requiring that the renewed access rights be associated with an identical number of train services which were identical in all respects and asked that the definition of renewals be broadened.[108]

Our intent under the Draft Decision was that the renewal provisions, whilst protecting an access seeker's sunk costs and allowing Queensland Rail to generate expected revenue to earn an appropriate return, should incentivise efficiency improvements in the network. This may advance Queensland Rail's legitimate business interests by increasing contracting efficiency and potentially freeing up train paths for re-contracting (s. 138(2)(b)). It also complies with the pricing principles (s. 138(2)(g)). In addition, the renewal provisions promote the interest of access seekers and access holders and the public interest in having an efficiently run network (s. 138(2)(a), (d), (e), (h)). Accordingly, we consider our required renewal provisions are appropriate with regard to all the criteria in section 138(2).

We have broadened the definition of 'renewal' in Chapter 2 of this Decision such that there will be greater scope for variations from an existing access agreement to still be considered a renewal application. In addition, we require Queensland Rail to amend the renewal pricing provisions to provide that Queensland Rail will still apply the renewal pricing rules to a non-reference tariff access holder if there are changes to the train services as a result of supply chain improvements which would otherwise have meant that the application was not within the definition of a renewal application.

In addition to these changes, we have also clarified the amendments from the Draft Decision in relation to Queensland Rail not being any worse off in relation to recovery of its common costs as a result of accommodating supply chain improvement initiatives.

[107] Queensland Rail, sub. 26: 62.
[108] Aurizon, sub. 20: 21; Glencore, sub. 25: 3.

It is likely that the introduction of supply chain improvements could result in a reduction of the incremental costs to Queensland Rail of providing the service, and a corresponding reduction in the access charges. However, Queensland Rail's risk in relation to common costs is protected and Queensland Rail also has the benefit of freed-up capacity which it can recontract.

We do not consider that Glencore's proposal is appropriate in this instance, as it tips the balance too far in favour of a renewing access holder. We are aiming to strike a balance between Queensland Rail's and the renewal access holder's interests while increasing the overall efficiency of the network. If a proposed renewal is too different from the existing access agreement, the access holder is effectively negotiating a new access agreement. In this regard, we note that we have increased the obligations on Queensland Rail to vary the SAA for demonstrable efficiency improvements (see Chapter 7 of this Decision).

See also Chapter 2 for a discussion about what the QCA considers should constitute a 'renewal' (including in relation to intermodal services) for the rest of the negotiation provisions within the 2015 DAU.

Renewal pricing appropriateness

We consider that our approach provides all parties with increased certainty. Access holders will know that Queensland Rail cannot levy access charges with undue discretion and thereby impose risk premiums on future investments. At the same time, it may advance Queensland Rail's legitimate business interest, as it increases certainty by providing the potential for future, but not open-ended, changes to access charges and the flexibility to generate expected revenue that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved (s. 138(2)(a), (b), (e), (g) and (h)).

Summary 3.6

The renewal pricing provisions in the 2015 DAU must provide that:

(a) **the renewal pricing mechanism can be used only once**

(b) **access charges for renewal access applications may be varied to account for differences in the nature of costs and risks as well as actual costs or risks between an expiring and renewing access agreement**

(c) **if an access seeker would be a renewal access seeker but for changes to its train services to accommodate supply chain improvements, it will still have the benefit of the renewal pricing provisions**

(d) **in the case that a contribution to common costs is an input for calculating access charges arising from a renewal accommodating supply chain improvements, Queensland Rail must provide details of how it calculated that input**

(e) **if Queensland Rail differentiates for cost or risk, it must provide details of how it calculated that differentiation for both reference tariff and non-reference tariff traffics and renewing access applications**

(f) **price differentiation is limited to differences and changes in cost or risk or material limitations on available capacity**

(g) **all non-reference-tariff renewal access agreements are subject to the renewal pricing mechanism unless the expiring access agreement provides otherwise.**

See clauses 2.7.2(a)(vi) and 3.3(e), (f), (g) and the definition of 'renewal' in Appendix F.

3.7 Rate of return

The regulated rate of return is a key input into determining appropriate reference tariffs. The regulated rate of return is calculated using a weighted average cost of capital (WACC), comprising three primary components:

- cost of equity—typically estimated with reference to the Capital Asset Pricing Model (CAPM)
- cost of debt—observed or estimated from the current debt rate
- capital structure—appropriate debt and equity proportions of firm market value, typically determined by benchmarking.

Queensland Rail's WACC proposal comprises two principal parts:

- as at the approval date, an indicative, nominal post-tax, 'vanilla' WACC of 6.93 per cent, comprising a cost of equity of 8.01 per cent and a cost of debt of 6.05 per cent. Queensland Rail[109] proposed to update the risk-free rate and debt margin once the averaging period for determining them was agreed between the QCA and Queensland Rail
- after the approval date, a variable WACC, derived by adding a WACC margin[110] of 4.12 per cent to the average yield on a five-year Commonwealth Government bond over a 20-day

[109] Queensland Rail, sub. 2: 41.

[110] Queensland Rail's 2015 DAU defines the margin as being the difference between the WACC as at the approval date and the risk-free component of the WACC.

trading period ending as close as practicable to, but not later than, the date that Queensland Rail offers an access agreement to an access seeker.

The Draft Decision accepted Queensland Rail's proposed WACC of 6.93 per cent, subject to updating the time-variant parameters (i.e. the risk-free rate and debt margin), using a term and methodology consistent with the QCA's standard approach.

Stakeholders' submissions

Yancoal[111] and New Hope[112] supported the methodology applied by the QCA. Queensland Rail said the risk-free rates for periods before 2013–14 and 2014–15 were higher.[113]

QCA analysis and Decision

We have adopted our Draft Decision position on an appropriate non-time variant WACC parameters for Queensland Rail (see section 3.8 of the Draft Decision).[114]

Two different WACCs (see Table 5) have been determined:

- a WACC of 6.93 per cent which is consistent with that proposed by Queensland Rail in its 2013 and 2015 DAUs but which is based on the parameters in our 2014 Draft Decision. This WACC is applicable to reference tariffs relating to the period from 1 July 2013 to 30 June 2016
- an updated WACC of 5.73 per cent derived using a risk free rate and debt margin calculated over a 20-business-day period beginning Monday, 14 March 2016. This WACC is applicable to reference tariffs relating to the period from 1 July 2016 onwards.

Both WACCs use the non-time-variant parameters used by the QCA in its decisions on Aurizon Network's 2013 and 2014 DAUs, that were proposed by Queensland Rail in its 2015 DAU (see Table 5).

The difference in the two WACCs comes from the time-variant parameters (the risk-free rate and debt margin), assessed by Incenta Economic Consulting. Incenta's report for the June 2013 parameters was published with our October 2014 Draft Decision, while its report for the March–April 2016 parameters is published with this Decision.[115]

Queensland Rail said in its December 2015 submission that the WACC for the tariff that would have applied in relation to the period from 1 July 2013 to 30 June 2016 was based on market data from a different period (i.e. the 20 business days before 1 July 2013). It added that the risk-free rate so derived was higher in this previous period, and included a graph illustrating the decline in risk-free rate between July 2013 and February 2016.

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[111] Yancoal, sub. 27: 3.
[112] New Hope, sub. 23: 14.
[113] Queensland Rail, sub. 26: 30.
[114] We note that the Australian Competition Tribunal (the Tribunal) has recently decided to set aside and remit the AER's 2015 determinations for each of the appeals brought by the NSW and ACT electricity distributors (see *Applications by Public Interest Advocacy Centre Ltd and Ausgrid [2016]* ACompT 1). Among other matters, the AER is required to remake its decision by reference to a gamma of 0.25. We have considered the Tribunal's decision in relation to gamma and find that there is nothing in the Tribunal's reasoning that demonstrates that our approach to estimating gamma is inappropriate. See the QCA 2016 decisions on Aurizon Network and DBCT for further details.
[115] Incenta Economic Consulting 2016.

We agree with Queensland Rail's comment. The risk-free rate has declined since 1 July 2013. However, the WACC averaging period used to derive the WACC proposed in our 2014 and 2015 draft decisions is consistent with past practice, and the resulting WACC of 6.93 per cent is consistent with the expectations of Queensland Rail and other stakeholders.

We do not consider it would advance Queensland Rail's legitimate business interest to reduce the WACC by applying a new, later averaging period, in order to derive the tariff that would have applied in relation to the period from 1 July 2013 to 30 June 2016 (s. 138(2)(b). Changing the WACC would also be against the expectations of access seekers, access holders and their customers (s. 138(2)(e), (h)). Therefore, having regard to all the approval criteria in section 138(2), we consider it appropriate to adopt the 6.93 per cent WACC from the Draft Decision to derive the tariff that would have applied in relation to the period from 1 July 2013 to 30 June 2016.

Table 5 Cost of capital parameters for the 2015 access undertaking

Parameter	*Applicable to the period from 1 July 2013*	*Applicable to the period from 1 July 2016*
Credit rating	BBB+	BBB+
Risk-free rate	2.81%	2.00%
Market risk premium	6.50%	6.50%
Asset beta	0.45	0.45
Gearing (debt to total enterprise value)	55%	55%
Equity beta	0.80	0.80
Gamma	0.47	0.47
Equity margin	5.20%	5.20%
Cost of equity	8.01%	7.20%
Debt margin (including financing allowance)	3.24%	2.52%[116]
Cost of debt	6.05%	4.52%
WACC margin	4.12%	3.73%
WACC	6.93%	5.73%

[116] The 'financing allowance' of 22 basis points covers refinancing costs (interest rate swaps) and transaction costs. This is on top of the debt margin of 2.30 per cent assessed by Incenta for the 2016–20 WACC. For more information on the allowance, see QCA 2016b: 207, Table 107.

Summary 3.7

The 2015 DAU must:

(a) include a WACC of 6.93 per cent per annum in relation to the period 1 July 2013 to 30 June 2016

(b) include a WACC of 5.73 per cent per annum in relation to the period from 1 July 2016, consistent with the QCA's approved WACC parameters.

3.8 Take-or-pay arrangements

Queensland Rail's 2015 DAU proposal

Queensland Rail proposed to maintain take-or-pay arrangements within its 2015 DAU. This means that access holders would pay a proportion of their contracted access charge, even in the event that they do not actually use train service entitlements (TSEs).

In particular, in relation to West Moreton network coal traffic, Queensland Rail proposed that:

- access holders be liable for a pre-determined proportion of the total access charge[117]
- Queensland Rail provide take-or-pay relief where services are not provided due to a Queensland Rail Cause (Schedule D).[118]

These arrangements, amongst other things, provide revenue certainty for Queensland Rail by transferring a degree of volume risk to access holders.

The Draft Decision was to accept Queensland Rail's proposal to apply take-or-pay for West Moreton network coal traffic at a predetermined rate where a reference tariff applies, excluding instances where access is not available due to a Queensland Rail cause (refer to chapter 8 of the Draft Decision). However, we did not require a prescribed amount of take-or-pay where no reference tariff applied.

Stakeholders' comments

Aurizon agreed that, where a reference tariff was not payable, take-or-pay charges should be a matter for negotiation between the parties.[119] Comments by other stakeholders, except Glencore, were in relation to reference tariff services and largely concerned with the prescribed rate of take-or-pay.[120] Glencore said that, if no rate of take-or-pay was prescribed for non-reference-tariff services, Queensland Rail would simply insist on 100 per cent take-or-pay.[121]

QCA analysis and Decision

We accept that prescribed take-or-pay arrangements are appropriate for reference tariff train services, but we do not accept that prescription of such arrangements is appropriate in the

[117] The rate of take-or-pay for West Moreton network coal traffics is considered in Chapter 8 of this Decision in the context of form of regulation matters.
[118] 'Queensland Rail Cause' is a defined term in the 2015 DAU, which reflects Queensland Rail's inability to make the network available to provide train service entitlements as a result of defined events.
[119] See Aurizon, sub. 20: 49.
[120] Aurizon, sub. 20: 49; 24, 49; Yancoal, sub. 27: 2; New Hope, sub. 24: 13.
[121] Glencore, sub. 25: 2.

context of non-reference-tariff services. We have adopted our Draft Decision in this regard (see section 3.5 of the Draft Decision).

Reference tariff train services

Prescribed take-or-pay arrangements for reference tariff train services are appropriate given the allocation of risks, rewards and costs have already been determined.

We accept Queensland Rail's proposal to apply take-or-pay for West Moreton network coal traffic at a predetermined rate where a reference tariff applies, excluding instances where access is not available due to a Queensland Rail cause (refer to Chapter 8 of this Decision).

This is a reasonable approach which is in Queensland Rail's legitimate business interests, while at the same time being in the interests of access seekers and access holders, consistent with the QCA Act (s. 138(2)(b), (e), (h)). It should also promote the efficient use of capacity (s. 138(2)(a)).

Non-reference-tariff train services

Glencore said that, at a minimum, we should impose a cap on take-or-pay arrangements for non-reference tariff services. We do not agree with Glencore's submissions. It is appropriate to include regulation of take-or-pay in a reference tariff environment, because the QCA has regulated the cost, risks and returns of the access charges. Take-or-pay provides some certainty to the access provider where their upside is capped.

For a non-reference-tariff system, there is no similar regulation of costs and returns and because of this, it would be inappropriate to regulate take-or-pay. It is not uncommon for take-or-pay terms to form part of negotiations in unregulated market environments. We maintain the view that, for non-reference-tariff systems, the negotiation stage remains the appropriate forum for the parties to consider take-or-pay arrangements and that its regulation could inappropriately distort the negotiations between two sophisticated commercial parties.

Glencore also said that referring disputes for arbitration may not be a realistic option, but it did not elaborate on this point. We consider that the negotiate–arbitrate model is appropriate and cost-effective, as the reasoning behind it reflects that the possibility of dispute resolution is likely to encourage the parties to act more reasonably in negotiating take-or-pay.

We consider that this decision is appropriate after having regard to all submissions on the matter and each of the factors listed in section 138(2) of the QCA Act. It strikes a balance between Queensland Rail's interests, access seekers' interests and the public interest by allowing the negotiate–arbitrate model to be used (s. 138(2)(b), (d), (e), (g), (h)).

Summary 3.8

Queensland Rail's proposal to request take-or-pay from access holders at a predetermined proportion for reference tariff train services is accepted.

See Schedule 3 of the 2015 SAA (Appendix G).

4 OPERATING REQUIREMENTS

Part 4 of the 2015 DAU provides for the operating requirements that govern how Queensland Rail will deliver train service entitlements (TSEs). These include the network management principles (NMPs) for Queensland Rail to schedule, manage, and demonstrate capacity for train services (Schedule F). They also include the Operating Requirements Manual (ORM), which prescribes rules for use of the network by train operators (Schedule G).

This Decision accepts a substantial part of Queensland Rail's 2015 DAU proposal but requires amendments to clarify how the NMPs and ORM will operate.

The Decision in this chapter differs from the Draft Decision mainly as follows:

- *In relation to scheduling changes, Queensland Rail is only required to notify those stakeholders who are non-access holders that opt in*
- *Queensland Rail's notification requirement for changes to planned possession has been extended to three months, from 20 business days*
- *Queensland Rail's obligations in relation to the Environmental Impact and Risk Management Report (EIRMR) process have been made less prescriptive*
- *Compensation provisions for changes to the ORM via a DAAU process have been removed*
- *Provisions for amending the ORM for minor matters and safety matters have been removed.*

Introduction

The safe and efficient operation and use of Queensland Rail's network will be guided by the NMPs (Schedule F) and ORM (Schedule G) in the 2015 DAU. The NMPs set out how Queensland Rail will coordinate maintenance and other track restrictions, schedule and operate trains and demonstrate available capacity. The proposed ORM governs a variety of other procedures for operating trains and addressing matters such as safety and emergency responses.

In our Draft Decision, we indicated a number of particular provisions which we required to be amended or varied before we would consider the relevant Part and Schedules to be appropriate. Queensland Rail has accepted some of these amendments (in relation to the NMP) but has also not accepted a substantial number of required amendments. Key issues are summarised in Table 6 below. Matters that require a more detailed explanation are discussed in Sections 4.1 to 4.4.

Table 6: Summary of key positions and decision—operating requirements, NMP and ORM

Summary of the 2015 Draft Decision	*Queensland Rail's position*	*Other stakeholders' positions*	*QCA Decision*
1. Changes to train plans			
A broader range of parties should be notified about changes to Queensland Rail's train plans.	Accepted in part.	Largely agreed with the Draft Decision. New Hope and Yancoal said notice for amending the MTP and DTP was short.	See Section 4.1.
Access holders should be consulted about all non-emergency operational	Did not accept.	Agreed with the Draft Decision. New Hope suggested some	See Section 4.1.

Summary of the 2015 Draft Decision	*Queensland Rail's position*	*Other stakeholders' positions*	*QCA Decision*
constraints that affect scheduled paths on the DTP.		additional amendments.	
Queensland Rail should seek agreement from access holders to vary the DTP from the MTP, except for emergencies, and report on timing of planned possessions.	Did not accept.	Agreed with the Draft Decision.	See Section 4.1.
Queensland Rail should delay changes to the MTP until related disputes are resolved.	Did not accept.	Agreed with the Draft Decision.	See Section 4.1.
Queensland Rail should make reasonable endeavours to minimise adverse effects of constraints, offer useable replacement train paths.	Did not accept.	Agreed with the Draft Decision.	See Section 4.2.
2. Coordination with adjoining networks			
Queensland Rail should consult with other railway managers on matters affecting both networks and minimise effects on through-running trains.	Did not accept.	Agreed with the Draft Decision.	See Section 4.3.
3. Passenger services			
Network controllers should 'act reasonably' when forming a belief that it is necessary to give priority to passenger train services.	Did not accept.	Agreed with the Draft Decision	See Section 4.4.
4. **Operating Requirements Manual**			
The ORM should balance obligations and requirements, clarify procedures and link with other provisions.	Did not accept.	Agreed with Draft Decision. Aurizon suggested some additional amendments.	See Section 4.5.
The ORM should not be amended from the SAA but (except for certain minor matters) via the DAAU process. Compensation addressed in the SAA.	Did not accept.	Agreed with Draft Decision.	See Section 4.6.

4.1 Changes to train plans

In the 2015 DAU, Queensland Rail did not propose to consult with stakeholders when it varied the daily train plan (DTP) from the schedule set out in the master train plan (MTP) if an access holder's train services were not affected (Schedule F). If an access holder's train services were affected, the 2015 DAU's proposed process for changing the MTP and DTP required that Queensland Rail (except in cases of urgent or emergency possessions):

- notify access holders whose activities were affected by any modifications, of changes to the MTP at least 20 business days in advance
- consult with relevant access holders where a proposed change to the MTP would result in those access holders' scheduled train services not being met
- agree modifications to the MTP with relevant access holders where the change was not within the scope of those access holders' TSEs.

The proposed NMPs provided that if Queensland Rail wished to make a short-term change to a DTP at least two business days before the DTP was scheduled because of an operational constraint, and the variation would result in an access holder's scheduled train services not being met, Queensland Rail first has to consult with that access holder. Queensland Rail also proposed that it may alter the DTP before the DTP is scheduled if Queensland Rail invites affected access holders to consider and agree to the changes at least 36 hours before the day of operation.[122] Queensland Rail said:

> *Once scheduled, Queensland Rail cannot vary the DTP so as to adversely affect the access holder except where an Emergency Possession is required.*[123]

Queensland Rail proposed broader notification, but only by publishing an unredacted MTP on its website every six months.[124]

Our Draft Decision proposed to increase the notification, consultation and agreement obligations on Queensland Rail in relation to scheduling changes.

Stakeholders' submissions

Queensland Rail largely rejected the QCA's proposed amendments.[125]

Yancoal and New Hope agreed with the QCA's Draft Decision[126]; however, both remained concerned about the amount of discretion Queensland Rail had to change the MTP and DTP without the consent of access holders. New Hope suggested a number of additional amendments in this regard.[127]

Glencore and Aurizon supported the QCA's Draft Decision.[128] However, Aurizon said that there should be some additional amendments which allowed for an access holder to suggest changes to the MTP which did not otherwise impact on the running of the system.[129]

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[122] Queensland Rail, 2015 DAU, Schedule F, cls. 2.2(e)–(h).
[123] Queensland Rail, sub. 1: 28.
[124] Queensland Rail, 2015 DAU, Schedule F, cls. 2.1(h), (j).
[125] See Queensland Rail, sub. 26: Schedule 7.
[126] Yancoal, sub. 27: 4.
[127] New Hope, sub. 23: 15–17.
[128] Glencore, sub. 25: 1; Aurizon, sub. 20: 5–6.
[129] Aurizon, sub. 20: 34–35.

QCA analysis and Decision

We do not consider that Queensland Rail's proposed Schedule F is appropriate. Instead, we require Queensland Rail to make amendments to Schedule F to impose stricter obligations on Queensland Rail to notify, consult and more appropriately seek agreement with access holders before making changes to the MTP and DTP.

We have largely adopted our Draft Decision position (see section 4.1 of the Draft Decision) in this regard, except for some additional amendments discussed below.

The QCA considers Queensland Rail should amend its proposed 2015 DAU, so that before changing the MTP or DTP, Queensland Rail is required to:

- *notify* an expanded range of affected parties about changes to its train and maintenance scheduling and planning documents
- *consult* with affected access holders in relation to all changes that affect access holders' scheduling
- *seek agreement* from access holders in more circumstances
- *delay implementation of disputed changes,* until the matter is resolved, except for urgent safety-related issues.

Notify

In our Draft Decision we proposed that Queensland Rail amend its proposed Schedule F so that Queensland Rail was obliged to notify affected parties of changes to the train services and other activities detailed in its planning and scheduling documents as early as possible and as often as necessary. This included notifying supply chain participants that are affected by those changes.

To do otherwise is inconsistent with an efficiently run network and contrary to the interests of access holders and access seekers.

Notifying affected parties is not, in our view, an onerous requirement. Queensland Rail is a sophisticated organisation that already actively notifies affected parties other than access holders. For example, Queensland Rail already publishes service updates and planned closures on its website for its related-party operations.[130] We anticipate that Queensland Rail could use a similar website approach for notifying parties about changes to train plans across its network that affect non-passenger access holders and other parties. This would limit any administrative costs, and thereby limit any negative impact on Queensland Rail's legitimate business interests (s. 138(2)(b)).

We accept Queensland Rail's position that it should not have to notify affected parties who do not opt in and that its obligation to notify should be able to be satisfied either by its portal or website, or in meetings (at Queensland Rail's discretion). This would have regard to Queensland Rail's legitimate business interests by minimising the administrative costs on Queensland Rail, while allowing notices to be available to those parties who wish to be notified. This particular suggestion was raised by the QCA in the Draft Decision.[131]

[130] This includes upcoming closures for the next 14 days and those planned over the next 12 months. In addition, Queensland Rail announces delays to services and provides clear, regular updates for its passenger operations. See http://www.queenslandrail.com.au/RailServices/City/Pages/Plannedclosures.aspx.
[131] See QCA 2015: 74.

New Hope said that Queensland Rail should be required to provide six months' notice of proposed changes to the planned possessions which are expected to have a duration of greater than four days, and three months' notice of all other planned possessions (except emergency possessions). New Hope said that changes to planned possessions can have significant impacts on end users' logistics and impose material adverse cost impacts.

We agree with New Hope in relation to the effect of changes to planned possessions. Planned possessions are, and should be, part of a long-term planning schedule. If these stoppages occur without sufficient notice, users of the network can face substantial consequences upstream or downstream of the network. We consider that three months' notice is not a particularly long period when considering the planning that initially goes into an MTP. Accordingly, we require that the notice period for Queensland Rail changes to planned possessions should be three months.

We do not agree that the notice period for changes to planned possessions that will be longer than four days should be six months. We consider that a three-month notice period strikes a reasonable balance between flexibility and appropriate notice. This is also consistent with the amount of time which Queensland Rail requires from an access holder if it requests a change to an MTP.

Queensland Rail should be required to give three months' notice of modifications to an MTP (except for urgent and emergency possession). We consider that this period of notice is balanced and symmetrical with an access holder's notice requirements if it wishes to change the MTP. It also promotes upstream and downstream efficiency, as well as planning efficiency, and is appropriate in regard to section 138(2), most notably section 138(2)(a), (d), (e) and (h).

We remain of the view that an approach to notify a broader range of stakeholders of changes to the train plans when they are proposed and implemented will enable the efficient operation and use of significant infrastructure by providing affected parties with timely information that they could use to manage and mitigate the impact (ss. 138(2)(a) and 69E of the QCA Act). As such, we also consider this requirement to be in the public interest, and in the interests of access holders and seekers (s. 138(2)(d), (g), (e), (h)). Therefore, we consider it appropriate to require the 'opt-in' notification of a wide range of supply chain participants, having regard to all the criteria in section 138(2).

Summary 4.1

The NMPs in Schedule F of the 2015 DAU must provide that:

(a) Queensland Rail is obliged to notify a broader range of parties about changes to its train plans. However, Queensland Rail is only required to notify parties (other than access holders) who have opted to be notified

(b) Queensland Rail be required to give three months' notice of modifications to the MTP (except for urgent and emergency possessions).

See clauses 2.1(d), 2.1(m) and 2.2(c) in Schedule F to Appendix F.

Consult

In our Draft Decision, we required Queensland Rail to consult in a wider range of circumstances with access holders who were affected by changes to an MTP or DTP.

We do not accept Queensland Rail's position that our proposed amendments are impracticable, given the large number of changes and short planning windows leading up to the day of operation.[132]

While it may advance Queensland Rail's legitimate business interests not to consult on operational constraints that affect the DTP, we consider that the absence of such consultation does not promote the efficient use and operation of rail infrastructure (s. 138(2)(a), (b)). Nor is it in the interests of access seekers or holders (s. 138(2)(e), (h). We therefore are of the opinion that the amendments outlined in our Draft Decision are appropriate, having regard to all the criteria in section 138(2).

We consider Queensland Rail should consult with access holders on all operational constraints that affect the access holder's scheduled paths on the DTP. Queensland Rail need only make reasonable endeavours to consult in the case of urgent or emergency possessions and pressing safety issues.[133] We understand that Queensland Rail consults on most operational constraints in practice, as consulting about changes to its DTP is an essential part of providing a service to its customers.

We also do not accept Queensland Rail's position that being obliged to consult with relevant access holders in relation to operational constraints which affect those access holders' scheduled paths on a DTP could put Queensland Rail in a position where it is unable to comply with its statutory obligations or incurs additional liability because third parties dictate safety requirements regarding its network.[134]

This is because the obligation is merely to consult (and as discussed below, make reasonable endeavours to agree about changes). The effect of the amendments is to provide for some cooperation between parties who both have an interest in, and are affected by, the scheduling. Plainly, any statutory obligations or additional liabilities on Queensland Rail would be relevant to an assessment of the reasonableness of its action.

Given this, a broad obligation to consult is not an onerous requirement on Queensland Rail. To a large extent, our Decision formalises what occurs in practice anyway.

It also promotes the efficient use and operation of the rail network, as it provides access seekers and access holders with greater certainty they will receive a standard of service consistent with their TSEs (s. 138(2)(a), (e), (h)).

We agree with New Hope's suggested amendments to create an obligation to make access available based on the DTP and create a link between the MTP and DTP.[135] These amendments provide that a DTP is developed from, and consistent with, the applicable MTP. We consider that these suggested amendments provide clarity around Queensland Rail's obligations in relation to DTPs. We consider that this clarity further helps to promote the efficient use of and operation of the rail infrastructure, while clearly delineating each party's responsibilities in

[132] Queensland Rail, sub. 26, Schedule 7: 6.
[133] Many safety issues will be addressed by urgent or emergency possessions, but some result in other measures such as speed restrictions.
[134] Queensland Rail, sub. 26, Schedule 7: 7.
[135] New Hope, sub. 23: 16.

relation to train scheduling (s. 138(2)(a), (b), (e), (h)). It may also advance Queensland Rail's legitimate business interests for obligations to access holders to be clearly outlined, so that each party knows where it stands in relation to each other (s. 138(2)(b)).

Summary 4.2

The NMPs in Schedule F of the 2015 DAU must:

(a) provide for Queensland Rail to consult access holders in relation to all operational constraints that affect the access holder's scheduled paths on the DTP, except in the case of urgent or emergency possessions, when Queensland Rail need only make reasonable endeavours to consult.

(b) clarify Queensland Rail obligations in relation to making access available based on the relevant DTPs.

See clauses 2.2(b), 2.2(e), 2.2(f), 2.2(j) and 2.2(j)(iii) in Schedule F to Appendix F.

Seek agreement

The 2015 DAU provided that Queensland Rail would seek agreement from access holders for all changes to the MTP that were not consistent with contracted TSEs.

In our Draft Decision we also required that Queensland Rail make reasonable endeavours to agree with access holders about changes to the DTPs that affected those access holders' TSEs.

In doing so, we accepted that Queensland Rail could make an exception for urgent and emergency possessions and pressing safety matters such as speed restrictions, but we still proposed that its planners and controllers should make reasonable endeavours to consult about changes to the DTP.

We do not agree with New Hope's suggestion to delete the reference to urgent possessions. We believe that Queensland Rail is currently in the best position to understand its own requirements in relation to emergency and urgent possessions.

Queensland Rail said:

> *Seeking agreement ... provides no perceivable benefit ... as Network manager, Queensland Rail already ensures that it consults with affected parties on changes.*[136]

Queensland Rail did not accept our Draft Decision, but considered that the obligation to seek agreement, despite the fact that it already consulted with affected parties, would impose a significant administrative burden.[137]

As Queensland Rail already consults with affected parties, we cannot accept the assertion of an added significant administrative burden. Our required amendment to seek agreement does not impose obligations on Queensland Rail in relation to non-affected parties, only relevant access holders. Further, our amendments only require Queensland Rail to use reasonable endeavours to seek agreement. Our required amendments would therefore not create an oppressive administrative burden.

Timeliness in respect of the start and finish of planned possessions is a fundamental indicator of the efficiency of the management of a rail network. As the name implies, planned possessions

[136] Queensland Rail, sub. 26, Annexure 7: 7.
[137] Queensland Rail, sub. 26, Annexure 7: 7.

are typically settled well in advance—sometimes two years or more before the day of operation. If planned possessions are changed at a late stage, a range of parties that have relied on those long-established plans will be adversely affected. Therefore, varying the DTP from the MTP for changes to planned possessions should be an unusual event, particularly as all traffics on Queensland Rail's network are timetabled.

We therefore consider that Queensland Rail's proposed requirements for making such changes are not appropriate having regard to the interests of access seekers and holders in terms of giving them certainty about receiving their TSEs (s. 138(2)(e), (h)). They also hinder the efficient use and operation of the rail infrastructure (s. 138(2)(a)), as they place too little onus on Queensland Rail to adhere to the timing of its planned possessions. Therefore, while it may be in Queensland Rail's legitimate business interest to change the time of possessions (s. 138(2)(b), we consider that Queensland Rail's proposal is not appropriate.

As mentioned above, we do not consider it appropriate that Queensland Rail should be required to agree with affected access holder in relation to changes to the DTP. Rather, we require that Queensland Rail make reasonable endeavours to agree any changes to planned possessions in the DTP compared with the MTP, where those changes affect TSEs. Also, we consider that Queensland Rail should be able to vary the DTP from the MTP without seeking agreement from affected access holders in cases of emergency possessions and pressing safety issues.

We would be concerned, however, if Queensland Rail consistently failed to adhere to the timing of planned possessions. We therefore require Queensland Rail to report on whether it has adhered to the timings of the planned possessions in its MTP.

This reasonable-endeavours regime for changes to planned possessions in the DTP supports the efficient use and operation of the rail network, and the interests of access seekers and holders, in giving them certainty about receiving their TSEs (s. 138(2)(a), (e), (h)).

Summary 4.3

The NMPs and reporting requirements in the 2015 DAU must provide that Queensland Rail:

- **(a) make reasonable endeavours to seek agreement from affected access holders where it varies the DTP from the MTP, except for emergency possessions and pressing safety issues**
- **(b) report on its adherence to timings of planned possessions in the MTP.**

See clause 5.1.2(a)(x) and Schedule F, clause 2.2(f) in Appendix F.

Delaying disputed changes until resolution

We require Queensland Rail to amend its proposed Schedule F, so that where an access holder disputes a change to the MTP, other than in cases of an emergency or urgent possession or a pressing safety matter, then the change should take effect once the dispute is resolved via the dispute resolution mechanisms in the 2015 DAU.

We consider that allowing changes to the MTP to go ahead while they are subject to a dispute would be detrimental to the interests of access seekers and holders (s. 138(2)(e), (h)) and that this outweighs any legitimate business interest Queensland Rail may have in going ahead with changes it has decided are desirable.

Asciano said that either truncated timeframes or an alternative to the DAU dispute resolution provisions were required to allow a timely resolution of disputes over train plan changes.[138] We are not convinced of the merits of a separate truncated process applying in this circumstance. We consider it sufficient that the parties should act reasonably in any event, and consider that this should provide for timely resolution of disputes.

We do not agree with Queensland Rail's (and implicitly Asciano's) position that our proposed amendment will lead to inefficiencies and disruptions to the running of the network in some cases. Nor do we agree with Queensland Rail's proposition that stakeholders could use the process frivolously, as there is no evidence to date that stakeholders have acted in such a manner.[139]

Relevantly, we note that for changes to the MTP an access holder's agreement is 'not to be unreasonably withheld'. We have, in addition to the changes required in the Draft Decision, also included that the dispute provision operates in relation to 'bona fide' disputes. We consider that these factors should mitigate against any fears Queensland Rail has about 'frivolous' disputes.

Also, given that any change to the MTP that is not an urgent or emergency possession or pressing safety matter should, as noted by Queensland Rail[140], occur at least three months before the day of operation, Queensland Rail and its access holders should have sufficient time to resolve disputes under the provisions in the access agreements. We consider that this reasoning also applies to Asciano's concerns.

Our required amendments promote the efficient use and operation of the rail network and the interests of access seekers and holders (s. 138(2)(a), (e), (h)).

Summary 4.4

The rules for changes to train plans in Schedule F of the 2015 DAU must provide for delaying changes to the MTP until related bona fide disputes are resolved.

See clause 2.4 in Schedule F to Appendix F.

4.2 Minimising the adverse effects of operational constraints

Queensland Rail proposed to use reasonable endeavours to minimise any material adverse effects of planned, urgent or emergency possessions, that prevented train services from operating 'substantially in accordance with the Access Holder's Train Service Entitlement'.[141]

In our Draft Decision, we proposed that Queensland Rail be required to use reasonable endeavours to minimise the material adverse effects in relation to all operational constraints. We also proposed that Queensland Rail be required, when mitigating material adverse effects caused by changes to the MTP or DTP, to use reasonable endeavours to offer substitute train paths that an access holder could actually use.[142]

[138] Asciano, sub. 28: 17.
[139] Queensland Rail, sub. 26, Annexure 7: 7–8.
[140] Queensland Rail, sub. 26, Annexure 7: 7.
[141] Queensland Rail, 2015 DAU, Schedule F, cl. 2.3.
[142] See QCA 2015: 78–80 and the QCA's 2015 DAU cl. 2.3, which introduced the concepts of 'useable schedule time' and 'alternative schedule time'.

Stakeholders' comments

Stakeholders agreed with our required amendments, but suggested some further amendments.[143]

Queensland Rail did not accept our required amendments and said they did not balance the interests of all parties appropriately.[144]

QCA analysis and Decision

We are of the view that Queensland Rail should use reasonable endeavours to minimise any resulting material adverse effects of all operational constraints, consistent with the obligations in its access agreements. We are also of the view that where Queensland Rail intends to provide a replacement path, the replacement path should be, within reason, a path the access holder is able to use efficiently.

Our Decision has adopted the Draft Decision position in this regard (see section 4.2 of the Draft Decision).

Obligation to address adverse effects

Any operational constraint has the potential to result in an access holder's scheduled train services not being met.

But Queensland Rail's proposal that it will use reasonable endeavours to address adverse effects only in relation to possessions means that a range of disruptions including speed restrictions and other safety-related matters will not be covered.[145]

Minimising adverse effects only in relation to operational constraints which are possessions is not in the interest of access seekers or access holders in receiving their TSEs, or consistent with the efficient use and operation of the rail network (s. 138(2)(a), (e), (h)). This concern outweighs any legitimate business Queensland Rail may have in leaving the adverse effects unaddressed (s. 138(2)(b)). We therefore cannot consider Queensland Rail's proposal to be appropriate having regard to all the criteria in section 138(2).

Accordingly, we require that Queensland Rail use reasonable endeavours to minimise the effects of operational constraints wherever a TSE is affected. This broader responsibility on Queensland Rail is reasonable because the proposed requirement is not open-ended. In particular, in using 'reasonable endeavours to minimise' the effects of the change, Queensland Rail may take into account a range of commercial and operational matters, including safe operation of the network.[146]

We consider that this appropriately balances the interests of all parties.

We consider that this is appropriate having regard to the legitimate business interest of Queensland Rail as it provides enough flexibility in complying with the requirement (s. 138(2)(b)). It also places sufficient onus on Queensland Rail to consider the interests of access seekers and holders in receiving their TSEs (s. 138(2), (e), (h)).

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[143] See New Hope, sub. 23: 16–17; Yancoal, sub. 27: 4; Glencore, sub. 25: 1; Aurizon, sub 20: 5–6.
[144] Queensland Rail, sub. 26, Schedule 7: 9. Queensland Rail's detailed comments were limited to those made in relation to the new definitions and obligations in relation to alternative scheduled times.
[145] Queensland Rail, 2015 DAU, Schedule F, cl. 2.3(a).
[146] Queensland Rail, 2015 DAU, Schedule F, cls. 2.3(a) and (b).

Useful train paths

In our Draft Decision, we also included two new definitions which had the effect of requiring Queensland Rail to have regard to the usefulness of the alternative schedule times which it offered in substitute for varied paths of access holders.

All stakeholders, except Queensland Rail, agreed with these required amendments. New Hope suggested some additional amendments to the definition of 'useable schedule time'.[147] Aurizon and Asciano also suggested that if Queensland Rail cannot offer a useable schedule time, and the offered replacement path is not useable by an operator, it should be recorded as a Queensland Rail Cause.[148] Queensland Rail considered that the obligations should be on each operator to accommodate the alternative paths which Queensland Rail offers in substitution for varied paths.[149]

Despite the concerns raised by Queensland Rail in its December 2015 submission, we are of the opinion that Queensland Rail should be required to have regard to the utility of any alternative paths. We consider that this is the appropriate outcome for a number of reasons, including:

- Queensland Rail is in the best position to have an overall understanding of the operation of the network and the relevant available paths and schedules.
- Most variations to the MTP and DTP will be as a result of Queensland Rail's changes. Queensland Rail has contracted to provide access and has agreed to provide train paths in accordance with the MTP and DTP. If these are changed, there could be substantial inconvenience and cost to an operator.
- The required amendments do not impose an absolute obligation. They only require Queensland Rail to use reasonable endeavours. We consider that the reasonable endeavours test still provides some flexibility for Queensland Rail if it cannot, after consulting with the relevant access holder, provide an ideal replacement.

The current replacement path rules are not in the interests of access seekers or access holders in receiving their TSEs (s. 138(2)(e), (h)). In particular, Queensland Rail's proposal is one-sided to the extent that it is in conflict with the interests of access seekers and holders, which could make the operation and use of the network less efficient (s. 138(2)(a), (e), (h)).

We do not consider it appropriate, given the required amendments which place additional obligations on Queensland Rail regarding variations to the MTP and DTPs, to include New Hope's suggested amendments or Aurizon's and Asciano's suggestions in relation to increasing the scope of the definition of 'Queensland Rail Cause'.[150]

We consider that our required amendments will increase the obligations on Queensland Rail sufficiently. Our amendments will have the effect of minimising interruptions to access holders' schedules, allow for disputes to be lodged with the QCA, and require Queensland Rail to consult and seek agreement where relevant. We consider that these changes strike an appropriate balance between Queensland Rail's and access holders' interests. We consider that to include New Hope's suggestions and/or to increase the scope of the definition of 'Queensland Rail Cause' would tip the balance too far in favour of one party.

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[147] See New Hope, sub. 23: 16–17; Yancoal, sub. 27: 4; Glencore, sub. 25: 1; Aurizon, sub. 20: 5–6.
[148] Aurizon, sub. 20: 45; Asciano, sub. 28: 17.
[149] Queensland Rail, sub. 26: 9–10.
[150] Aurizon, sub. 20: 45.

Summary 4.5

The operational constraints provisions in Schedule F of the 2015 DAU must provide that Queensland Rail is required to use reasonable endeavours to minimise the material adverse effects of all operational constraints and also use reasonable endeavours to offer useable replacement train paths.

See clauses 2.3(a) and 2.3(c) in Schedule F, and definitions of 'alternative schedule time' and 'useable schedule time' in Appendix F.

4.3 Coordination with adjoining networks

Queensland Rail's 2015 DAU proposal

Queensland Rail proposed to use reasonable endeavours to consult with other railway managers on coordinating maintenance activities, developing MTPs and amending the ORM, and to minimise adverse effects on through-running trains.[151]

In our Draft Decision, we proposed making the obligations to consult and minimise adverse effects in relation to through-running trains more robust.[152]

Stakeholders' comments

Stakeholders supported our proposed amendments and said that that coordination with other railway managers is essential to the efficient use and operation of Queensland Rail's infrastructure.[153] New Hope said 'the rail network will not operate efficiently unless Queensland Rail is properly engaged in alignment/coordination activities'.[154]

Queensland Rail did not accept our proposed amendments. Queensland Rail said that the QCA had no authority to require Queensland Rail to consult or otherwise communicate with other railway managers.[155]

QCA analysis and Decision

We consider Queensland Rail should always consult with adjoining network managers on scheduling and other operating matters affecting both networks rather than just using reasonable endeavours to consult 'as relevant' and 'from time to time'. We consider that rather than merely having a 'view to' minimising adverse effects, Queensland Rail should be required to use reasonable endeavours to minimise the effect of any scheduling decisions or changes on through-running trains.

We have adopted our Draft Decision position in this regard (see section 4.3 of the Draft Decision).

We consider that Queensland Rail's 2015 DAU proposal is too weak a level of obligation for such an important matter given that a large proportion of freight services contracted to use Queensland Rail's network use track managed by other operators for part of their journey. This

[151] Queensland Rail, 2015 DAU, cl. 4.2.
[152] See QCA 2015: 81–82.
[153] See New Hope, sub. 23: 17.
[154] New Hope, sub. 10: 39.
[155] Queensland Rail, sub. 26: 11.

includes all services travelling along the North Coast line between Gladstone and Rockhampton.[156]

Consultation with other adjoining networks involves giving other parties the information about the operation of Queensland Rail's below-rail infrastructure, which is necessary to enable effective access to the declared service. Furthermore, upstream and downstream systems, and the network itself, must be coordinated at the points of overlap to avoid interruptions to train services and be delivered efficiently and in a timely manner. To do otherwise, would preclude effective access to the services provided by Queensland Rail's below-rail infrastructure.

We do not agree with Queensland Rail that we do not have the authority to impose this obligation on Queensland Rail.

We have had regard to Queensland Rail's legitimate business interests in considering its proposed rules for scheduling through-running trains[157] and we do not consider that this obligation will impose a significant financial burden on Queensland Rail. We consider that Queensland Rail's proposal is not appropriate, having regard to the interests of access holders and seekers in receiving their TSEs, as it is too narrow, given the importance of proper scheduling to through-running trains.

Queensland Rail's proposal, therefore, does not promote the efficient use and operation of the rail infrastructure (s. 138(2)(a), (e), (h)).

We require that Queensland Rail consult on scheduling changes that affect other railway managers and that it use reasonable endeavours to minimise the effects of these changes, rather than just having 'a view' to doing so.[158]

Summary 4.6

The 2015 DAU must provide that Queensland Rail is required to consult with other railway managers on scheduling and other matters affecting both networks and use reasonable endeavours to minimise the effect on through-running trains.

See clause 4.2 in Appendix F.

4.4 Passenger services

We require that Queensland Rail amend the NMPs in its 2015 DAU so that a network controller must be 'acting reasonably' when forming a belief that it is necessary to give priority to passenger train services.

We have adopted our Draft Decision position in this regard except for the change discussed below (see section 4.4 of the Draft Decision).

Stakeholders' comments

Stakeholders agreed with our Draft Decision. New Hope said it:

[156] See also New Hope's discussion on the various possible futures for the West Moreton system: New Hope, sub. 23: 17.
[157] Trains from adjoining networks which interact with Queensland Rail's network.
[158] Queensland Rail, 2015 DAU, cl. 4.2.

> *appreciates the legislative requirement for passenger priority, but it is not in the interests of Access Seekers or Access Holders, the public interest or efficient use of the infrastructure for passenger priority to become a cloak for poor planning and scheduling practices.*[159]

Queensland Rail objected to our proposed amendment, saying that the QCA Act did not override the TI Act and that Queensland Rail, if it failed to comply with its passenger priority obligations, might face substantial civil penalties.[160]

QCA analysis and Decision

We accept that Queensland Rail has legislative obligations in relation to passenger trains. However, we do not consider that our required amendments result in the QCA Act overriding the TI Act. Nor do we accept the implicit proposition that, by having a network controller act reasonably, Queensland Rail will somehow become more exposed to penalties under the TI Act.

The intention and effect of the amendments is simply to provide that a belief formed by the network controller must be reasonable. This is not a particularly onerous standard and one that a network controller should be meeting in any event. The explicit inclusion of this standard removes the unfettered discretion which, although not likely, could be used by Queensland Rail to cloak poor planning and scheduling.

For the most part, Queensland Rail's 2015 DAU provisions provide a balance between the public interest in safe and timely operation of passenger trains, the legitimate business interests of Queensland Rail as operator of those passenger trains and provider of below-rail services, and the interests of non-Queensland-Rail access seekers and holders (s. 138(2)(d), (b), (e), (h)).

We have accepted Queensland Rail's submission that the subclause (cl. 2.2(e)(i)(C) of Schedule F) which allows Queensland Rail to vary the DTP in relation to its passenger trains where no other access holder is affected should be reinstated (we proposed in the Draft Decision to delete this subclause). We consider that this is appropriate given the checks and balances we have applied to other variations to the MTP and DTP.

However, Queensland Rail has not specified that the network controller must act reasonably in determining that it is necessary to act to favour passenger services in such circumstances. Given that, in relation to passenger services, Queensland Rail is a related access provider[161], Queensland Rail may have a potential conflict of interest and be inclined to support actions (beyond those provided in the QCA Act or envisioned by the QCA in relation to peak services in the metropolitan system) to prevent passenger trains from being late. Similarly, without a decision having to be based on relevant, objective evidence, decisions which may have a materially adverse effect on access holders could be made based on any number of irrelevant factors.

We therefore consider Queensland Rail's passenger service provisions do not appropriately balance the interests of Queensland Rail and access seekers and access holders. As such, we do not consider it appropriate to approve Queensland Rail's proposal having regard to all the approval criteria in section 138(2).

We consider that it is appropriate to require the network controller to act reasonably when forming a view about scheduling to favour passenger trains because it advances the interests of access holders and promotes the efficient use and operation of Queensland Rail's network. We

[159] See New Hope, sub. 23: 17.
[160] Queensland Rail, sub. 26, Schedule 7: 11–16.
[161] See QCA Act, definition of 'related access provider'.

do not consider the amendments to be contrary to Queensland Rail's legitimate business interests because we do not consider that that amendments would cause Queensland Rail to fail to satisfy its obligations either under the TI Act or the pending access undertaking (s. 138(2)(a)).

We also adopt Section 4.5 of our October 2014 Draft Decision and require Queensland Rail to clearly specify the NMPs in the undertaking will apply to all services including Queensland Rail's own passenger services.

Summary 4.7

The operating requirements and NMPs in the 2015 DAU must:

(a) clearly specify that the NMPs will apply to all services including Queensland Rail's own passenger services; and

(b) provide that a network controller is required to be 'acting reasonably' when forming a view that it is necessary to give priority to passenger services.

See clause 4.1(d) and Schedule F, clauses 3(i)(i), 3(i)(ii) in Appendix F.

4.5 Operating Requirements Manual

Queensland Rail has proposed that a variety of rules and procedures for use of the network by train operators be set out in the ORM. These standard provisions, most of which were included in the SAA in the previous 2008 undertaking, are common across the network and not subject to individual variation between different access agreements. They address, among other things:

- interface risk management[162], including environmental risk management
- safe working procedures and safety standards
- incident and emergency response procedures
- various technical requirements for train control and network planning
- requirements such as those for forecasts by the operator of expected train services and how and when safety notices will be issued.[163]

Queensland Rail said in its material accompanying the 2015 DAU that the ORM reflected 'an appropriate allocation of risks for its business'.

In our Draft Decision, we proposed that the ORM be amended in a number of places to make certain requirements more reasonable, improve its operation and clarity, and enable a proper fit with the 2015 DAU and SAA.

Stakeholders' comments

Stakeholders other than Queensland Rail agreed with the amendments we proposed in our Draft Decision. Aurizon said that, in addition to the QCA's proposed amendments, Queensland

[162] How different stakeholders on the network interface with each other.
[163] Queensland Rail, 2015 DAU, schedule G.

Rail should also be obliged to consult with access holders in relation to changes to the ORM due to safety matters and also in relation to changes to the interface standards.[164]

Aurizon also noted a number of specific objections to the ORM which was submitted by Queensland Rail in December 2015.[165] New Hope said it supported the QCA's proposed amendments as an appropriate rebalancing but also noted some specific comments.[166]

Asciano said that the obligation on an operator to provide contact details should be reciprocal. It also said that if the dispute resolution process under the access undertaking did not apply to the ORM then that should be stated explicitly.[167]

Queensland Rail said that, generally, the QCA's proposed amendments made the ORM unnecessarily prescriptive and limited Queensland Rail's ability to plan and respond to demand on the network. Queensland Rail also highlighted its concerns in relation to particular provisions within the QCA's proposed ORM.[168]

Queensland Rail submitted an amended ORM which reverted to its previous version, except for changes that Queensland Rail said it considered necessary to update the ORM to comply with the *Transport (Rail Safety) Act 2010* and Queensland Rail's systems and procedures. This ORM largely disregarded the QCA's proposed amendments.[169]

QCA analysis and Decision

We consider that Queensland Rail should amend the ORM to balance the obligations and requirements between Queensland Rail and train operators, and to clarify how various procedures will operate and link with relevant provisions in the undertaking and SAA.

This Decision has largely adopted the Draft Decision in this regard; however, we have made some additional changes to the ORM (see section 4.5 of the Draft Decision).

We consider that much of the ORM proposed by Queensland Rail as part of its 2015 DAU represents a reasonable way of moving a variety of procedures from individual access agreements to a document that will apply to all access holders.

We also accept a number of Queensland Rail's most recent amendments as reasonable, appropriate and conforming to Queensland Rail's current practice.

However, we accept stakeholders' concerns that a variety of amendments to the ORM are also required to improve the balance of risks and responsibilities between Queensland Rail and its access holders, and make various provisions clearer or more reasonable.[170]

As noted above, Queensland Rail only provided comments in relation to some of the amendments we required in the Draft Decision. The remainder were not raised, but were presumably not accepted, as evidenced by Queensland Rail's December 2015 version of the ORM, which does not contain the QCA's proposed amendments.

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[164] Aurizon, sub. 20: 45–46, 54.
[165] Aurizon, sub. 29: 15.
[166] New Hope, sub. 32: 40–43.
[167] Asciano, sub. 28: 18.
[168] Queensland Rail, sub. 26: 105.
[169] See Queensland Rail, sub. 26, Annexure 6.
[170] Aurizon, sub. 6: 29, 30, 31–32; Asciano, sub. 5: 27–29. The various matters covered by the ORM are discussed in more detail in our October 2014 Draft Decision—see QCA 2014d: 71–74, 178–187.

We agree with Aurizon that Queensland Rail should be required to provide full details of any complaints (see cl. 2.1(d)(D) of the proposed ORM in the Draft Decision).[171] Queensland Rail proposed to provide only a summary of any complaints. However, we agree that full details of any complaints will allow the most appropriate consideration of the complaints in any interface risk assessment.

Aurizon also supported the QCA's proposed amendments in relation to baseline environmental data and said that, if applicable, the requirements for environmental controls should be based on an understanding of the existing environmental conditions.[172]

Moreover, while it may advance Queensland Rail's legitimate business interest to manage its network in a way that it considers safe and efficient, in some cases its proposed ORM goes beyond what is required from Queensland Rail in order to meet its regulatory and contractual obligations (s. 138(2)(b)). In particular, Queensland Rail's proposal is one-sided in areas such as emergency responses and the treatment of baseline environmental standards to the extent that it is not in the interest of access seekers and holders and is likely to make the operation and use of the network less efficient (s. 138(2)(a), (e), (h)). Therefore, while we accept much of Queensland Rail's proposed ORM, we do not consider it appropriate to approve it as submitted, having regard to all the approval criteria in section 138(2).

Table 7 provides our responses to those aspects of the QCA's proposed ORM on which Queensland Rail did comment.

Table 7: Queensland Rail's ORM concerns and QCA responses

QCA reference clause	*Queensland Rail concern*[173]	*Stakeholders' comments*	*QCA response*
2.2(b)	It cannot update its safety management systems to accommodate the requirements of individual operators.	New Hope said safety was the objective rather than avoiding changes to Queensland Rail's safety management system.[174]	It is appropriate that the IRMP consider the obligations of both parties in relation to the risks identified. Queensland Rail can update its safety management systems in appropriate circumstances.
2.4	The amendments in relation to the removal of assumptions regarding baseline environmental standards were unbalanced, uncommercial and made obligations reciprocal, whereas the risks were solely the preserve of the operator.	New Hope said that Queensland Rail had no reasonable basis to avoid its responsibilities for environmental risks.[175]	The QCA's amendment does away with the previous assumption that the network is taken to meet all environmental standards. Future environmental impacts should be assessed based on all available information, without being constrained by an assumption that is not supported by data. This should not require Queensland Rail to undertake baseline studies of the whole network. It is also more balanced than Queensland Rail's proposal

[171] Aurizon, sub. 29: 15.
[172] Aurizon, sub. 29: 15.
[173] See Queensland Rail, sub. 26: 105–106 for summaries of Queensland Rail's concerns.
[174] New Hope, sub. 32: 40.
[175] New Hope, sub. 32: 41.

QCA reference clause	*Queensland Rail concern[173]*	*Stakeholders' comments*	*QCA response*
			which places all the risk on the access holder.
2.6	The amendment to include the EIRMR[176] process was unnecessary, as identification and management of environmental risks was specifically dealt with in the IRMP process.	New Hope said that the process proposed by the QCA was quite specific to environmental risks.[177]	The required amendments clarify each party's responsibility and the process in relation to the EIRMR. However, we have removed some duplication and simplified the drafting (the relevant clause is now cl. 2.5 in Schedule G to Appendix F).
2.6(j)[178]	Unresolved environmental matters disputes should be referred to an appropriate expert not the QCA.	New Hope said that the QCA could engage experts on matters such as this.[179]	The QCA, when conducting an arbitration, can have regard to suitable experts if necessary (see s. 197(1)(e) of the QCA Act).
3.1	The operation of a 'reasonableness' test is unclear and may lead to the 'watering down' of Queensland Rail's environmental and safety requirements.	New Hope said that Queensland Rail was being unnecessarily concerned with exceptions to safe-working procedures and standards.[180]	A requirement to act reasonably will not have the effects Queensland Rail suggests. Rather, including these words helps to minimise the risk of frivolous and opaque decision-making.
4.3	The operation of a 'reasonableness' test in practice was unclear.	New Hope said the 'reasonableness' clause provided appropriate balance.[181]	The inclusion of the obligation to act reasonably would not be vague or unclear in practice. Rather, it provides that directions should be based on evidence. Queensland Rail's directions should be objectively reasonable.
6.5(c), 6.8, 6.9	The amendments to its communication system change notification requirements imposed unduly onerous obligations.	New Hope said that the obligation to update was reasonable given that Queensland Rail was the owner of the radio network.[182] New Hope also considered the changes to cls. 6.8 and 6.9 to be reasonable.[183]	Queensland Rail is already able to communicate with operators and stakeholders via its website, which is not onerous. A similar method of communication would suffice. Queensland Rail did not otherwise substantiate its concerns.
7.1.1	The 'reasonableness' test in relation to the provision of	New Hope said it was entirely reasonable for	See our response to Queensland Rail's comments in

[176] Environmental Investigation and Risk Management Report.
[177] New Hope, sub. 32: 41.
[178] Now 2.5(i) in Schedule G to Appendix F.
[179] New Hope, sub. 32: 41.
[180] New Hope, sub. 32: 41.
[181] New Hope, sub. 32: 41.
[182] New Hope, sub. 32: 42.
[183] New Hope, sub. 32: 42.

QCA reference clause	*Queensland Rail concern*[173]	*Stakeholders' comments*	*QCA response*
	safety updates in practice was unclear.	Queensland Rail to provide safety updates.[184]	relation to cl. 4.3 (above).
'Safety Standards'	The definition of safety standards should be limited to those standards relevant to the operator's activities and Queensland Rail should only be required to provide an operator with Queensland Rail's internal standards.	New Hope acknowledged that the definition was quite broad and might include information that Queensland Rail did not have.[185]	We accept that Queensland Rail should only be required to provide an operator with Queensland Rail's internal standards. However, the definition of safety standards should be broad enough to include standards which are applicable but not necessarily Queensland Rail's internal standards. This is because there may be standards, in addition to Queensland Rail's internal standards, to which operators must comply. To the extent that Queensland Rail is aware of other safety requirements that are relevant to trains operating on its network, it should be obliged to make the operator aware of them.
'Safeworking Procedures'	The definition of safeworking procedures should be limited to those standards relevant to the operator's activities.	New Hope said the QCA's amendments were appropriate.[186]	Our decision is the same as above ('Safety Standards').

Interface standards

We consider it appropriate to limit Queensland Rail's discretion to unilaterally amend or vary the interface standards[187] without consultation, as Queensland Rail's maintenance requirements are linked to these interface standards. If Queensland Rail has the ability to unilaterally amend the interface standards without consultation, it erodes the certainty which access seekers and holders have in relation to Queensland Rail providing the contracted level of access. While this may advance Queensland Rail's legitimate business interests (s. 138(2)(b)), it is contrary to the interests of access seekers and access holders or the public interest in having an efficient and competitive network (s. 138(2)(a), (d), (e), (h)). Accordingly, we do not consider it appropriate to approve an ORM that includes a unilateral ability to amend interface standards without consulting with access holders, having regard to all the approval criteria in section 138(2).

[184] New Hope, sub. 32: 42–43.
[185] New Hope, sub. 32: 43.
[186] New Hope, sub. 32: 43.
[187] The interface standards are Queensland Rail's minimum requirements or standards relating to the interface between a train and the network with which the applicable rolling stock and train configurations must comply in order to operate on the network.

Interface risk training and environmental matters

Some of our more significant proposed amendments relate to interface risk training, environmental standards and environmental risk management.

This includes a requirement to provide training to an access seeker/holder's staff or contractors on how to address an interface risk, where they can only obtain that training from Queensland Rail.[188] The requirement is appropriate, as it also provides that Queensland Rail will be able to recover a reasonable commercial charge for providing the training. Our proposed amendment reflects the drafting of an equivalent clause in the previous 2008 undertaking SAAs.[189]

In addition, we require that the ORM include an environmental risk management process to specify how the operator will prepare an EIRMR and agree it with Queensland Rail.[190] Queensland Rail said that our required amendments were overly prescriptive and that the IRMP already included the obligation to undertake an EIRMR. Whilst we agree that the EIRMR provisions can be relaxed slightly (and have so amended the ORM accordingly), we consider a specified EIRMR process is more efficient and better protects the interests of access seekers and holders. Our proposed amendments are largely based on the drafting of an equivalent clause in the previous 2008 undertaking SAA.[191]

Other amendments

We also require a range of other amendments that improve the operation of the ORM and the procedures it specifies, including to:

- amend the definition of 'comparison train length' to provide for variation of parameters;[192]
- specify that a sample Interface Risk Management Plan (IRMP) be published on Queensland Rail's website to give new access seekers an indication of what is addressed in the document, as it is required in order to conclude an access agreement;[193]
- specify that an operator's obligations to provide emergency response and incident management plans will be subject to the terms of an access agreement;[194]
- require that operators notify only the train control centre about contact details;[195]
- require that Queensland Rail consult (but not agree on) the location of train crew breaks;[196]
- require that the operator's controller (not train crew) notify Queensland Rail's controller and consult about crew changes;[197]
- provide for Queensland Rail's controllers to use reasonable endeavours to relay messages between an operator's controllers and train crew;[198]

[188] Appendix F, Schedule G, cl. 2.3.
[189] Queensland Rail, 2008 undertaking, Operator SAA, cl. 11(h).
[190] Appendix F, Schedule G, cl. 2.5.
[191] Queensland Rail, 2008 undertaking, Operator SAA, cl. 8.1.
[192] Appendix F, Schedule G, definitions.
[193] Appendix F, Schedule G, cl. 2.1(a).
[194] Appendix F, Schedule G, cls. 4.1 and 4.2.
[195] Appendix F, Schedule G, cl. 6.2(a).
[196] Appendix F, Schedule G, cl. 6.3(a).
[197] Appendix F, Schedule G, cl. 6.3(d).
[198] Appendix F, Schedule G, cl. 6.3(e).

- require Queensland Rail to notify operators about changes to network control radio channels 'as soon as reasonably possible'; and[199]
- provide for Queensland Rail to notify operators about changes to online documents or the location of control centres and interface points.[200]

In addition, we require several minor changes of wording that balance the obligations so that Queensland Rail bears joint or equal responsibility for complying. These include changes to the sections on:

- the contents of the IRMP[201]
- environmental risks to be considered[202]
- emergency responses[203]
- operational meetings.[204]

These changes are appropriate, as without them, Queensland Rail's ORM is imbalanced in Queensland Rail's favour, while reducing clarity and transparency in Queensland Rail's accountability as the railway manager. To do otherwise would not be appropriate with regard to section 138(2). We note that a number of these provisions differ from the ORM attached to the Draft Decision where we have accepted changes proposed by Queensland Rail in its submissions provided since the Draft Decision.

We have also included a number of the amendments to the ORM which Queensland Rail proposed in its December 2015 submission. These include amendments made by Queensland Rail to clause 2.1(d)(i) (except in relation to only providing a summary of complaints (as discussed above)), parts of clause 2.1(d)(ii), parts of clause 2.2, parts of clause 2.4, changes to clause 2.6 (previously cl. 2.5) and clause 4.4 of Schedule G to Appendix F. In response to these amendments, we have also simplified and streamlined the 'environmental risks' and process provisions and removed duplications (as noted above).

We consider that the above changes, individually and together, do not place unduly onerous requirements on Queensland Rail and they provide for Queensland Rail to improve efficiency and minimise disputes. Also, they support the efficient operation of the supply chain and are therefore in the public interest and in the interest of access seekers and holders (s. 138(2)(d), (e), (h)). In addition, they promote the efficient use and operation of Queensland Rail's infrastructure, as well as the public interest and the interests of access seekers and holders in receiving their TSEs (s. 138(2)(a), (d), (e), (h)).

[199] Appendix F, Schedule G, cl. 6.5(c).
[200] Appendix F, Schedule G, cls. 6.8(b), 6.9(b).
[201] Appendix F, Schedule G, cls. 2.2(a)(i)–(vi), (b), (c).
[202] Appendix F, Schedule G, cls. 2.4(a)–(e).
[203] Appendix F, Schedule G, cl. 4.3.
[204] Appendix F, Schedule G, cls. 7.3.1(c), (d).

Summary 4.8

The ORM in the 2015 DAU must balance the obligations and requirements between Queensland Rail and train operators, clarify how various procedures will operate and link with relevant provisions in the undertaking and SAA.

See Schedule G to Appendix F.

4.6 ORM amendment process

Queensland Rail's 2015 DAU proposal

Queensland Rail proposed that the ORM be a schedule to the 2015 DAU.[205] However, it proposed that the process for amending the ORM, including compensation provisions, be included in the SAA.[206] Queensland Rail said that its ORM, included as a schedule to the DAU, was only intended to be a snapshot of the ORM at that point in time.[207]

Our Draft Decision proposed accepting that the ORM be a schedule to the 2015 DAU, but proposed a requirement that any amendments occur through a DAAU and not through the exercise of a provision in the SAA.

Stakeholders' comments

Aurizon agreed with our Draft Decision and said that it was more appropriate to have the protections supplied by the DAAU process in relation to any amendment to the ORM.[208] Aurizon also said that Queensland Rail should be required to consult in relation to changes to the ORM due to safety matters.[209] New Hope, Glencore and Yancoal agreed with our proposed amendments.[210] Glencore said that changes to the ORM could fundamentally alter the access holder's ability to use access rights in the manner intended at the time of contracting.[211]

Queensland Rail said our amendments impacted on its ability to operate the network efficiently and to deal with matters affecting safety in a timely manner, and that the QCA fundamentally misunderstood Queensland Rail's intention when it proposed having the ORM as a schedule to the DAU.[212]

QCA analysis and Decision

We accept Queensland Rail's proposal to include the ORM as a schedule to the 2015 DAU, but require Queensland Rail to remove any mechanisms in the SAA for changing the ORM.

[205] Queensland Rail, 2015 DAU, Schedule H.
[206] Queensland Rail, 2015 DAU, SAA, cl. 8. The compensation provisions are in cl. 8.3.
[207] Queensland Rail, sub. 26: 107.
[208] Aurizon, sub. 29: 15.
[209] Aurizon, sub. 20: 46.
[210] New Hope, sub. 23: 17; Glencore, sub. 25: 1; Yancoal, sub. 27: 1.
[211] Glencore, sub. 30: 5.
[212] Queensland Rail, sub. 26: 107.

ORM as part of the undertaking

We accept the proposal to include the ORM as a schedule to the access undertaking, as that removes the need to amend individual access agreements and also provides for consistency of operational requirements across multiple access agreements.[213]

However, we do not accept Queensland Rail's proposal that a mechanism for amending the ORM be included in the SAA in the 2015 DAU. This is unworkable and undesirable, because amendments to the undertaking (which would include the ORM under Queensland Rail's proposal) must be effected through the process in the QCA Act for amending an approved access undertaking. Moreover, the prospect of different SAAs having different ORMs is likely to be unworkable (and potentially dangerous) as this would mean different access holders would operate according to different rules on the network. One universal ORM promotes certainty in relation to access holders' and access seekers' operating requirements.

Therefore, Queensland Rail will need to submit a DAAU to implement any changes to the ORM. We consider that the rights of access holders and other parties, including end users and Queensland Rail, will be protected, as the QCA considers the DAAU through the processes prescribed in the QCA Act. The approval process in the QCA Act provides for the QCA to seek submissions from stakeholders and apply the criteria in section 138(2) to decide whether or not to approve the DAAU.

Queensland Rail said in its December 2015 submission that the inability of Queensland Rail to amend the ORM because of a 'change of law' [214] would impact on Queensland Rail's ability to operate the network efficiently. We do not accept this submission from Queensland Rail. Having to use the DAAU process for all amendments to the ORM may be less efficient for Queensland Rail; but, this is outweighed by the increased efficiency to the system as a whole, which is achieved by having certainty and consistency in relation to the ORM (s. 138(2)(a), (e), (h)).

Further, we note that the operator's and Queensland Rail's compliance with the ORM is predicated on that compliance not being inconsistent with all applicable laws and authorisations; and, to the extent that any applicable law is inconsistent with the ORM, the applicable law prevails (see cls. 7.3 and 8.4 of the SAA). Also, as noted by New Hope, in the event that there are genuine reasons for change, agreement from stakeholders in advance is likely to expedite the DAAU approval process.[215]

Queensland Rail also said that, by removing clause 8.4(b) of the 2015 SAA (which deems changes to the ORM via a DAAU not to be changes to the ORM for the purposes of a SAA), the QCA would be improperly imposing a compensation process on Queensland Rail for the exercise of its statutory rights (namely lodgement of a DAAU).[216] The appropriateness or otherwise of any compensation is a matter that could be raised and considered in the course of the approval process for any DAAU.

We consider that our requirements provide an appropriate balance between Queensland Rail's legitimate business interests in having the ability to amend the ORM, the public interest, and access holders' and access seekers' interests in having a consistent set of operating requirements (s. 138(2)(a), (b), (d), (e), (h)). Consistency of operating requirements promotes

[213] We note that our October 2014 Draft Decision had accepted an alternative approach by Queensland Rail of publishing the ORM on its website, which also achieved this outcome.
[214] Queensland Rail, sub. 26: 107.
[215] New Hope, sub. 31: 40.
[216] Queensland Rail, sub. 26: 107.

efficiency and productivity, as access holders and seekers can appropriately plan and prepare their operations without having to adapt to idiosyncratic or individual variants to the requirements.

In line with the above review, we have removed the provisions in the 2015 DAU which allowed for changes to certain matters (typographical changes, people and places, and safety matters) to be made by Queensland Rail without submitting a DAAU. We have also amended the definition of the Operating Requirements Manual to remove the reference to it being amended through a process in the access agreements.

Safety issues and minor matters

Despite these changes reducing the ability to amend the ORM promptly, we still consider that they are appropriate, given the fundamental importance of every access holder being able to rely on the operating requirements. The QCA cannot give 'pre-approval' of amendments. However, we do accept that, in practice, Queensland Rail may be able to expedite amendments by discussing potential amendments with the QCA in advance of any formal submission.

In relation to safety matters, we note that the ORM still provides an ability for Queensland Rail to amend its own internal safety documents outside of the DAAU process. Further, as noted above, the terms of the ORM and each access holders' IRMP are (via provisions of the access agreements) also subject to the TRSA and all other applicable laws.

Compensation

In our Draft Decision we noted stakeholders' concerns about compensation for changes that impose costs on access holders, and the miners' desire for this to extend to end users.[217] While we accept that an effective compensation mechanism for access holders is needed, we consider that the way compensation is managed for end users who do not hold access directly is a matter to be considered at the time that any proposed amendments to the ORM are submitted for approval.

Accordingly, while we require that the 2015 DAU SAA be amended to remove the mechanism for amending the ORM without a DAAU, we also propose to remove the provisions in the SAA for compensating access holders for material adverse effects from ORM changes. We have had regard to Queensland Rail's concerns that a compensation provision in the SAA may inappropriately seek to impose obligations on Queensland Rail for exercising its rights under the QCA Act.

Queensland Rail said that our proposed amendments in the Draft Decision inappropriately disconnected the process of making amendments from the compensation process. This should no longer be a complaint of Queensland Rail, because now, as part of the process of approving a DAAU submitted by Queensland Rail (in relation to ORM amendments), the QCA will also consider the appropriateness of any compensation. That is, the compensation and amendment processes will now be connected.

We consider our amendments balance Queensland Rail's ability to amend the ORM with the appropriateness of an access holder being able to proceed on the basis that operational matters which exist at the time the access holder contracts remain consistent.

Also, if these matters change and have a material financial effect on the access holder's operations, the access holder may, if at the time of approving the DAAU it is appropriate, be

[217] Glencore, sub. 7: 10, 35–36; New Hope, sub. 10: 20, 43–44; Aurizon, sub. 6: 30; Asciano, sub. 5: 26–28.

compensated. It may not promote Queensland Rail's legitimate business interests to have to compensate operators, however, we consider that Queensland Rail's interest in being free to amend the ORM at will is outweighed by access holders' interest in Queensland Rail maintaining the operational requirements it has contracted to provide.

Similarly, Queensland Rail should, if it is appropriate, provide compensation when it deviates from these contracted requirements to the detriment of an access holder (s. 138(2)(e) and (h)). It also promotes the efficient use and operation of the network and is in the public interest if parties are held to the promises they make when contracting (s. 138(2)(a), (d)).

Summary 4.9

The SAA in the 2015 DAU must remove all processes for amending the ORM. If Queensland Rail is minded to amend the ORM in any way, it must lodge a DAAU. The QCA will consider the appropriateness of compensation to access holders at the time it considers the appropriateness of the DAAU.

See clause 4.3, the definition of Operating Requirements Manual in Appendix F, and clauses 8 and 9.13 of the ORM in Appendix G.

5 REPORTING

Ideally, a reporting regime should provide interested parties with information on how efficiently Queensland Rail has been operating and whether it is complying with certain aspects of its undertaking or access agreements, while ensuring the obligations on Queensland Rail are not excessive.

Part 5 of the 2015 DAU sets out Queensland Rail's reporting responsibilities, as well as its auditing and information obligations.

Our Decision accepts much of Queensland Rail's 2015 DAU proposal, but requires amendments to increase transparency.

This Decision differs from the Draft Decision in a few key areas. This Decision:

- *requires more of the quarterly report content to be disaggregated at the system level*
- *for systems with a reference tariff, requires Queensland Rail to:*
  - *report actual costs against forecasts on a like-for-like basis; and*
  - *provide an explanation of any under- or overspends compared to forecasts.*

Introduction

Reporting and compliance monitoring are important parts of the regulatory regime, as they place accountability on Queensland Rail and provide for greater levels of transparency.

However, it is important that there is a balance between the benefits to access seekers and users from reporting and compliance monitoring, and the regulatory burden that these processes impose on Queensland Rail.

The key issues are summarised in Table 8. Matters that require a more detailed explanation are discussed in Sections 5.1 to 5.6.

Table 8: Summary of key positions—reporting

Summary of the 2015 Draft Decision	*Queensland Rail's position*	*Stakeholders' position*	*QCA Decision*
1. Operational reporting			
Quarterly reporting on operational matters, certain complaints, and causes of significant changes in operating performance.	No comments.	Aurizon and New Hope supported the Draft Decision; however, they have proposed further amendments.	See Section 5.1.
2. Access reporting			
Annual reporting on timeframes associated with access negotiations.	Queensland Rail disagreed with our timeframe categories.	Asciano supported the Draft Decision. New Hope accepted the Draft Decision but also proposed further amendments.	See Section 5.2.
3. Cost and price reporting			
Where a reference tariff applies, reporting of cost and price information.	Queensland Rail accepted the Draft Decision.	Aurizon and New Hope supported the Draft Decision but also proposed further amendments. Asciano supported the Draft Decision.	See Section 5.3.
Where a reference tariff does not apply, reporting of cost information.	Queensland Rail accepted the Draft Decision.	Glencore supported the Draft Decision but also proposed further amendments. Asciano supported Glencore's position.	See Section 5.4.
4. Audit requirements			
The QCA is allowed to require an audit of compliance with any aspect of the undertaking or the QCA Act.	Queensland disagreed with this position and said that we do not have the explicit right to undertake audits.	Aurizon said that the auditor should not be limited to someone who has experience in the area of costing railway activities. Asciano submitted that auditing should be undertaken at regular intervals.	See Section 5.5.
5. Financial statements and costing manual			
Queensland Rail is required to publicly release audited financial statements.	Queensland Rail accepted the Draft Decision.[218]	No comments.	See Section 5.6.

[218] Queensland Rail, sub. 26, Annexure 7: 14.

5.1 Quarterly reporting on performance

Queensland Rail's 2015 DAU proposed quarterly reporting on operational matters, certain complaints, and causes of significant changes in operating performance.

Our Draft Decision proposed to accept Queensland Rail's proposed quarterly reporting provisions in the 2015 DAU.

Stakeholders' submissions

Aurizon and New Hope supported the Draft Decision but also proposed further amendments.[219]

QCA analysis and Decision

The QCA agrees with some of Aurizon and New Hope's positions, namely that:

- Queensland Rail should be obliged to correct an error as soon as it is identified[220]
- 'if any', in clause 5.1.2(a)(vii) of the proposed DAU in the QCA's Draft Decision (referring to whether there is a measure of track quality), should be removed, as it is ambiguous[221, 222]
- disaggregating the following metrics by systems is reasonable and unlikely to be onerous to Queensland Rail:
  - track kilometres under temporary speed restrictions
  - track quality
  - the number of written complaints that are verified as correct
  - the number of planned possessions that did not start and the number and percentage of planned possessions that did not finish within the time scheduled for the relevant planned possession in the MTP
  - the cause of any material changes affecting Queensland Rail's operating performance compared to the previous quarter.[223]

We consider that the above changes will improve the efficiency of the system as a whole by further decreasing information asymmetry and by helping to assist efficient pricing and negotiations (s. 138(2)(b), (c), (e), (a)). These amendments are also in the interests of access seekers and access holders and are not an onerous requirement on Queensland Rail as it will be collecting this information in any event (s. 138(2)(b), (e), (h)).

We have not implemented the following suggestions by Aurizon and New Hope:

- Queensland Rail should report on the number and percentage of train services that did not reach their destination within an allotted time slot by two groups:
  - when it is solely due to acts or omissions of Queensland Rail; and
  - when it is primarily due to delays attributed to an access holder or a nominated rolling stock operator.[224]

[219] Aurizon, sub. 20: 53; New Hope, sub. 23: 18.
[220] Aurizon, sub. 20: 53.
[221] By removing 'if any', we require Queensland Rail to report on the most recent measure of track quality when the information is applicable, or explicitly state that the information is not applicable.
[222] Aurizon, sub. 20: 53.
[223] Aurizon, sub. 20: 53; New Hope, sub. 23: 18.

We consider the use of 'solely' in relation to Queensland Rail, but 'primarily' in relation to an access holder or nominated rolling stock operator, to be unfair.

- The definition of operational constraint should be expanded to include any speed that is not the nominated speed board. [225]

We consider this to be unnecessary as the 2015 DAU definition already specifies speed restrictions.

- The reporting of average speed restrictions should be expanded to include the number of individual speed restrictions and the percentage below normal line speed.[226]

We do not consider that these particular changes strike an appropriate balance between Queensland Rail and access seekers and access holders (s. 138(2)(b), (e), (h)).

Summary 5.1

The 2015 DAU's quarterly reporting provisions must provide that:

(a) Queensland Rail should be required to correct any errors identified in its annual or quarterly reports as soon as reasonably practicable and publish an amended report containing the correct information.

(b) The words 'if any' should be deleted from clause 5.1.2(a)(vii).

(c) All of the information metrics required in a quarterly report should be disaggregated by system.

See clauses 5.1.2(a)(vii), 5.1.2(b) and 5.4.1 in Appendix F.

5.2 Annual reporting on the access negotiation process

The 2015 DAU proposed annual reporting on various measures across the access negotiation process, including capacity information requests, access applications, IAPs, negotiation cessation notices and access agreements.

Our Draft Decision accepted the majority of Queensland Rail's proposals. However, we required the time taken to issue IAPs, and the time taken by access seekers to provide their intent to negotiate that was to be reported, to be disaggregated by number-of-day ranges.

Stakeholders' submissions

Queensland Rail disagreed with the timeframe categories proposed by the QCA for reporting on the intention to negotiate.[227]

New Hope and Asciano supported the Draft Decision.[228, 229]

[224] Aurizon, sub. 20: 53.
[225] Aurizon, sub. 20: 53.
[226] New Hope, sub. 23: 18.
[227] Queensland Rail, sub. 26, Annexure 7: 12.
[228] New Hope, sub. 23: 18.
[229] Asciano, sub. 28: 12.

QCA analysis and Decision

We do not accept Queensland Rail's position that the annual reporting of intention to negotiate provided by an access seeker should be reduced to two timeframe categories (i.e. within 20 days, and more than 20 days). We disagree that our proposed timeframes (four categories) will impose a material administrative burden and lead to further downside regulatory risks to Queensland Rail, as it has claimed.

The relevant information is obviously available to Queensland Rail, so any additional administrative burden is unlikely to be significant and, in any event, this is outweighed by the increased transparency our proposal provides in terms of Queensland Rail's negotiation processes.

Further, we note that the original reason for specifying a range of time periods was to address a concern that a simple percentage of on-time and late responses did not properly reflect whether any delay was trivial or significant. Queensland Rail's proposed approach has the same flaws, while our required approach of reporting in time ranges indicates whether any delays are material.

We have adopted our Draft Decision in this regard (see section 5.1 of the Draft Decision).

Summary 5.2

The 2015 DAU must provide that Queensland Rail report annually on the time taken to issue IAPs to access seekers, and on the time taken by access seekers to provide their intent to negotiate, in the following categories:

(1) less than 10 business days

(2) 10 to 20 business days

(3) 21 to 40 business days

(4) more than 40 business days.

See clause 5.2.2(d) in Appendix F.

5.3 Reporting of cost and price information (when a reference tariff applies)

Queensland Rail proposed the annual reporting of information relevant to reference tariffs including: maintenance costs, scope of work undertaken, capital expenditure, operating expenditure and volumes.

Our Draft Decision proposed to accept the majority of Queensland Rail's proposal; however, we proposed a requirement that the actual information to be compared against the forecasts used to develop the tariffs.

This section only applies to the West Moreton and Metropolitan networks as they are the only systems for which the QCA has approved reference tariffs (see Chapter 8).

Stakeholders' submissions

Queensland Rail accepted our Draft Decision and said it intended to provide the information through its annual performance reporting (as suggested by the QCA) or in its publicly released audited below-rail financial statements.[230]

Asciano, New Hope and Aurizon supported our Draft Decision.[231] New Hope and Aurizon also proposed further amendments:

- New Hope submitted that the actual information should be reported against forecasts on a like-for-like basis; that is, in the same categories as those on which the approved forecast was based, and adopt the approved cost allocation methodology.[232]
- Aurizon said that Queensland Rail should also provide commentary explaining any under- or over-spends compared to forecasts.[233]

QCA analysis and Decision

We agree with the proposals put forward by New Hope and Aurizon, as these will increase the transparency of the tariff calculations, without imposing a material administrative burden on Queensland Rail. We consider that this is in the interests of access seekers and access holders, as it will assist both in understanding the calculation and movement of tariffs and in reducing information asymmetry (s. 138(2)(a), (b), (e), (h).

Summary 5.3

The 2015 DAU must provide that, for systems with reference tariffs, Queensland Rail report annually for the relevant financial year on:

(a) maintenance costs and scope of maintenance, compared with the maintenance forecasts used to develop the tariff; the information is to be aggregated by the same categories as those on which the relevant forecast was based

(b) operating expenditure, compared with the forecasts used to develop the tariff; the information is to be aggregated by the same categories as those on which the relevant forecast was based

(c) an explanation of the main reasons for any discrepancy between actual and forecast maintenance costs and operating expenditure

(d) capital investment and a roll-forward of its regulatory asset base

(e) system volumes (disaggregated by system and commodity (where appropriate)).

See clause 5.2.2 in Appendix F.

[230] Queensland Rail, sub. 26, Annexure 7: 13.
[231] New Hope, sub. 23: 19; Aurizon, sub. 20: 53; Asciano, sub. 28: 12.
[232] New Hope, sub. 23: 19.
[233] Aurizon, sub. 20: 53.

5.4 Reporting of cost and price information (when a reference tariff does not apply)

Queensland Rail proposed to report annually on the previous financial year's maintenance and operating costs, capital expenditure and volumes when a reference tariff does not apply.

Our Draft Decision considered that reporting for systems where no reference tariff applies should be at least as comprehensive as that provided for reference train services.

Stakeholders' submissions

Queensland Rail accepted the Draft Decision.[234]

Glencore supported the Draft Decision; however, it submitted that Queensland Rail should be obliged to disclose more information. Glencore said that Queensland Rail should be required to report to the QCA, access holders and end users for each year of this undertaking in relation to the Mount Isa line by type of services (e.g. bulk minerals, intermodal, agricultural freight or passenger) and amongst other things, report on aggregate costs and revenues for the year, as well as any other information the QCA would want in order to calculate a Mount Isa line reference tariff.[235] This included :

- detailed information on how access charges for the requested access rights had been calculated (e.g. inputs into any formula or methodology utilised, and the methodology for prices that were said to be 'market based')
- information on the aggregate current and future revenue streams for relevant parts of the network (e.g. Mount Isa line for Glencore services)
- the assumptions (and the basis of the assumptions) used to calculate future projections (e.g. escalations, forecasts or estimates of future costs or revenue).[236]

Asciano supported Glencore's submission.[237]

QCA analysis and Decision

After having regard to all submissions on this matter, we have adopted the Draft Decision in this regard (see section 5.2.2 of the Draft Decision), except as set out below.

In addition to the amendments proposed in the Draft Decision, we have shortened the timeframe for reporting expected capital investments from five years to four years. This is to accord with the term of the undertaking which will terminate less than four years after the approval date.

We note that it is open for an access seeker to bring a dispute to the QCA for determination; this should incentivise Queensland Rail to provide sufficient information relating to cost or price. Further, we have had regard to Queensland Rail's legitimate business interests in minimising its administrative burden (s. 138(a), (b), (e), (h).

Therefore, we have not implemented the additional reporting measures proposed by Glencore and Asciano as required amendments to the reporting regime in this Decision. However, we will be updating the costing manual that governs the regulatory accounts published by Queensland

[234] Queensland Rail, sub. 26, Annexure 7: 13.
[235] Glencore, sub. 30: 2.
[236] Glencore, sub. 25: 5.
[237] Asciano, sub. 28: 5.

Rail. During our review of the costing manual we will have regard to stakeholders' requests for more or better-presented information, including those already submitted by Glencore and Asciano. This matter is discussed further in Section 5.6 below.

Summary 5.4

The 2015 DAU must provide that, for non-reference-tariff train services, Queensland Rail is to include information on capital investment over the previous financial year and expected capital investments over one and four years, as well as:

(1) maintenance costs of its system and scope of maintenance performed

(2) operating costs of the regional network

(3) system volumes (disaggregated by system and commodity (where appropriate)).

See clause 5.2.2(j) in Appendix F.

5.5 Audit requirements

Queensland Rail's 2015 DAU limited the QCA's audit powers to information contained in the quarterly and annual reports.

Our Draft Decision considered Queensland Rail's auditing proposal did not provide for adequate auditing of Queensland Rail's compliance with its access obligations. Our Draft Decision proposed that the QCA, acting reasonably, be allowed to require an audit of compliance with any aspect of the undertaking or the QCA Act.

Stakeholders' submissions

Queensland Rail said the QCA Act did not include an explicit right for the QCA to undertake audits; rather, the QCA had strong information gathering rights.[238]

Aurizon supported our Draft Decision; however, it said that the auditor should not be limited to someone who has experience in costing railway activities.[239]

Asciano submitted that auditing should be undertaken at regular intervals—at least every two years, or annually if there were major issues. It said that this would provide assurance that Queensland Rail was complying with the QCA Act, the access undertaking, and other associated regulatory instruments, while managing the costs. Asciano also submitted that the audit regime could be strengthened to oblige Queensland Rail to remedy breaches identified by the audit.[240]

QCA analysis and Decision

We have adopted our Draft Decision in this regard (see section 5.4 of the Draft Decision), except as set out below.

We consider that the QCA Act does allow for the QCA to require Queensland Rail to undertake audits to determine compliance with the access undertaking. Our position is not that the QCA undertake the audit itself, but rather the QCA may instruct Queensland Rail to obtain an audit of its compliance with the undertaking and provide the results to the QCA.

[238] Queensland Rail, sub. 26, Annexure 7: 15.
[239] Aurizon, sub. 20: 54.
[240] Asciano, sub. 28: 15.

However, we agree with Queensland Rail that the auditing provisions should not extend to compliance with the QCA Act itself. We therefore have not adopted this aspect of the Draft Decision.

We do not accept Asciano's proposed amendments. We consider that our required auditing regime is appropriate without being unduly burdensome.

We disagree with Asciano that the audit regime needs to include an explicit obligation in relation to remedying breaches. Enforcement provisions, in relation to an approved undertaking, are already provided for in the QCA Act (see ss. 150A and 158A).

We also agree with Aurizon that the experience of the auditor should be widened to include auditors without the relevant rail costing experience.

Summary 5.5

The regulatory audit requirements in the 2015 DAU must provide that the QCA, acting reasonably, can require an audit of compliance with any aspect of the undertaking.

See clause 5.4.4 in Appendix F.

5.6 Regulatory accounts and cost allocation manual

Regulatory accounts

The QCA Act requires that an access provider keep separate accounts for its declared service in a manner approved by the QCA (s. 163). However, it does not require that Queensland Rail publish those accounts.

Our Draft Decision therefore proposed that Queensland Rail amend the 2015 DAU so that Queensland Rail was required to publicly release audited financial statements for its declared services, consistent with the requirements in the QCA Act, within six months of the end of the relevant financial year.

Neither Queensland Rail nor stakeholders were opposed to the QCA's Draft Decision on this matter. The QCA has therefore adopted section 5.3 of the Draft Decision.

Cost allocation manual

The QCA Act gives the QCA the power to require a cost allocation manual that sets out how the regulatory accounts will be prepared (s. 159).

We note the concerns raised by Asciano that historically the cost information provided by Queensland Rail has been inadequate. Asciano said this could be addressed by requiring Queensland Rail to provide consistent and transparent cost information to the QCA and users on an ongoing basis, where such costs are allocated according to the QCA-approved cost allocation manual. Asciano said that this would allow a degree of cost certainty and consistency. We also note Glencore's concerns discussed above in Section 5.4 of this Decision.

Given that the regulatory accounts are governed by the QCA Act and that the costing manual gives the QCA the ability to specify how those accounts should be prepared, the QCA considers there is no need to duplicate those requirements in the undertaking.

In this regard, the costing manual was amended in 2012 to identify the costs, revenue and assets for the Western Moreton network separately from those for the rest of Queensland Rail's

declared below-rail operations. The QCA is minded to require further amendments to the costing manual, consistent with that precedent, so that the regulatory accounts include a similar separation for each of the Mount Isa and north coast systems.

This should address stakeholders' concerns, without including provisions in the undertaking that govern how to prepare the regulatory accounts. The QCA will seek stakeholder comments on any proposed Queensland Rail costing manual once we have published this Decision.

Summary 5.6

The 2015 DAU must require Queensland Rail to publicly release audited financial statements for its declared services, consistent with the requirements in the QCA Act, within six months of the relevant financial year.

See clause 5.3.1 in Appendix F.

6 ADMINISTRATIVE PROVISIONS

Administrative provisions provide clarity on a range of miscellaneous administrative mechanisms that are designed to assist in dispute resolution, notices, QCA decision-making processes and transitional reporting arrangements.

In this Decision we have made changes to clarify that reporting of tariff related information must occur from the commencement date of the undertaking but will include information from 1 July 2013 onwards. We have also made miscellaneous amendments relating to access applications and dispute resolution.

Introduction

Part 6 of Queensland Rail's 2015 DAU provides for dispute resolution as well as transitional arrangements for reporting and negotiations started under the 2008 undertaking.

The QCA has adopted the views expressed in its Draft Decision on Part 6 of Queensland Rail's 2015 DAU relating to administrative provisions, unless otherwise indicated in amendments required by this Decision.

Key issues are summarised in Table 9 below, with matters requiring a more detailed explanation discussed further in Sections 6.1 and 6.2.

Table 9: Summary of key positions and Decision—administrative provisions

Summary of the 2015 Draft Decision	*Queensland Rail's position*	*Stakeholders' position*	*QCA Decision*
1. QCA decision-making			
Provides decision-making procedures and criteria. The provisions on QCA decision-making apply to both Queensland Rail and other relevant parties.	No comments.	No comments.	As per the Draft Decision (see Table 6.1 of the Draft Decision).
2. Notices			
Provisions to clarify the form, means of giving, and effect of notices relating to this undertaking.	No comments.	No comments.	As per the Draft Decision (see Table 6.1 of the Draft Decision).
3. Transitional provisions			
Tariff-related reporting information to be provided from the commencement date but is to include information from 1 July 2013.	Queensland Rail disagreed with our Draft Decision.	New Hope said that different information was required to achieve the QCA's intent.	See Section 6.1.
Negotiation for access—all matters and negotiations that commenced under the	Queried drafting of amendments.	No comments.	See Section 6.2.

Summary of the 2015 Draft Decision	*Queensland Rail's position*	*Stakeholders' position*	*QCA Decision*
2008 undertaking have to be finalised under the 2015 undertaking once it has been approved.			
4. Miscellaneous			
Miscellaneous other matters	Queensland Rail queried the need for transitional clause 6.4(b).	No comments.	See Section 6.2.

6.1 Commencement date of tariff-related reporting

For the period prior to the undertaking's approval date, Queensland Rail's 2015 DAU proposed to only provide reporting information as was required under the 2008 access undertaking.

Our Draft Decision proposed that Queensland Rail, in addition, should provide reports containing information about tariff-related matters as from 1 July 2013, rather than such reports only containing information about tariff-related matters as from the approval date of the 2015 undertaking.

Stakeholders' submissions

Queensland Rail disagreed with our position.[241] New Hope supported our position, but said different information was required to achieve the QCA's intent.[242]

QCA analysis and Decision

We disagree with Queensland Rail's position that we do not have the power to require tariff-related reports to be provided containing information from the period between 1 July 2013 and 1 July 2016. While the undertaking and the reporting provisions will take effect from the undertaking's commencement date, it is appropriate to require the provision of information that preceded the commencement date, because such information is relevant to the access charges that access holders have paid and the negotiation of access charges in the future by reducing information asymmetry.

In doing so, we have made minor drafting changes to our DAU from our Draft Decision, to better effect our intent.

We note that New Hope's position was made in the context of our Draft Decision approach to calculating the adjustment amounts. This methodology has now been revised in this Decision.

[241] Queensland Rail, sub. 26, Annexure 7: 16; Queensland Rail, sub. 26: 108.
[242] New Hope, sub. 23: 20.

Summary 6.1

The 2015 DAU must provide that Queensland Rail provide tariff-related reports for the West Moreton network to access seekers which will include information from the period between 1 July 2013 and the commencement date of the undertaking.

See clause 6.4 in Appendix F.

6.2 Miscellaneous other matters

Transitional treatment of access and renewal applications

The 2008 access undertaking expired on 30 June 2015. Given this, we introduced clause 6.4(b) in our Draft Decision, to provide for things that happened during the period between the expiry of the 2008 access undertaking and the commencement of the new access undertaking. That is, any access applications or renewal applications made during this time period are deemed to have been done under the new undertaking to the extent that the matters are equivalent. However, in our drafting for this Decision, we have clarified that the terms 'access applications' and 'renewal applications' used in clause 6.4(b) do not refer to access applications and renewal applications commenced after the approval date of this undertaking.

Dispute resolution changes

Separately, we have adopted our Draft Decision position on dispute resolution for access seekers (see Table 6.1 of the Draft Decision). However, we have now extended the ability for access holders to avail themselves of the dispute resolution provisions in the undertaking as well in certain circumstances (see Section 1.4 of this Decision).

Moreover, we have made minor amendments to the dispute resolution provisions which provide for the scenario that the Rail Safety Regulator no longer exists or declines to determine a dispute. We have also clarified that, if a dispute is referred directly to the QCA pursuant to a provision of the undertaking, that dispute does not have to pass through each stage of the dispute resolution process before being determined by the QCA. We consider that this is appropriate to clarify and expedite disputes referred directly to the QCA and so is in the interests of Queensland Rail, access seekers, and access holders and promotes the economically efficient operation of Queensland Rail's infrastructure (s. 138(2)(a), (b), (e), (h)).

Summary 6.2

The 2015 DAU in respect of administrative provisions must provide that:

(a) **any access applications or renewal applications done between the expiry of the 2008 access undertaking and the commencement of the new undertaking are deemed to have been 'done' under the new undertaking**

(b) **the dispute resolution provisions provide for the scenario that the Rail Safety Regulator no longer exists or declines to determine a dispute**

(c) **if a dispute is referred directly to the QCA by a provision of the undertaking, that dispute does not need to pass through each step of the dispute resolution escalation process.**

See clauses 6.1.1, 6.1.4 and 6.4 in Appendix F.

7 STANDARD ACCESS AGREEMENT

Queensland Rail's 2015 DAU includes a standard access agreement (SAA), which sets out the standard terms and conditions on which Queensland Rail will provide access to its network for all traffic types.

Access agreements are essential for the provision of access to Queensland Rail's network. A SAA facilitates the timely development of access agreements by providing a 'safe harbour' access agreement which parties can adopt without the need for further negotiation, or which parties can use as a guide when negotiating alternative terms of access.

Stakeholders have said that Queensland Rail's proposed SAA in the 2015 DAU[243] is not balanced because it significantly weakens Queensland Rail's obligations to deliver its contracted access services and materially increases the contract risk held by access seekers who become access holders.

Our Decision is that Queensland Rail's proposed 2015 SAA is not appropriate as it is currently drafted. Instead, we require amendments to the proposed 2015 SAA to appropriately balance the rights, responsibilities and legitimate business interests of Queensland Rail with those of prospective access seekers.

This Decision differs from the Draft Decision in a few key areas. This Decision:

- *clarifies the process for nominating multiple operators who will now enter separate (but substantially identical) tripartite agreements*
- *includes provisions for ad hoc train services*
- *removes all ORM amendment provisions and leaves amendments (and any compensation) to be dealt with via a DAAU*
- *clarifies that the agreement will be legally binding on operators who execute the agreement after Queensland Rail and the access holder*
- *includes some additional performance level reporting requirements*
- *amends the take-or-pay schedule to clarify its operation in accordance with the approved ceiling revenue limit*
- *requires Queensland Rail to negotiate variations to access agreements in good faith for efficiency improvements both at the initial negotiation stage and during the term of an undertaking.*

Introduction

The Draft Decision said that Queensland Rail's proposed 2015 SAA did not appropriately balance the rights, responsibilities and legitimate business interests of Queensland Rail with those of prospective access seekers. The Draft Decision also set out our proposed amendments to the 2015 SAA.

Queensland Rail, in response to the Draft Decision maintained that the contractual form of the 2015 SAA was appropriate and largely rejected the QCA's proposed amendments.

[243] For simplicity, we have referred to the proposed SAA in the 2015 DAU as the '2015 SAA'.

Queensland Rail did not provide detailed comments on the QCA's proposed amendments, other than responding to a limited number of clauses (discussed in Table 7 of Queensland Rail's submission).[244] Queensland Rail largely took issue with the structure and legality of the QCA's proposed SAA and noted instances where Queensland Rail believed the QCA had deviated from earlier regulatory precedents, which the QCA had identified as being relevant to its considerations of the 2015 DAU.[245]

For the reasons set out in this chapter, we have adopted the view set out in the Draft Decision that the 2015 SAA is not appropriate.

This chapter broadly sets out the major themes and important issues relevant to assessing the 2015 SAA. Appendix C outlines stakeholders' and Queensland Rail's responses to specific clauses which were marked up in the QCA's proposed SAA, as well as our responses to their submissions. The amendments that we require to the 2015 SAA are reflected in Appendix G.

Key issues are summarised in Table 10 below. Matters that require a more detailed explanation are discussed in Sections 7.2 to 7.5.

Table 10: Summary of key positions and decision—standard access agreement

Summary of the 2015 Draft Decision	*Queensland Rail's position*	*Other stakeholders' position*	*QCA Decision*
1. Access principles			
No separate schedule of access principles; the 2015 SAA applies to all traffic types.	No further comment on this issue.	New Hope, Glencore and Yancoal supported the Draft Decision subject to having a robust SAA. Aurizon did not accept the Draft Decision.	See Section 7.2.
2. SAA contracting framework			
A tripartite structure, to allow either an end customer or an operator to hold the access rights.	Did not accept the Draft Decision; the contractual form of its proposed 2015 SAA was appropriate.	Other stakeholders, except Aurizon and Asciano, supported the Draft Decision.	See Section 7.3.
3. Balanced risk allocation			
The 2015 SAA should provide a more balanced risk position for all parties.	Did not accept the Draft Decision.	Other stakeholders generally supported the Draft Decision, but suggested further amendments.	See Section 7.4.
4. Performance reporting and KPIs			
The 2015 SAA should include a performance reporting regime and require Queensland Rail to negotiate suitable KPIs with access seekers.	Generally supportive of measures to increase transparency, but had issues with some proposed amendments.	Other stakeholders supported the Draft Decision, but said any financial outcomes should be in the SAA or the undertaking and the provisions should be subject to the dispute	See Section 7.5.

[244] Queensland Rail, sub. 26: 94.
[245] See Queensland Rail, sub. 26: 91–94.

Summary of the 2015 Draft Decision	*Queensland Rail's position*	*Other stakeholders' position*	*QCA Decision*
		resolution provisions.	
5. Standard funding agreement			
Access funders should be allowed to reasonably require Queensland Rail to develop a standard funding agreement.	See Chapter 9.	See Chapter 9.	See Chapter 9.

7.1 QCA assessment approach

We consider that an appropriate SAA (and associated provisions in the undertaking) will:

- facilitate the timely development and execution of an access agreement for all access seekers; and
- balance Queensland Rail's legitimate business interests with the rights and interests of access seekers and access holders; and
- promote efficient and non-discriminatory use of the network; and
- promote effective competition in upstream and downstream markets.

Given the above, and in accordance with section 138(2)(h) of the QCA Act, we also consider it appropriate that a SAA should take account of the regulatory precedents established by:

- the standard access principles within Schedule E of Queensland Rail's previous 2008 access undertaking (access principles) (especially if the risk allocation matrix of the access principles is to be embedded within the 2015 SAA (see below))
- the SAA—coal (Schedule H) of Queensland Rail's 2008 undertaking
- the split-form SAA of the approved Aurizon Network 2010 undertaking.

That is not to say that the 2015 SAA should be drafted on the same terms as these regulatory precedents, nor that every provision which covers similar subject matter should be exactly the same as the earlier approved examples. Queensland Rail's proposed 2015 SAA has been reviewed afresh and some provisions of the previous regulatory precedents may no longer be appropriate. However, their use as guides, considering their practical application over the years, is instructive and appropriate.

Table 11: provides more detail on how we consider that the above themes should be reflected in the 2015 SAA.

Table 11: QCA's assessment of the 2015 SAA

Assessment considerations	*QCA's assessment approach*
Does the SAA facilitate the timely development and execution of an access agreement for all access seekers? (s. 138(2)(a), (d), (e), (h))	We consider the SAA will facilitate the timely development and execution of access agreements if it: • allows the SAA to be used as a workable and balanced guide to negotiations as well as a 'safe harbour' so that, unless otherwise agreed by Queensland Rail and the access seeker, the terms of the SAA will apply as the default access agreement; • assists in enabling all access seekers and end customers to obtain timely access to the declared network, including in circumstances where access seekers

Assessment considerations	*QCA's assessment approach*
	and/or end customers require a network extension to accommodate their access application; • establishes appropriate dispute mechanisms so that the SAA remains a relevant and effective agreement over the term of the access undertaking; and • clearly defines the terms and conditions of the SAA so that they are readily understood by parties and are relatively simple to negotiate and administer.
Does the SAA address Queensland Rail's legitimate business interests? (s. 138(2)(b), (g))	We consider the SAA is likely to advance the legitimate business interests of Queensland Rail if, among other things, it: • allows Queensland Rail to deliver all access services in accordance with its executed access contracts; • recognises Queensland Rail's responsibility to deliver access services consistent with its passenger priority obligations under the *Transport Infrastructure Act*; • applies a commercially balanced approach to allocating risks to the contracting party best placed to manage or mitigate the risks; and • allows Queensland Rail to recover all efficient costs from the construction and ownership of a network extension consistent with the 2015 DAU, including Schedule E.
Does the SAA appropriately balance the rights, obligations, risks, liabilities and indemnities between all the contracting parties? (s. 138(2)(a), (b), (d), (e), (h))	We consider the SAA will appropriately balance Queensland Rail's, access seekers' and access holders' rights and interests if it: • makes it possible for an end customer access seeker to become an access holder that has the flexibility to assign operational utilisation rights to different rail operators; • establishes a reasonable and commercially balanced allocation of rights, obligations and risks between the parties in the provision of access services • provides certainty and security regarding the nature and quality of the access rights being sold/purchased and the ability for parties to manage their contractual risks; • establishes transparent and clearly defined processes through which access rights can be varied (renewed, resumed, relinquished, transferred, suspended and/or terminated), including in response to productivity and efficiency improvements; and • takes appropriate account of the earlier approved regulatory precedents and, where appropriate, reflects the approved workable balance contained in those documents.
Do the arrangements promote efficient and non-discriminatory use of the network? (s. 138(2)(a), (b), (d), (e), (h))	We consider the SAA will promote the efficient and non-discriminatory use of the network if it: • provides an access seeker (and access holder) with flexibility in relation to the use and management of its access rights; • provides a rail operator with the ability to operate train services in accordance with the access rights contained in the relevant access agreements; • clearly delineates the rights and responsibilities of all parties to the SAA, namely Queensland Rail, rail operators, and end customers; and • consistently applies the same arrangements across all access holders with respect to Queensland Rail's operational, safety, and environmental requirements.
Do the arrangements promote effective competition in upstream and downstream markets? (s. 138(2)(a), (b), (d),	We consider the SAA will promote effective competition in upstream and downstream markets if it: • provides an efficient network service at an efficient cost that is commensurate with the regulatory and commercial risks held by all the parties; • provides a clear separation of roles relating to the ownership and management

Assessment considerations	*QCA's assessment approach*
(e), (h))	of access rights and the operation of train services on the network; • provides opportunities for end customers (i.e. bulk commodity companies) to hold the access rights and assign operational rights to different train operators within the term of the agreement; • provides the ability for access seekers and end customer access seekers to obtain access to the network when a network extension is required to accommodate its access application; and • provides scope for variations required to adopt productivity and efficiency improvements.

7.2 Access principles

The third party access regime in the QCA Act is underpinned by a 'negotiate–arbitrate' approach to regulation, with the access regime incorporating the primacy of contractual negotiations. Access principles[246] have previously been used as a contractual guide to establishing the core terms and conditions according to which Queensland Rail is obliged to provide access when the SAA is not suitable or relevant. Because access principles seek to allocate the main commercial and operational risks between the contracting parties in a balanced manner, they facilitate the timely negotiation of access agreements. Queensland Rail's previous 2008 undertaking outlined its access principles in Schedule E.[247]

Queensland Rail, in its proposed 2015 DAU, did not include a separate schedule of access principles. Rather, Queensland Rail intended for the contractual risk allocation matrix underpinning the access principles to be embedded in Queensland Rail's proposed 2015 SAA, which would then apply to all traffic types, thereby removing the need for separate access principles.[248]

Our Draft Decision agreed with Queensland Rail's proposed approach of not including separate access principles.

Stakeholders' submissions

Glencore and Yancoal supported the QCA's Draft Decision.[249] New Hope also supported the QCA's Draft Decision, subject to having a robust SAA.[250]

Aurizon said a decision to remove access principles provided Queensland Rail with the ability to reject any reasonable requests for variations to the SAA that would result in productivity gains.[251]

[246] Schedule E in both Aurizon Network and Queensland Rail's approved undertakings (2001, 2006, 2008, 2010) has remained relatively consistent since the approval of the 2001 undertaking. Aurizon Network's 2010 undertaking was the last instance where we approved access principles that set out what a network provider was required to do to reflect its obligations under the QCA Act.

[247] Schedule E was used as a guide by all contracting parties when negotiating a customised access agreement, while the SAA provided a 'safe harbour' agreement for traffics (including non-coal traffics) to fall back on if negotiations were not successful.

[248] Queensland Rail, sub. 1: 35–39.

[249] Glencore, sub. 25: 1; Yancoal, sub. 27: 1, 4.

[250] New Hope, sub. 24: 3.

[251] Aurizon, sub. 20: 31–35; New Hope subsequently supported this submission in New Hope, sub. 31: 20.

Stakeholders also said that access agreements should have mechanisms in place to allow for above-rail efficiency improvements during the term of the access agreement and that Queensland Rail should be required to substantiate why it did not consider a proposed amendment suitable.[252]

Queensland Rail disagreed and said that it should not have an additional obligation to negotiate productivity variations during the term of an access agreement.[253]

Asciano said that it remained concerned about unbalanced risk management in relation to the 2015 SAA but supported an increased emphasis on flexibility and customer focus.[254]

QCA analysis and Decision

The QCA agrees with Queensland Rail's proposal that separate access principles are not required and that the 2015 SAA should instead apply to all traffic types. However, we have had regard to Aurizon's comments that removing the access principles could stifle commercial innovation and reduce flexibility by imposing the SAA terms if agreement cannot be reached on variations.

We have adopted our Draft Decision not to include separate access principles, subject to the further amendments discussed below (Draft Decision, section 7.2).

We recognise that Queensland Rail's proposal does not adequately address the legitimate concern raised by Aurizon. Because of this, we believe it is appropriate to clarify that at the negotiation stage Queensland Rail is obliged to provide reasons if it does not accept variations to the SAA proposed by an access seeker which would promote productivity or efficiency improvements.

We therefore require clause 2.9.4 of the 2015 DAU to be amended such that Queensland Rail is obliged to provide reasons if it rejects (at the negotiation stage of an access agreement) proposed variations to the SAA that an access seeker can demonstrate will promote productivity or efficiency improvements.[255] While this will impose an additional burden on Queensland Rail, we consider the amendment is appropriate as it will promote efficiency and productivity gains, which will in turn promote competition and increase contracting capacity for Queensland Rail.

This position is largely consistent with our Draft Decision, but further clarifies the role and purpose of the SAA in relation to all traffic types, given that there will no longer be access principles to guide negotiations for non-reference-tariff traffic.

We do not accept Queensland Rail's position that it is sufficient that it already has statutory obligations, pursuant to section 101(1) of the QCA Act, to negotiate in good faith.[256] This provision, in itself, does not provide access seekers with sufficient clarity and certainty regarding negotiations surrounding proposed variations to the SAA.

Likewise, Aurizon, New Hope and Glencore said that there should be a mechanism to allow access holders to vary the terms of their access agreements, during the term of the access

[252] Aurizon, sub. 20: 32; New Hope and Glencore subsequently supported this submission in New Hope, sub. 31: 20 and Glencore, sub. 30: 3.
[253] Queensland Rail, sub. 33: 44.
[254] Asciano, sub. 28: 5, 19.
[255] Clause 2.9.4 of the 2015 DAU provides for an access agreement to be consistent with the terms of the undertaking and the SAA unless otherwise agreed between the contracting parties.
[256] Queensland Rail, sub. 26: 92.

agreement, to allow for efficiency and productivity improvements. This might also include new reference train services and relief in relation to relinquishment fees if train paths are relinquished because of these improvements.[257] Queensland Rail said that there was no need for this mechanism because it was already obliged to negotiate in good faith under the QCA Act. Further, Queensland Rail said that the QCA had no power to require amendments to introduce a new reference train service.[258]

We agree that it is important to promote efficiency and productivity improvements and that these improvements may be conceived during the life of a long-term access agreement. Efficiency improvements benefit access holders, access seekers and Queensland Rail. They also benefit upstream and downstream markets, as well as the system as a whole.

We therefore require Queensland Rail to reasonably consider any proposed productivity or efficiency variations which arise during the term of an access agreement and negotiate in good faith as well as provide reasons for any refusal to vary the access agreement. We do not agree with Queensland Rail that the amendment is unnecessary because of section 101 of the QCA Act, as the required provision will also operate in circumstances where an access agreement has already been agreed.

The development of new reference train services is discussed in Chapter 8.

Our required amendments are more specific than the statutory obligation and seek to address any imbalance in negotiating positions—for example, where Queensland Rail is seeking to use its monopoly position as the access provider. We consider our proposal can facilitate balanced discussions between the parties on access conditions and efficiency gains. This has the potential to encourage productivity improvements and infrastructure investments that rely on Queensland Rail's infrastructure, promoting the effective and efficient utilisation of Queensland Rail's below-rail service, as well as facilitating upstream and downstream competition.

Our required amendments are also consistent with, and provides additional guidance to, Queensland Rail's and access seekers' obligations under section 101(1) of the QCA Act to negotiate in good faith.

[257] See Aurizon, sub. 20: 32–33; New Hope, sub. 31: 20; Glencore, sub. 30: 3.
[258] Queensland Rail, sub. 33: 44.

Summary 7.1

The QCA accepts that Queensland Rail does not need to include a separate schedule of access principles in the 2015 DAU, as the 2015 SAA applies to all traffic types.

However, the 2015 DAU and SAA must clarify that Queensland Rail has an obligation to:

- **(a) provide reasons as to why Queensland Rail rejects a proposed variation to the SAA (both at the negotiation stage and during the term of the access agreement) where the relevant access seeker or access holder can demonstrate that the proposed variations will result in productivity or efficiency improvements; and**
- **(b) reasonably consider, and negotiate in good faith in relation to, any proposed variations to the terms of an access agreement which are proposed by an access holder during the term of an access agreement where the relevant access holder can demonstrate that the proposed variations will result in productivity or efficiency improvements.**

See clause 2.9.4 of Appendix F and clause 1.3 of Appendix G.

7.3 Tripartite structure

Queensland Rail proposed a tripartite structure in its 2015 SAA which provided that both an end customer and an operator could become signatories to a single agreement. However, despite allowing three parties to be signatories to Queensland Rail's proposed 2015 SAA, the agreement only provided for an operator to be the access holder.

Our Draft Decision considered it was appropriate to amend Queensland Rail's proposed 2015 SAA to provide that either an end customer or an operator could be the access holder. We also considered that an access holder should have the flexibility to nominate an operator (or multiple operators) to use its access rights (in the case of an end customer access holder) or, if the access holder was also an accredited railway operator, nominate itself to use the access rights.

Stakeholders' submissions

Queensland Rail said that the QCA's proposed SAA was not effective in creating legal relations between Queensland Rail, an access holder, and an operator who executed the SAA later than the original parties.[259]

Aurizon and Asciano stated that the 2015 SAA should not allow for multiple operators to enter into the same agreement.[260]

New Hope, Glencore and Yancoal all supported the QCA's Draft Decision, subject to some further amendments to, amongst other things, more clearly take account of the fact that multiple operators might execute the agreement.[261]

[259] Queensland Rail, sub. 26: 91–92.
[260] Aurizon, sub. 20: 37; Asciano, sub. 28: 8.
[261] New Hope, sub. 24: 3, sub. 32: 27; Glencore, sub. 25: 1; Yancoal, sub. 27: 4.

QCA analysis and Decision

The QCA requires Queensland Rail to amend its 2015 SAA as proposed by the QCA in its Draft Decision, to allow for either an end customer or an operator to contract as the access holder and allow for that access holder to nominate an operator (or multiple operators via multiple tripartite agreements) to use the access rights on its behalf. This is necessary so that an access holder can control its access rights and nominate one or more operators to use its access rights.

In our view, the 2015 SAA restricts contracting flexibility and thereby reduces incentives to increase and improve efficiency across the system.

We have adopted our Draft Decision in this regard except as noted in relation to the amendments discussed below (see section 7.3 of the Draft Decision).

We reject Queensland Rail's argument that even though the proposed 2015 SAA does not reflect a particular form of contractual arrangement it remains appropriate. Our view is that the form of the 2015 SAA is not appropriate. The form of the contractual arrangements provided by a SAA are integral to the operation of the network. Amending the SAA to allow for different parties to hold the access rights greatly increases competition amongst the users of the network and therefore we consider that the form of SAA required by this Decision is appropriate.

Multiple operators

Stakeholders, except Aurizon, Asciano and Queensland Rail, supported the QCA's proposed structure. Stakeholders did however propose a number of additional amendments, the majority of which related to:

- clarifying (within particular clauses) the possibility of more than one operator being a signatory to the agreement
- restricting information sharing amongst operators
- clarifying which party is to provide initial information to Queensland Rail during access negotiations (this aspect is dealt with in the body of the DAU).[262]

Aurizon and Asciano said that a number of issues would result from having multiple operators being parties to one access agreement.[263] For example, inconsistencies between the termination provisions and the security provisions; quarantining of commercially sensitive information between operators; and, imposing unfavourable variations on an operator who may not agree to the variation.[264]

We agree with Aurizon and Asciano that there are a number of matters within a SAA where multiple operators being parties to the same contract could compromise sensitive information or have other unintended consequences (e.g. in relation to disputes and variations). Because of this, we have moved away from our proposal in the Draft Decision in this regard and consider that the 2015 SAA should remain a tripartite agreement (i.e. only one operator, one access holder and Queensland Rail per access agreement) and not allow for multiple operators to be parties to the same access agreement.

The amended SAA will still allow an access holder the flexibility to nominate multiple operators to use its access rights; however, each operator will be required to enter into a separate access

[262] In relation to concerns regarding who is to provide Queensland Rail with information, see Yancoal, sub. 27: 4 (other issues —'End User Contracting').
[263] Aurizon, sub. 20: 37.
[264] Aurizon, sub. 20: 37.

agreement which will be substantially identical to that negotiated between the access holder and Queensland Rail except for variations necessary to account for a different operator. These changes should also help to improve transparency as well as clarify and improve the structure and mechanics of the QCA's required SAA. These changes are reflected in our amendments and also noted in Appendix C.

Legal relations

We accept Queensland Rail's position that the QCA's draft SAA was not clear in creating legal relations between Queensland Rail, an access holder, and an operator who executes the access agreement after Queensland Rail and the access holder.[265] We have sought to address this by clarifying that each signatory agrees to be contractually bound to a subsequent incoming operator and vice versa. The amendments will also clarify that an access holder can execute an access agreement with Queensland Rail before having decided on its operator(s) and any subsequent operators will also be bound.

We consider this amendment is consistent with Queensland Rail's legitimate business interest as it provides contractual certainty to Queensland Rail as access rights provider, and also solidifies the liabilities and obligations between the parties.

We consider that providing for an end customer to have the ability to control the access rights is appropriate for the 2015 SAA, as it will allow an end customer to:

- hold, transfer, assign, relinquish and terminate the access rights independently of an operator
- negotiate and execute an access agreement without concurrently nominating a rail operator
- switch between rail operators within the term of the access agreement.

Our proposed amendments also allow for operating and contractual risks to be more clearly delineated between the parties, depending on which party is best placed to manage the risk that is assigned to it.

The ability to control the access rights (which are essential to an end customer's business) is important to end customers who may seek access to the service.

Further, our amendments to Queensland Rail's proposed 2015 SAA will increase operator competition (and thereby encourage efficiencies and innovation within the network), as well as upstream and downstream competition, by allowing an end customer to nominate its chosen operator (or operators) and vary its nominations during the term of the agreement (s. 138(2)(a), (d)). The amendments will also reduce negotiation and contracting duplication and other inefficiencies thereby reducing costs. These outcomes promote the object of the relevant part of the QCA Act, the legitimate business interests of Queensland Rail, and the interests of access seekers and end user access seekers who become access holders (s. 138(2)(b),(e), (h)).

[265] Queensland Rail, sub. 26: 91, 95, 102.

Summary 7.2

The 2015 SAA must provide for the following:

(a) It should be possible for an end customer or an operator to be the access holder and have the necessary flexibility to manage and control the use of access rights under an access agreement.

(b) A tripartite structure should be adopted which more appropriately divides the contract responsibilities and risks of Queensland Rail, an operator and an end customer.

See clauses 2.9.4 and 2.9.7 (deleted) in Appendix F, clauses 2, 3, 4, 14, 15, 16, 27.11 and Schedule 1 to Appendix G (SAA), in addition to various consequential amendments made throughout the SAA to provide for the tripartite structure.

7.4 Balanced risk allocation

The balance between contracting parties in allocating risks, rights and obligations under a SAA is arguably the most important element of the 2015 SAA. This is because the SAA is used as a 'fallback' position if variations to the SAA cannot be agreed in the negotiation stage. If the risk allocation is not balanced, and the access provider and an access seeker cannot agree in their negotiations on rebalancing it, a party may be liable for large risks it cannot control. Equally, a party may be liable for obligations which it cannot satisfy.

A number of regulatory precedents to the SAA that have been approved by the QCA over the years have largely proved, in practice, to be workable and balanced. [266]

Queensland Rail had previously said that it has proposed a risk and liability regime in its 2015 SAA that was a revision of the regimes in the previous regulatory precedents (2008 and 2010 SAAs).[267]

In our Draft Decision we did not consider that Queensland Rail's proposed allocation of rights, obligations and risks between the parties in Queensland Rail's proposed 2015 SAA was appropriate.

Stakeholders' submissions

Stakeholders said that Queensland Rail's proposed 2015 SAA provided an unreasonable and unbalanced risk allocation between the access provider and the access seeker.[268] In contrast, stakeholders were largely supportive of the QCA's proposed 2015 SAA.[269] However, Asciano said it still had strong concerns about Queensland Rail's approach to risk allocation and risk management, which were not addressed in our Draft Decision.[270]

[266] These include, relevantly, the access principles, the SAA (coal) from the Queensland Rail's 2008 access undertaking; and, the split-form SAA from the Aurizon Network 2010 access undertaking (see discussion above in relation to these regulatory precedents).
[267] Queensland Rail, sub. 1: 35–40.
[268] Asciano, sub. 5: 13–15; Aurizon, sub. 6: 23; Glencore, sub. 7: 9; New Hope, sub. 11: 2, 4.
[269] New Hope, sub. 24: 3-5; Aurizon, sub. 20: 6; Yancoal, sub. 27: 4; Glencore, sub. 25: 1, 6.
[270] Asciano, sub. 28: 13.

Queensland Rail did not make further comments on the risk profile of the QCA's proposed SAA generally. However, Queensland Rail did provide some comments on particular clauses.

QCA analysis and Decision

We do not consider that the risk allocation balance in the 2015 SAA is appropriate.

We have provided detailed amendments to Queensland Rail's proposed 2015 SAA which we consider are required to make the risk allocation matrix underlying the 2015 SAA appropriate, having regard to section 138(2) of the QCA Act.

These amendments are contained in Appendix G. The amendments to key areas are also discussed below.

The amendments are largely consistent with the Draft Decision. However, we have made a number of changes to the approach contemplated in the Draft Decision. Because of this, we refer to and repeat our Draft Decision in relation to the balanced risk allocation except where the approach in our Draft Decision is amended or varied by this Decision as set out below (see section 7.3 of the Draft Decision).

Regulatory precedents (2008 and 2010)

We are of the opinion that the number of executed access agreements that are currently held by access holders demonstrates the relevance of the 2008 Queensland Rail and the 2010 Aurizon SAAs. Stakeholders had also recommended significant amendments to Queensland Rail's proposed 2015 SAA to reflect the risk allocation matrix contained in these approved regulatory precedents.[271]

In order to identify in Queensland Rail's proposed 2015 SAA any material deviations from the approved regulatory precedents which inappropriately altered the risk balance, we conducted a clause-by-clause review of Queensland Rail's proposed 2015 SAA. We then compared Queensland Rail's proposed SAA provisions with the provisions relating to the same subject matter under the earlier regulatory precedents. The results of this review were annexed to the Draft Decision.

Additionally, as we have accepted that the access principles are not required to be included in Queensland Rail's proposed DAU, we also conducted a detailed review of the previous access principles and compared these (again clause by clause) with the risk position in Queensland Rail's proposed 2015 SAA to check for consistency.[272] This is because part of the role of the access principles was to guide negotiations for non-reference-tariff traffic. If the access principles are no longer available to guide these negotiations, we consider it appropriate that the balance contained in those access principles should be (as appropriate) incorporated in the SAA. The results of this review were also annexed to the Draft Decision.

However, in reviewing Queensland Rail's proposed 2015 SAA, we have considered the document with 'fresh eyes'. In effect, although the regulatory precedents are instructive and relevant, we did not merely apply the old regulatory precedents—we also considered submissions made by all stakeholders (as to their concerns regarding the risk allocation in the SAA as proposed by Queensland Rail) and considered the appropriateness of the access principles in the current context.

[271] Glencore, sub. 7: 12-14; New Hope, sub. 11: 6-24; Aurizon, sub. 6: 22-31; Asciano, sub. 5: 18–22.
[272] This comparison of the access principles and the 2008 Queensland Rail SAA with Queensland Rail's proposed 2015 SAA was documented in Appendix B to our October 2015 Draft Decision.

Amendments to key clauses

The key clauses which we have amended to re-balance the risk allocation are outlined in Table 12. The detail of these amendments and all the other amendments we require to the 2015 SAA are contained in Appendix G (the QCA's 2015 SAA). Variations from the Draft Decision in relation to particular clauses are outlined in the table in Appendix C of this Decision.

Table 12: Key provisions which require amendments to re-balance the risk allocation matrix

Queensland Rail's proposed 2015 SAA provisions	***QCA's amendments to Queensland Rail's proposed 2015 SAA***
Network management (cls. 7, 8 and 23 of Queensland Rail's 2015 SAA)	Queensland Rail's network management obligations in the 2015 SAA should be amended to include an obligation on Queensland Rail to maintain the network consistent with objective rolling stock infrastructure standards, and consult in relation to any changes to these standards (see Chapter 4) This is a reasonable obligation on Queensland Rail as an access provider to facilitate access being provided to third parties.
	Provisions requiring rail operators to warrant as to the standard of the network should be removed, as this is reasonably a matter for Queensland Rail; and insofar as an incident should have been reasonably foreseeable to an operator as a result of its inspection, the general liability provisions will apply (see cl. 12.5(a), (b) and (c) in particular).
Indemnities, liabilities and limitations (cls. 12 and 13 of Queensland Rail's 2015 SAA)	The indemnities, liabilities and limitations applying to Queensland Rail should be amended to allow claims to be made in relation to: • the standard of the network • the non-provision of access caused, or contributed to, by Queensland Rail's negligence or breach • third party works undertaken on behalf of Queensland Rail It is reasonable for Queensland Rail to be held accountable for the state of the below rail network as the access provider.
Dangerous goods (cls. 10.5 and 13 of Queensland Rail's 2015 SAA)	The dangerous goods provisions should be amended to better reflect the ability of each party to manage the risks associated with the carriage of dangerous goods on the network, including as follows: • Queensland Rail should be liable for claims arising out of incidents involving dangerous goods where caused or contributed to by Queensland Rail; • No additional indemnity should be provided by operators to Queensland Rail in relation to dangerous goods; and • The rail operator's insurance provisions should not require the rail operator to be insured for Queensland Rail's negligence. It is reasonable that risk is allocated to the party best able to manage it.
Disputes (cl. 19 of Queensland Rail's 2015 SAA)	All disputes should be escalated to an independent arbiter and Queensland Rail cannot arbitrate on disputes to which it is a party. This is consistent with any arbitration being impartial and unbiased.
Force majeure (cl. 20 of Queensland Rail's 2015 SAA and associated definitions)	The amended force majeure provisions provide that an access holder is relieved from its obligations to pay access charges in the event of a force majeure event which affects the regulated network—this amendment reflects the position under the previous access principles in relation to the non-reference tariff network. Similarly, reference tariff traffic is also relieved from its take-or-pay obligations if a force majeure event affects the regulated network. However, if the relevant access agreement relates to the West Moreton Network and track destroyed by a force majeure event is reinstated, Queensland Rail can submit a variation to the reference tariff to recover 50%

Queensland Rail's proposed 2015 SAA provisions	*QCA's amendments to Queensland Rail's proposed 2015 SAA*
	of the take-or-pay foregone while force majeure applied. Force majeure is not the fault of either Queensland Rail or access holders and partial take-or-pay relief creates incentives for Queensland Rail to expedite necessary repair works, while reducing its financial exposure to forgone take-or-pay. We have also clarified the operation of the force majeure provisions and the definition of 'Queensland Rail Cause' to clarify that an access holder is only relieved from its obligations to pay access charges to the extent that the force majeure event affects the regulated network (and not private infrastructure). Further information on force majeure is found in Chapter 8.

We consider our proposed amendments are appropriate for the following reasons:

- The amendments promote the efficient use of Queensland Rail's network, promote the object of the relevant part of the QCA Act and, where appropriate, have regard to the risk position underlying the 2008 and 2010 regulatory precedents (including access principles) (ss. 69E and 138(2)(a), (b), (e) and (h) of the QCA Act). Specifically, Queensland Rail's proposed 2015 SAA would need to be amended to:
  - apply, in general, the risk allocation principles commonly applied in contractual negotiations, including that each party is to:
    - carry the contract risk that they are best placed to manage
    - be held accountable for their actions, negligence or breach under the agreement
    - indemnify the other parties for loss (personal injury, death or property damage) caused by, or to the extent contributed to by, the wilful default or negligence of the indemnifying party
    - exclude the other parties from liability for consequential loss except in limited circumstances.
  - subject to appropriate exceptions, apply a risk position that is relatively consistent with the risk position underlying the 2008 and 2010 regulatory precedents (where appropriate)
  - promote commercial confidence that access seekers, access holders and rail operators can enter into long-term access contracts with Queensland Rail and hold Queensland Rail accountable for delivering the contracted services over the life of the agreement
  - facilitate access to the network to maximise the operation and use of access rights which, in turn, will improve network productivity and lower the unit cost of access.
- The amendments may advance the legitimate business interests of Queensland Rail. They also address the interests of access seekers, access holders (both rail operators and end customers) and comply with the pricing principles (s. 138(2)(b), (e), (g) and (h) of the QCA Act). This is achieved by amending Queensland Rail's proposed 2015 SAA to:
  - provide a consistent set of terms and conditions for all traffics to access the network on a non-discriminatory basis
  - provide a level playing field to underpin access negotiations between access seekers, end customers and Queensland Rail
  - align each contracting party to its relevant contractual obligations and entitlements

- provide clear and transparent assignment of the risks and accountabilities held by each party to the agreement
- leave Queensland Rail and access seekers free to negotiate the setting of access charges for non-reference-tariff traffic
- provide open and transparent communication channels in the use and delivery of contracted access services
- allow Queensland Rail and access seekers to negotiate non-standard terms and conditions
- minimise the potential for access disputes to be triggered under the 2015 DAU and, where they are triggered, provide for an independent party to arbitrate disputes
- provide a safe harbour agreement to facilitate the timely execution of access agreements.

- The amendments promote the public interest in having competition in markets (s. 138(2)(d) of the QCA Act) where participation in that market is reliant on Queensland Rail's monopoly provision of an access service. This is achieved by, amongst other things, providing a more balanced and equitable contracting regime, and allocating risks and costs efficiently.

We have made substantial amendments to Queensland Rail's proposed 2015 SAA. This is because we have sought to work within the drafting of Queensland Rail's proposed 2015 SAA in order to achieve an appropriate SAA, rather than create a separate split-form operator SAA to sit alongside the 2015 SAA as has occurred for the 2010 Aurizon Network access undertaking.

Summary 7.3

The 2015 SAA must give effect to a more balanced risk position for all parties to the agreement (see Appendix C and Appendix G).

7.5 KPIs and performance reporting regime

The QCA considers that performance indicators are an effective method for encouraging a party to comply with its obligations in an access agreement as well as encouraging improvements in efficiency and productivity. The 2008 SAA contained provisions relating to compliance with agreed operational performance levels. Queensland Rail has not included a KPI regime within its proposed 2015 SAA. Queensland Rail said in its December 2015 submission that no KPI regime had ever been agreed between the parties despite the good faith negotiation provisions in the previously approved SAAs.

We consider that for KPIs to be effective and worthwhile, an initial performance reporting regime is imperative to create baseline data against which KPIs can be measured.

In our Draft Decision we proposed that Queensland Rail commence a performance level reporting regime and provided for the parties to agree KPIs after the initial performance reporting had commenced and had provided meaningful data.

Stakeholders' submissions

Stakeholders were supportive of the inclusion of the QCA's proposed reporting and KPI regime.[273] However, stakeholders said that financial incentives should be included in the DAU or the SAA and not left to be agreed between the parties and that the performance regime should be subject to the dispute resolution provisions.[274]

Queensland Rail stated that it was generally supportive of measures which improved transparency. However, Queensland Rail suggested that parts of the proposed regime were onerous and asymmetrical.[275]

QCA analysis and Decision

We require Queensland Rail to amend its proposed 2015 SAA to include a performance reporting regime.

The 2015 SAA should then allow for an access holder to use the information provided by the reporting regime to negotiate KPIs and financial incentives during the term of the relevant access agreement. The QCA considers that the absence of any reference to KPIs in Queensland Rail's proposed 2015 SAA creates a risk profile that inappropriately favours Queensland Rail.

This position is consistent with our Draft Decision. As such, we have adopted our Draft Decision position in relation to the KPI and reporting amendments, except for the additional amendments required and discussed below (see section 7.4 of the Draft Decision).

Expanding the KPIs

All stakeholders considered that including a KPI reporting regime was important to encourage improvements to performance and efficiency. Stakeholders also generally supported the QCA's Draft Decision. Nevertheless, stakeholders (other than Queensland Rail) said that the QCA's proposed provisions did not go far enough.

We agree with Aurizon and Asciano that the reporting obligations should be expanded.[276] But, we do not accept Aurizon's suggestion to include an initial report on the track condition, with Queensland Rail then required to report on any deviation from this established baseline[277], as this would be inappropriately onerous. Similarly, we do not consider that path availability, as suggested by Asciano, should be included. Our required amendments should provide this information indirectly.

Rather, we consider that the obligations should be expanded to the three additional matters suggested by New Hope[278]:

- the number of train services cancelled during the month
- the number of train service cancelled during the month which are not rescheduled
- a list of speed restrictions in place at the end of each month (including when such restriction was applied, the speed limit and the start and finish locations).

[273] See New Hope, sub. 24: 7; Aurizon, sub. 20: 44; Glencore, sub. 24: 3–4; Yancoal, sub. 27: 4.
[274] See Asciano, sub. 28: 19–20.
[275] Queensland Rail, sub. 26: 95–96.
[276] See Asciano, sub. 28: 19–20.
[277] Aurizon, sub. 20: 54.
[278] New Hope, sub. 24: 7–8 and schedule 5 of New Hope's amended 2015 SAA.

These obligations are less onerous than those suggested by Aurizon and Asciano, but still provide a direct indicator of whether or not Queensland Rail is satisfying its obligations under an access agreement; including acting as an indirect indicator of track condition. We do not consider that these reporting requirements are inappropriate having regard to Queensland Rail's legitimate business interests, as contracting for the provision of train paths is the core of Queensland Rail's business.

That said, the QCA agrees with Queensland Rail's submission that weekly reporting would be onerous whilst not necessarily providing accurate and useable data. We have removed the obligation for weekly reporting, consistent with Queensland Rail's submission.

We agree with New Hope's suggestion that Queensland Rail should warrant as to the accuracy of the data it provides.[279] Without the quality control that this warranty will encourage, data may be misleading or incorrect and consequently make the provisions of limited utility.

KPIs, financial incentives and other matters

Stakeholders said that settled and approved financial incentives should be included by the QCA rather than left for negotiation between the parties.[280] Consistent with the Draft Decision, we consider that the negotiation of incentives is a matter which should be left to the contracting parties.

The negotiation of financial incentives is something that requires a certain threshold of baseline reporting to give the parties meaningful data upon which to base their negotiations. We consider that, once the parties have access to this information, it is a matter for the two sophisticated commercial parties to decide amongst themselves. Each party's performance can be measured against the established baseline. Financial incentives can then be applied to encourage a party to improve their performance against the established baseline. The QCA's decision is intended to provide the right conditions for these negotiations and their outcomes to be effective.

We agree with Queensland Rail that the proposed reporting regime may provide a distorted view of Queensland Rail's performance by requiring weekly reporting which does not take account of seasonality, maintenance regimes or access holder operations.[281]

However, we do not agree with Queensland Rail that our required performance reporting obligations are inappropriately asymmetrical. Our required drafting provides that the parties are able to agree additional performance reporting criteria as well as incentives. Parties may agree to impose performance reporting obligations on access holders in the future. However, the initial baseline data in relation to Queensland Rail's network will first be required to inform operator reporting requirements (if any). Further, our initial KPIs are necessarily focused on the service provider, being the party that sells access to the service.

Separately, we agree with stakeholders that the reporting and incentive provisions should be made subject to the dispute resolution provisions. This will increase the effectiveness of the provisions and provide that, if one party is unreasonably unwilling to negotiate or agree financial incentives, the QCA can arbitrate the dispute.

The QCA considers that it would be inappropriate not to include a KPI regime within the 2015 SAA. A KPI regime will work to keep Queensland Rail and access holders accountable to their

[279] New Hope, sub. 4: 8.
[280] Glencore, sub. 25: 4; Yancoal, sub. 27: 4; New Hope, sub. 24: 7–8.
[281] Queensland Rail, sub. 26: 95–96.

obligations consistent with their commercial commitments. Further, an effective KPI regime will incentivise improved performance. This will benefit all parties and increase the efficiency and productivity of the network as a whole.

We therefore consider it appropriate for Queensland Rail to amend its proposed 2015 SAA to include a performance reporting regime which will serve to establish baseline performance criteria. These reporting criteria are outlined in Box 2 and are to be included in Schedule 5 to the 2015 SAA. We also consider it appropriate to include that the parties will, after 12 months of reporting data has been provided and if requested by one of the parties, meet to negotiate (in good faith), the inclusion of additional performance criteria and incentives (financial or otherwise) based on the baseline data.

Box 2: KPIs to be included in the 2015 SAA

A new schedule has also been included in the 2015 SAA to identify the minimum monthly operational reporting obligations based on the delivery of monthly train paths on an origin-destination pairing basis consistent with the agreement.

The performance levels to be reported by Queensland Rail under the agreement include:

- contracted versus scheduled versus actual TSE consumption by the access holder;
- network availability days for the track utilised by the agreement;
- planned and unplanned network maintenance across track utilised by the agreement;
- planned and actual track closures across track utilised by the agreement and the performance of actual track closures with Queensland Rail reporting on the percentage of track closures returned to daily services within the planned timeframe;
- sectional run-time performance for the train services operated under the agreement;
- below-rail transit time performance for the train services operated under the agreement;
- forecast versus scheduled versus actual GTKs hauled under the agreement;
- the number of train services cancelled during the month;
- the number of train services cancelled during the month which are not rescheduled; and
- a list of speed restrictions in place at the end of each month (including when such restriction was applied, the speed and the start and finish locations).

Conclusion

We consider the proposed performance reporting regime in the 2015 SAA is appropriate, having regard to each of the factors in s. 138(2) of the QCA Act for the following reasons:

- The reporting regime, in conjunction with agreed KPIs and incentives, will promote the efficient operation of Queensland Rail's network and address the legitimate business interests of Queensland Rail and interests of persons seeking access to, and holding access rights in relation to, the network (s. 138(2)(a), (b), (d) of the QCA Act), by:
  - providing clarity and transparency on Queensland Rail's contractual obligations which underpin the provision of an access service;
  - enabling an access holder to monitor and hold Queensland Rail accountable for the non-delivery of access services due to Queensland Rail's non-compliance with its operational and service obligations under the agreement (and vice-versa);
  - providing all access seekers, access holders and end customers with the required level of commercial certainty to enable them to enter into long-term access contracts with Queensland Rail and be confident that sufficient contractual remedies are available, should Queensland Rail not comply with its obligations under the agreement;

- providing Queensland Rail with a level of accountability that is commensurate with the service level obligations contained in the 2015 SAA;
- facilitating access to the network to maximise the operation and use of access rights which, in turn, will improve network productivity and lower the unit cost of access;
- minimising the potential for access disputes to be triggered under the 2015 DAU; and
- providing a default reporting regime to facilitate the timely execution of access agreements.

- The KPI reporting regime promotes the public interest in having competition in markets (s. 138(2)(d) of the QCA Act) where participation in that market is reliant on Queensland Rail's monopoly provision of an access service by keeping Queensland Rail accountable for its contracted obligations.
- The performance and KPI regime is also appropriately consistent with the previous regulatory precedents approved by the QCA (s. 138(2)(h)).

Summary 7.4

The 2015 SAA must:

(a) include a mandatory performance reporting regime which includes reporting on those matters outlined in Box 2 (above)

(b) provide a framework for the parties to negotiate KPIs and incentives based on the information provided by the performance reporting

(c) require Queensland Rail to warrant as to the accuracy of the information it provides to operators and access holders.

See clauses 4.6, 6.7, 23 and Schedule 5 in Appendix G.

8 REFERENCE TARIFFS

The 2015 DAU included West Moreton network and Metropolitan network reference tariffs for coal-carrying train services. Queensland Rail proposed a rate equivalent to $19.41/'000 gtk ($19.74/'000 gtk as at 1 July 2016) and sought to justify it on the basis that this tariff was below its proposed ceiling price of $34.92/'000 gtk. These are the only reference tariffs in the 2015 DAU.

Our Decision is to refuse to approve Queensland Rail's reference tariffs and ceiling price proposal. We require reference tariffs as at 1 July 2016 equivalent to $17.92/'000 gtk for the West Moreton network and $16.66/'000 gtk for the Metropolitan network.

Among other things, we require that Queensland Rail:

- *apply a price cap form of regulation with a take-or-pay capping mechanism and revise the allocation of costs between coal and non-coal traffics*
- *use efficient reference tariff building blocks, including for maintenance costs and the regulatory asset base;*
- *continue with a two-part tariff; and*
- *adopt an 'adjustment amount' mechanism to address an over-recovery of access charges since 1 July 2013.*

Background

The West Moreton network was built 150 years ago for mixed freight and passenger services. Upgrades to cope with the coal services that began operating in 1996 were incremental rather than reflecting a fundamental reconfiguration of the network. The West Moreton network remains a low-volume system with low-capacity coal trains that need to travel through the passenger-focused Metropolitan network to reach the port of Brisbane.

Recently, the West Moreton network has seen declining coal and non-coal freight demand. Forecast weekly return coal train paths used for pricing purposes have fallen to 63 during the 2015 DAU period, compared to 77 contracted paths used in the 2013 DAU. Non-coal services have dropped to 3 from 29. This represents reductions of 18 per cent and 90 per cent for coal and non-coal train services respectively.

Chapter structure

This chapter sets out in three parts our approach to determining an appropriate reference tariff for Queensland Rail's West Moreton and Metropolitan networks:

- Part A—Regulatory context and operating assumptions—outlines the QCA's approach to reviewing Queensland Rail's reference tariffs and related regulatory processes;
- Part B—Tariff building blocks and calculation—outlines the QCA's position on each cost element that forms part of the approved tariffs, and the proposed tariffs over the forward regulatory period; and
- Part C—Adjustment amount—outlines the QCA's approach to addressing the expectation of an adjustment to reflect the difference between the tariffs Queensland Rail actually charged and the tariffs that would have applied in relation to the period from 1 July 2013.

PART A—REGULATORY CONTEXT AND OPERATING ASSUMPTIONS

The West Moreton and Metropolitan network tariffs in the 2015 DAU are based on a number of mechanisms, including mechanisms for allocating costs, assessing capacity and determining take-or-pay charges. The DAU also contains processes for varying the reference tariff during the term of the undertaking and accepting capital expenditure into the regulatory asset base (RAB). Key issues are summarised in Table 13 below. Matters that require a more detailed explanation are discussed in Sections 8.1 to 8.9.

Table 13: Summary of key positions—regulatory context and operating assumptions

Summary of the 2015 Draft Decision	*Queensland Rail's position*	*Other stakeholders' position*	*QCA Decision*
1. Regulatory context of the QCA Decision			
Had regard to all of the approval criteria in s. 138(2) of the QCA Act in forming a view on Queensland Rail's proposed tariff.	Disagreed and said we failed to have regard, among other things, to the pricing principles and Queensland Rail's legitimate business interests.	Generally supported the Draft Decision.	See Section 8.2 below.
Affordability not given a material weighting.	No comment.	New Hope and Yancoal said affordability issues should lead to a lower tariff.	See Section 8.2.1 below.
Proposed a reference tariff based on efficient costs, and rejected Queensland Rail's de-coupling proposal.	Disagreed. Reaffirmed its proposed ceiling price and a reference tariff below this level.	Generally supported the Draft Decision.	See Section 8.2.2 below.
2. Allocation of common costs			
Accepted Queensland Rail's position that government-imposed restrictions prevented it from contracting more than 87 coal paths through the Metropolitan network.	Claimed that the 87-path constraint was not legally binding; QCA approach was erroneous and not appropriate.	Supported our Draft Decision	See Section 8.3.1 below.
Categorised maintenance and operating costs into fixed and variable components; treated all fixed costs (including forecast capital expenditure) as common network costs.	Disagreed and suggested re-categorising fixed costs into common and coal-triggered costs.	Supported our Draft Decision	See Section 8.3.2 below.
Proposed that coal traffics pay common network fixed costs reflecting the proportion of West Moreton network capacity they can contract and pay variable costs reflecting their share of forecast usage.	Agreed with variable cost allocation. Disagreed with fixed cost allocation and said coal traffics should pay common network fixed costs reflecting their share of total forecast paths.	Agreed with variable cost allocation. Disagreed with fixed cost allocation and said coal traffics should pay common network fixed costs reflecting the proportion of total available paths coal services were forecast to use.	See Section 8.3.3 below.

Summary of the 2015 Draft Decision	*Queensland Rail's position*	*Other stakeholders' position*	*QCA Decision*
3. Capacity assessment			
Noted consultant's assessment that West Moreton capacity was 135 weekly return paths; said final views were subject to stakeholders comments.	Disagreed and said capacity was 112 return paths as proposed in the 2015 DAU.	QCA should use its consultant's capacity estimate, unless that estimate was flawed.	See Section 8.4 below.
Metropolitan network operations reduced West Moreton capacity by 17 per cent.	Disagreed and said the Metropolitan impact was 12.1 per cent, as proposed in the DAU.	Disagreed and said Metropolitan impact was 22 per cent.	See Sections 8.4 and 8.4.1 below.
4. Form of regulation and take-or-pay			
West Moreton and Metropolitan tariffs should be subject to a price cap with a reset of the West Moreton tariff if contracted volumes are above forecasts.	Queensland Rail disagreed with a volume reset.	Supported an endorsed variation event for changes in contracted volumes.	See Section 8.5.1 below.
Take-or-pay should be 100 per cent of access charges, capped at total revenue allocated to coal services in assessing tariffs.	Supported 100 per cent take-or-pay, but opposed capping.	Opposed 100 per cent take-or-pay, but supported capping.	See Section 8.5.2 below.
5. Tariff structure			
Accepted Queensland Rail's proposed two-part structure of train-path-based and gtk-based tariff components.	No comment.	New Hope said the QCA should confirm tariffs would not breach the pricing limits.	See Section 8.5.4 below.
6. Metropolitan network tariff approach			
Applied tariff derived on West Moreton network, modified to remove double counting of capex since 2002; separate incremental train path charge.	Disagreed and said the QCA proposal was a 'dramatic move away' from past practice.	Supported the Draft Decision, but said QCA should be clear on what would happen in future.	See Section 8.6 below.
7. Productivity, innovation and incentives			
No specific productivity measures in reference tariff provisions (Schedule D).	No comment.	Aurizon said there should be incentives for innovations that provide operational efficiencies.	See Section 8.7 below.
8. Variation of reference tariffs			
Accepted Queensland Rail's process for varying reference tariffs.	No comment.	No comment.	See Section 8.8 below.
9. Capital expenditure assessment process			
Proposed to not require a DORC valuation and to provide for consulting with stakeholders; proposed optimising assets for possibility of actual bypass.	Disagreed with removing DORC valuation and optimising assets for possible actual bypass.	Supported Draft Decision.	See Section 8.9 below.

8.1 Queensland Rail's 2015 DAU proposal

The 2015 DAU included multi-part reference tariffs for coal-carrying train services operating on the West Moreton and Metropolitan networks. Queensland Rail said these were equivalent to $19.41/'000 gtk (as at 1 July 2015), derived by escalating by inflation the reference tariff of $19.14/'000 gtk that applied from 1 July 2014.[282]

Queensland Rail said that, as the reference tariffs were below its derived ceiling price of $34.92/'000 gtk, we should approve them. Queensland Rail said its ceiling price was based on a building block approach. It used volume forecasts and made various allocations of common costs and assets between coal and non-coal services using different allocators for the RAB, operating costs and maintenance costs.

8.2 Regulatory context of our Decision

In assessing Queensland Rail's proposed reference tariff for coal-carrying train services, we have had regard to various matters, including:

- Queensland Rail's legitimate business interests, and the ability of Queensland Rail to recover efficient costs and a return on investments relating to coal-carrying train services;
- access seekers' and access holders' interest in not paying for network capacity they are unable to contract because of government-imposed restrictions; and
- access seekers and access holders' expectations about an adjustment to reflect the difference between the tariffs Queensland Rail actually charged and the tariffs that should have applied since 1 July 2013.

Our Decision is to refuse to approve Queensland Rail's proposed ceiling price and reference tariff, having regard to the approval criteria in the QCA Act. In particular, Queensland Rail proposed:

- an opening asset valuation that would provide windfall gains to Queensland Rail. Windfall gains do not promote the economically efficient investment in and use of the rail infrastructure and are contrary to the interests of access seekers, access holders and their customers (s. 138(2)(a), (e), (h)); and
- allocating costs to coal-carrying trains reflecting capacity they are unable to contract. This recovery from coal services would reflect inefficient price discrimination, which would not be appropriate, having regard to the pricing principles (ss. 138(2)(g) and 168A(b)). It is also not in the interests of access seekers, access holders and their customers to pay for services they cannot contract to use (s. 138(2)(e), (h)).

We have had regard to each of the approval criteria in section 138(2) of the QCA Act in forming our views on the West Moreton and Metropolitan reference tariffs. Our approach to the criteria is discussed in more detail in Chapter 10 of this Decision.

In this context, Queensland Rail and other stakeholders raised the following particular thematic issues in relation to our 2015 Draft Decision:

- affordability of the reference tariff and relative prices;
- de-coupling of the reference tariff from the ceiling price; and

[282] Queensland Rail, sub. 2: 5. Note that the 1 July 2014 tariff is escalated from the 2009–10 tariff of $16.81/'000 gtk approved by the QCA in 2010.

- the limitations of the network.

These matters are discussed below.

8.2.1 Affordability and relative prices

Our October 2015 Draft Decision said that 'we have not had regard to the effects of short-term business cycles and hence affordability in considering the asset valuation for this Draft Decision'.[283] We said:

> *While our decision has not given a material weighting to the issue of relative prices of other train services, we do not consider that we must be precluded from taking relative prices into account in the future. Indeed, such comparisons are amongst a range of factors we could give greater weight to when assessing a reference tariff under the approval criteria in the QCA Act, especially in the face of material falling demand on the West Moreton network.*[284]

Additionally:

> *While we looked at 'relative prices' in our October 2014 Draft Decision (see p. 153) we did not take 'affordability' into account then and have not done so this time.*[285]

New Hope said in its December 2015 submission that the Draft Decision appeared to lack any explanation why the QCA had:

> *(a) failed to give material weight to relative prices and affordability in the face of actual (rather than hypothetical) material falling demand in the West Moreton Network; and*
>
> *(b) not acted on the 'prima facie case' that consideration should be given to reducing the value of assets to prevent a further decline in demand for access.*[286]

New Hope also said that it sought a tariff which was competitive in the long term.

> *However, shorter term considerations such as current market conditions remain relevant as these conditions increase the risks involved in over-estimating tariffs. Current market conditions are also relevant to issues involving the timing of cashflows …*[287]

Yancoal said the cost of rail access on the West Moreton system was 'well above' that in the Bowen Basin and Hunter Valley, and the current and proposed access charges did not promote competition.

> *Yancoal considers that it is clearly in the public interest, the interest of access holders and access seekers and consistent with the object of Part 5 of the QCA Act to reduce the proposed tariff to reflect the affordability and competitiveness arising from the current and proposed tariffs ...*[288]

However, Queensland Rail said:

> *it is not the role of the regulator to determine a below-rail access charge which makes coal mines 'competitive', any more than this obligation should be forced upon an above rail provider, or downstream port/terminal operator.*[289]

The QCA's view

While we have had regard to affordability and market conditions to the extent that they affect matters including the utilisation of the network, we also note that there are competing

[283] QCA 2015: 173.
[284] QCA 2015: 138–139.
[285] QCA 2015: 139, footnote 367.
[286] New Hope, sub. 22: 6; sub. 21: 4–5.
[287] New Hope, sub. 22: 6.
[288] Yancoal, sub. 27: 3–4.
[289] Queensland Rail, sub. 33: 12.

considerations. These include regulatory predictability and certainty in the regulatory process and its outcomes, achieved by applying commonly accepted regulatory methodologies consistent with the approval criteria in the QCA Act (s. 138(2)). The various considerations are outlined further in Chapter 10.

On balance, we consider that, while affordability and relative prices are relevant to assessing the West Moreton and Metropolitan tariffs, they do not on their own outweigh the other considerations, including the consideration of whether the price of access generates expected revenue that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved.

Further, setting a price based on short-term affordability considerations would have the potential to promote inefficient development of high-cost mines, which would not be in the public interest, and would not promote efficient use of the rail infrastructure.

Therefore, it would not be an appropriate balance of, among other things, the interests of Queensland Rail, the public interest, the pricing principles and the interests of access seekers and access holders, for prices to be set in a manner that gives greater weight to supporting the profitability of access holders or seekers and their customers over the regulatory predictability and certainty that will come from establishing a transparent tariff methodology to apply over the long term.

We have also considered the possibility that assets should be optimised to reflect the reduction in demand for below-rail services on the West Moreton and Metropolitan networks. While the volume forecasts provided by Queensland Rail may suggest it is appropriate to optimise the assets, we have not done so at this time, given the capacity constraints for coal services on the West Moreton network and the uncertainty about future volumes (see Sections 8.3.3 and 8.10 of this Decision).

8.2.2 De-coupling and regulatory uncertainty

QR Network's 2009 DAU proposed a 2009–10 reference tariff that it justified on the basis that it was lower than its proposed ceiling price.[290] Our December 2009 Draft Decision rejected QR Network's tariff approach and proposed a lower ceiling price that would also apply as the reference tariff.[291]

Queensland Rail has taken an approach this time that is similar to the approach followed by QR Network with the 'below-ceiling' tariff in its 2009 DAU. In Queensland Rail's 2015 DAU, it proposed a West Moreton network ceiling price of $34.92/’000 gtk for 2015–16 and a 'de-coupled' reference tariff of $19.41/'000 gtk.[292]

Queensland Rail said it proposed the lower reference tariff because its calculated ceiling price was 'higher than the commercially prudent access charge'.[293] It said the 'overwhelming factor

[290] QR Network proposed a ceiling price of $34.00/'000 gtk and a reference tariff of $22.07/'000 gtk for the network west of Rosewood. See QCA, December 2009: 71; QR Network, September 2008: 118–119.
[291] We proposed a ceiling price and reference tariff of $16.81/'000 gtk. See QCA, December 2009: 94.
[292] Queensland Rail, sub. 2: 4–6. This $19.41/'000 gtk tariff was escalated by the CPI from the $16.81/'000 gtk price originally proposed for 2009–10 in the QCA's 2009 DAU Draft Decision.
[293] Queensland Rail, sub. 2: 4.

contributing' to the sharp increase in the ceiling price was a changed market outlook for both coal and non-coal services.[294]

Our October 2015 Draft Decision rejected the de-coupling approach and proposed a ceiling price of $18.88/'000 gtk for 2015–16.

Queensland Rail said in its December 2015 submission that its:

> *reference tariff proposal under the 2015 DAU of $19.41/'000gtk (well below the ceiling price) was proposed at a level consistent with the status quo as a compromise to provide regulatory certainty.*[295]

Queensland Rail also said:

> *For the West Moreton network, if the QCA accepts Queensland Rail's 'de-coupling' of the ceiling revenue limit from the reference tariff that would apply to current and future users, it negates the need for the RAB value to be adjusted.*[296]

The QCA's view

We disagree with Queensland Rail's suggestion that its proposed de-coupling provides regulatory certainty. As long as the reference tariff is at some arbitrary level below a ceiling price, access seekers and holders will expect that the ceiling price will apply at some point in the future. As we said in 2009:

> *It would be very difficult for a non-QR party to enter the market to compete with incumbent operator QR Freight if it was believed that the access charge could be increased significantly, but with the only justification for the change being that the tariff remains lower than an estimated ceiling price.*
>
> *The Authority does not accept that a process where the tariff is set on the basis that it is lower than a ceiling tariff is sufficiently transparent, robust or repeatable.*[297]

While Aurizon Operations (formerly QR Freight) is no longer vertically integrated with Queensland Rail's below-rail business, the point still stands—the uncertainty about future prices in Queensland Rail's proposal would not promote competition. As Professor Menezes says:

> *QR's proposed tariff in its 2015 DAU implies that it is recovering less revenue than the maximum amount of revenue that it would be allowed to recover under a DORC valuation that allows QR to earn a return on assets with expired useful lives. However, as this asset valuation is rolled over to the next regulatory period, QR will still be able to charge a higher tariff, based on the higher DORC valuation, which will be associated with a risk that allocative efficiency will be negatively impacted.*[298]

Accepting Queensland Rail's de-coupling proposal would implicitly mean that Queensland Rail was entitled to charge up to its proposed ceiling price. But this, in turn, would mean that the QCA would be:

- endorsing a cost build-up for Queensland Rail that went beyond approving efficient costs for Queensland Rail over the regulatory period; and

[294] Queensland Rail, sub. 2: 6.
[295] Queensland Rail, sub. 26: 24.
[296] Queensland Rail, sub. 26: 27.
[297] QCA 2009a: 73.
[298] Menezes, F, 2016b: 11–12.

- providing for coal services to underwrite Queensland Rail's exposure to 'the changed market outlook, for … non-coal services'[299]—these market changes being a risk that coal miners are not able to manage or control.

Neither of these outcomes would be appropriate having regard to the approval criteria in the QCA Act (s. 138(2)(a), (d), (e), (h)).

It is appropriate for the reference tariff to be based on a well-understood approach that derives the price from underlying costs and asset values. That has the benefits of:

- providing regulatory certainty to access holders, access seekers and Queensland Rail; and
- enabling all parties to assess the tariff implications of proposed measures such as expansions of the network or changes in train configuration or operation.

The QCA's reference tariff approach therefore seeks to promote the efficient operation and use of, and investment in, the rail network. It also promotes the public interest, and is in the interests of access seekers and access holders (s. 138(2)(a), (d), (e), (h)).

We note that Queensland Rail's proposed de-coupling reflects an implicit recognition that it may not be appropriate—or necessary—for Queensland Rail to recover the full ceiling price it has proposed. In other words, if Queensland Rail was correct that $34.92/'000 gtk was the efficient ceiling price, then its proposed reference tariff would mean it was forgoing recovery of some of its sunk costs, and potentially other costs.

In practice, this means that Queensland Rail has submitted a proposal for a reference tariff that is below what it has argued is necessary to comply with section 168A(a) of the pricing principles.

Summary 8.1

The West Moreton network reference tariff in the 2015 DAU must not specify that Queensland Rail is applying a reference tariff that is below and separate from the ceiling revenue limit.

See Schedule D, clause 1.1 (deleted) in 2015 DAU.

Limitations of the network

Queensland Rail said investors knew of the limitations of the 'old, idiosyncratic' network when they sunk their capital in mines that used the West Moreton network. It said:

> *Queensland Rail should not be penalised for, or disadvantaged due to, the nature of the West Moreton network or because of the business challenges faced by coal mines that have freely chosen to use the West Moreton network.*[300]

We agree with Queensland Rail—the miners would or should have been aware of the nature of the infrastructure. However, that awareness would not be a reason why the access holders should expect to or be required to pay both for high maintenance costs and for an asset value that delivers monopoly rents and windfall gains to Queensland Rail. To put it another way, Queensland Rail should also be aware of the limitations of its own network, and should expect a pricing regime that reflects those limitations.

[299] Queensland Rail, sub. 2: 6.
[300] Queensland Rail, sub. 26: 47–48.

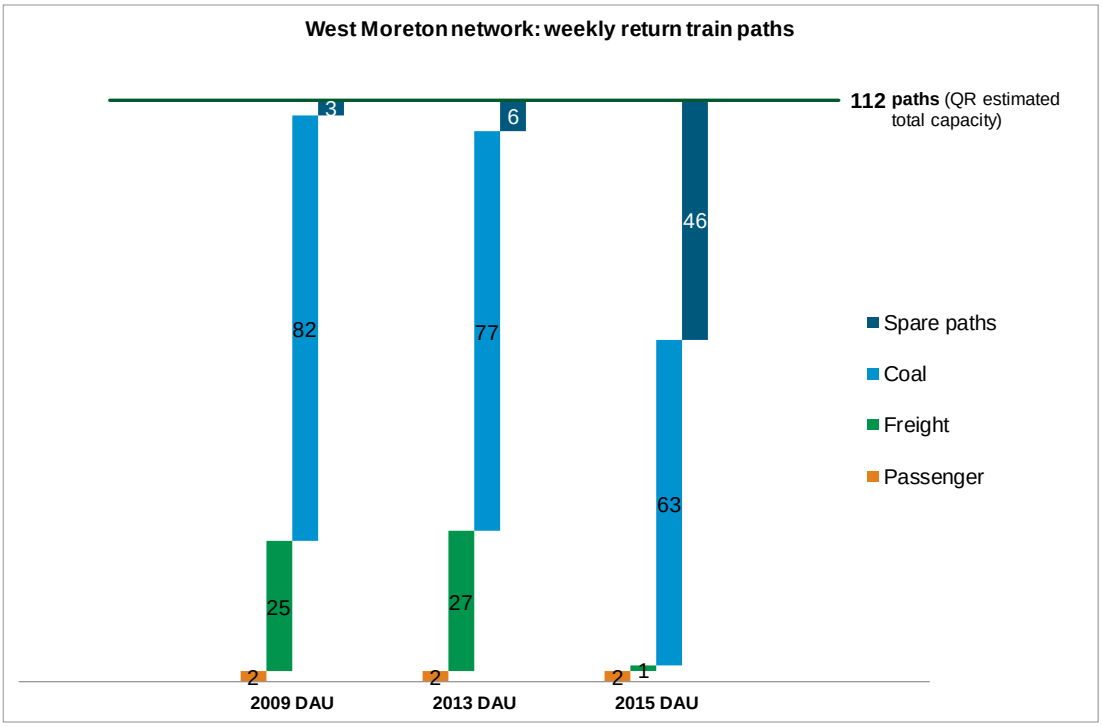
8.3 Allocation of common network costs

As West Moreton is a mixed traffic system, a share of the common network costs (opening asset base, forecast capital expenditure, maintenance and operating costs) is allocated to coal traffics. The coal-allocated costs are used in a regulatory building block model to develop a reference tariff for coal-carrying train services.

2015 DAU context: significant spare capacity with high forward-looking costs

Unlike the 2009 DAU and the 2013 DAU, the 2015 DAU has been developed in light of a material fall in demand for below-rail services on the West Moreton network—about three-fifths of the system capacity (66[301] of the 112 paths) is forecast to be used by coal and non-coal traffics combined, resulting in about 40 per cent spare capacity (Figure 3). This spare capacity is due to reductions of 18 per cent and 90 per cent in coal and non-coal train services respectively, compared to the 2013 DAU.

Figure 3: West Moreton network capacity utilisation status



Note: a) The 2009 DAU capacity utilisation status corresponds to the last two years of the DAU period (2011–12 and 2012–13. b) The 2015 DAU forecast coal paths are 62.8 (for presentational purpose we have used 63).

Source: QR Network (2009); QCA (2009b); Queensland Rail (2013a: 8; 2013d: 5; sub 2: 20).

Notwithstanding the significant reduction in forecast traffic volume, forward-looking costs in the 2015 DAU are generally higher on a per unit basis than in the 2013 DAU that was developed when the system was nearly capacity constrained. That is:

- maintenance cost per kilometre (a measure of unit cost) is slightly higher when comparing around $67,026 (proposed in the 2015 DAU) with $66,984 (proposed in the 2013 DAU);[302]

[301] The 2015 DAU total forecast paths are 65.8. For presentational purposes we use 66 paths.

[302] QCA calculation based on data reported in Queensland Rail 2013b: 3, sub. 2, Appendix 6: 22; QCA, 2014d: 123; B&H 2015: iii, 4. Amounts are in June 2014 dollars for which the 2015 DAU data were converted to June 2014 dollars. From Queensland Rail's 2015 DAU submission it was not clear what dollar year the constant

- forecast capital expenditure per kilometre is about 26 per cent higher when comparing around $64,000 in the 2015 DAU with $51,000 proposed in the 2013 DAU;[303] and
- operating cost is unchanged at around seven million dollars annually.[304]

Queensland Rail has predicted in its West Moreton System Asset Management Plan that the elevated levels of maintenance and capital spending on the network infrastructure will continue for at least another decade.[305]

2015 DAU cost allocation proposal and Draft Decision

Queensland Rail said that given the changed volume outlook for the 2015 DAU a different approach was required to allocate common network costs to coal traffics for pricing purposes, as compared to the approach in its 2013 DAU proposal[306] (see Appendix E for a summary of previous cost allocation assessments).

For the opening asset base, Queensland Rail said it proposed an allocation to reflect contracting limits for coal services through the Metropolitan network. Queensland Rail stated:

> *In particular, the binding constraint is the maximum 87 coal paths per week, limiting the proportion of the capacity of the West Moreton Network that can potentially be contracted to coal to 87 out of 112 available paths, or 77.7%.*[307]

For the forward-looking costs (maintenance and operating costs, and forecast capital expenditure), Queensland Rail proposed an allocation based on coal's share of forecast volumes. Queensland Rail proposed to recover the coal-allocated costs from the 63 forecast coal paths. Queensland Rail said its allocation approach provided it with a 'greater opportunity to recover its efficient costs including a return', even though it proposed a reference tariff 44 per cent below the ceiling price from its building block model.[308]

Our 2015 Draft Decision accepted Queensland Rail's proposed allocation that reflected the 87 path contracting restriction for coal services through the Metropolitan network. But we considered the allocation should reflect the actual contracting restriction for coal services in the West Moreton network—that is, the 87-path constraint in the Metropolitan network should be reduced further by the number of paths (10 paths at the time) contracted to coal services to operate in the Metropolitan network which did not traverse the West Moreton network. We applied the resulting allocator (77 out of 112 paths) to Queensland Rail's efficient fixed common network costs (i.e. the opening asset base, forecast capital expenditure and fixed maintenance and operating costs). Our Draft Decision allocated efficient variable common network costs (i.e.

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cost referred to and for the 2015 Draft Decision we inferred it was June 2014 dollars. In its correspondence of 15 April 2016, Queensland Rail stated that 'there is an error in the calculations in Figures 8.2 & 8.3 of the Draft Decision on maintenance which results in a material overstatement of any possible difference between the 2013 DAU maintenance costs and the 2015 DAU maintenance costs. In relation to this, please note that the 2013/14 data is in 2013/14 dollars, but the $2015/16 is not and so the figures aren't comparing like for like, resulting in an overstatement of the difference in maintenance allowance'. Therefore, we have now treated the 2015 DAU constant cost data as being in June 2015 dollars.

[303] QCA calculation based on data reported in Queensland Rail, June 2013c: 12, sub. 2, Appendix 3: 22; QCA 2014d: 126–127; B&H 2015: iv & 4. Amounts do not include interest during construction and are in June 2014 dollars for which the 2015 DAU data were converted to June 2014 dollars.

[304] Amount is in June 2014 dollars.

[305] Queensland Rail, sub. 2, Appendix 6—West Moreton System Asset Management Plan.

[306] Queensland Rail, sub. 2: 44–45.

[307] Queensland Rail, sub. 2: 48.

[308] Queensland Rail, sub. 2: 4–7.

variable maintenance and operating costs) based on coal's share of forecast volumes. Our Draft Decision proposed that coal-allocated costs be recovered from the 63 forecast coal paths.

Stakeholders' submissions

Queensland Rail and coal miners (New Hope and Yancoal) rejected the 2015 Draft Decision cost allocation approach, but they had divergent views on an appropriate cost allocation methodology. Aurizon considered the Draft Decision allocation approach was reasonable.[309]

Queensland Rail said that our Draft Decision resulted in it being unable to recover the full cost of providing the declared service. Queensland Rail stated that the QCA's rationale for the allocation of fixed costs based on the assumed 87-path constraint was 'erroneous and not appropriate', as there was no legally binding 87 path constraint.[310]

Coal miners were concerned that our allocation and recovery approach would produce a 'death spiral', where the closure of a mine would increase the tariffs by such a significant extent that it would likely shut another mine. They also said that any surplus paths above the current contract levels were equally available for contracting by general freight or other commodities. Therefore, miners argued that some proportion of the fixed common network costs of the unutilised train paths up to the 77 paths should be allocated to non-coal services.[311]

Some of these comments highlighted concerns about an appropriate categorisation of, and allocation of, costs in the face of a material fall in demand, focusing on which party should bear the costs. Some comments focused on the existence of the 87-path constraint for coal-carrying train services.

We have broken our discussions of the matters raised by Queensland Rail and other stakeholders into the following topics:

- 87-path constraint;
- categorisation of forward-looking costs; and
- cost allocation approach.

8.3.1 87-path constraint

During the 2013 DAU assessment process, Queensland Rail and New Hope had both identified the existence of government restrictions for their inability to contract additional coal-carrying train services. For example, in the 2013 DAU coal train services were contracted to use 77 paths and there were six uncontracted paths (see Figure 3), in relation to which Queensland Rail stated:

> *Government have not indicated a willingness to contract additional coal services and in relation to non-coal freight, above rail operators have not shown a willingness to contract additional services.*[312]

New Hope had stated:

> *The level of paths which is contracted is artificially constrained (below true system capacity) by Government (QR's shareholder). NHG has been seeking to contract additional train paths for the past three years and has been unable to do so because of this constraint.*[313]

[309] Aurizon, sub. 20: 25.
[310] Queensland Rail, sub. 26: 12, 22, 27, 30, 39.
[311] New Hope, sub. 21: 4; Yancoal, sub. 27: 2.
[312] Queensland Rail 2013d: 5.

In its 2015 DAU supporting submission, Queensland Rail reiterated that government restrictions for coal services limited its ability to contract the full amount of capacity, and it identified two constraints, being:

- preserved freight and passenger train paths from Rosewood to Toowoomba, which was 13 paths for freight[314] and two for passenger services; and
- a constraint of 87 coal paths per week through Metropolitan network specified by Queensland Rail's 'Responsible Ministers'.[315]

Queensland Rail added that 'the binding constraint is the maximum 87 coal paths per week', which limited the proportion of the capacity of the West Moreton network that could potentially be contracted to coal to 87 out of 112 available paths or 77.7 per cent. Accordingly, Queensland Rail considered it reasonable to cap the allocation of the initial asset base (or opening asset value as at 1 July 2015) to coal traffics at 77.7 per cent.[316]

Our 2015 Draft Decision accepted Queensland Rail's allocation approach to reflect the 87-path constraint for coal services in the Metropolitan network. However, we reduced it by the number of paths (10 paths at the time) contracted to coal services to operate within the Metropolitan network but not traverse the West Moreton network, to reflect the contracting restriction for coal services in the West Moreton network. We applied the resulting allocator of 68.8 per cent (i.e. 77 out of 112 paths) to West Moreton efficient fixed common network costs, which included the opening asset base as well as forecast capital expenditure and fixed maintenance and operating costs. We considered that coal traffics should only pay for efficient fixed common network costs that reflected the proportion of paths available for contracting by coal services.[317]

Stakeholders' submissions

In its response to the Draft Decision, Queensland Rail stated that '87 train path is not a legally binding constraint' and provided legal advice in support of its argument.[318] Queensland Rail said that all train paths in the Metropolitan network that were not allocated to existing train services were available for contracting by coal trains or other services. In this context, Queensland Rail said:

> *the QCA's rationale for the allocation of fixed costs based on the assumed 87 path constraint is erroneous and not appropriate*[319]
>
> *[a]s Queensland Rail has previously submitted and demonstrated there is no 87 train path constraint. It is unclear why the QCA continues to raise this as an issue …*[320]

However, West Moreton network users stated that Queensland Rail's assertion that there was no cap on contracting for coal services was completely inconsistent with Queensland Rail's practice to date. They said the cap had always been in place, and their investment and

[313] New Hope 2014: 3.
[314] Queensland Rail's 17 July 2015 response to the QCA's request for additional information noted that the reference to '13 paths for freight' was incorrect and that it should be '14 paths for freight'.
[315] Queensland Rail, sub. 2: 48. Queensland Rail's 17 July 2015 response to the QCA's request for additional information clarified that the restriction was advised by the Department of Transport and Main Roads.
[316] Queensland Rail, sub. 2: 48–49.
[317] QCA 2015: 143–145.
[318] Queensland Rail, sub. 26: 6 and Annexure 8.
[319] Queensland Rail, sub. 26: 30.
[320] Queensland Rail, sub. 33: 5. Queensland Rail repeated essentially the same argument in a letter sent on 14 April 2016.

contracting decisions were formed in part on that basis.[321] Coal miners provided confidential correspondence from Queensland Rail and the Queensland Department of Transport and Main Roads (DTMR) in support of their argument.[322]

QCA analysis and Decision

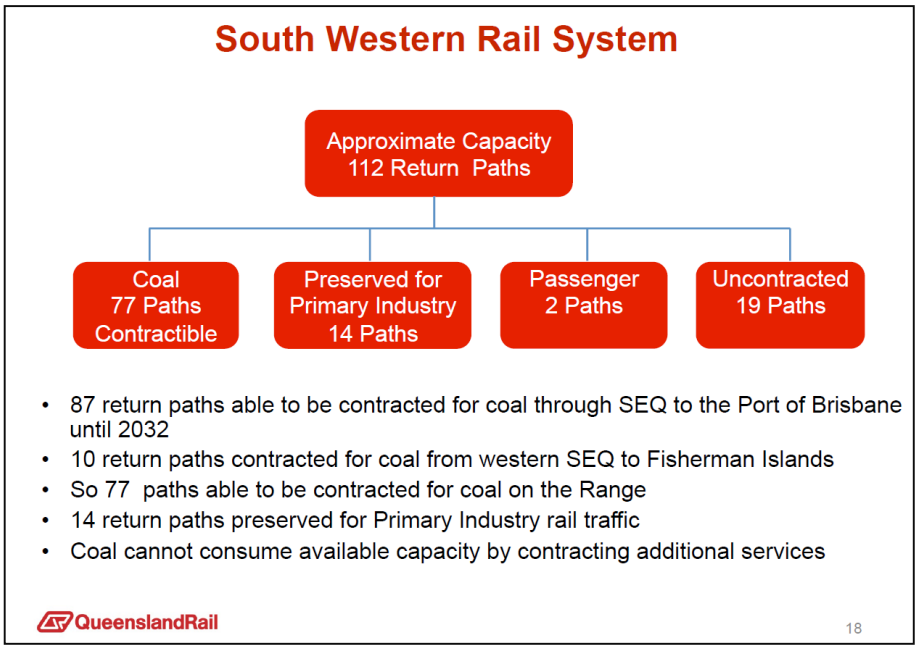
We have considered Queensland Rail's 2015 DAU and reviewed our 2015 Draft Decision in light of comments and information provided by Queensland Rail and other stakeholders in accordance with the QCA Act.

Based on the considerations set out in this section and having regard to the relevant factors in section 138(2) of the QCA Act, our Decision is that 87 paths is a binding constraint for coal train services through the Metropolitan network. We require that the 2015 DAU reflect this constraint.

Queensland Rail's changed positions

Queensland Rail had made—during the 2013 DAU assessment process and in its 2015 DAU supporting submission—several representations that coal services cannot contract more than 87 paths through the Metropolitan network. Queensland Rail had made similar representations at industry forums—for example, at a rail forum organised by the Goondiwindi Regional Council on 4 December 2015, about three weeks before submissions on our 2015 Draft Decision were due (see Figure 4).

Figure 4: Queensland Rail's representation at an industry forum



Source: Queensland Rail 2015l: 18.

The QCA notes that Queensland Rail has continued to change its position on this matter. Queensland Rail has variously stated:

- Queensland Rail's Responsible Ministers have specified a constraint of 87 coal paths per week through Metropolitan network.[323]

[321] Yancoal, sub. 35: 1; Aurizon, sub. 29: 10–14; New Hope, sub. 31: 3–5.
[322] Queensland Rail 2012, 2014b, 2014c, 2014d, 2014e, 2014f; Queensland Department of Transport and Main Roads (DTMR) 2011, 2014a, 2014b.

- The binding constraint is the maximum 87 coal paths per week.[324]
- Due to a constraint from the Queensland government, only 87 out of the 112 paths can be allocated to coal services.[325]
- 77 paths able to be contracted for coal on the Range. Coal cannot consume available capacity by contracting additional services.[326]
- 'The 2015 DAU allocated … the asset base based on assumed constraints to contracting'.[327]
- There is no such constraint.[328]
- There is no legally binding 87-train-path constraint.[329]

The QCA is unclear about the rationale underpinning the changes in Queensland Rail's positions and finds Queensland Rail's inconsistent statements puzzling.

Is 87 paths a binding constraint?

Queensland Rail argued that the 87-path reference was contained in correspondence with the DTMR but that correspondence was not a direction from the 'responsible Ministers' and consequently was not a legally binding constraint.[330]

However, West Moreton network users said that a Ministerial direction was not necessary and there were other ways in which a constraint could be legally binding. For example, section 266A of the Transport Infrastructure Act 1994 (TIA) prohibited a railway manager (such as Queensland Rail) from allocating a train path that is preserved for one traffic type to a different traffic type without the approval of the chief executive of DTMR.[331]

Indeed, Queensland Rail also said that it was required to comply with its passenger priority and preserved train path obligations under the TIA,[332] and submitted that 16 paths were preserved for non-coal-train services (see Figure 4).

The QCA's view

In any event, our view is that the relevant consideration is whether the constraint is, and will continue to be, binding after the approval date (i.e. whether it applies in practice, regardless of whether it is legally binding), which is the key concern of users and the matter that is relevant to the QCA in determining how common network costs should be allocated.

The network users argued that Queensland Rail's commercial conduct had been consistent with the existence of the 87 path constraint and that their investment and contracting decisions were based on that constraint. Aurizon stated:

> *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*

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[323] Queensland Rail, sub. 2: 48; Queensland Rail's 17 July 2015 response to the QCA's request for additional information clarified that the restriction was advised by DTMR.
[324] Queensland Rail, sub. 2: 48.
[325] Queensland Rail, sub. 2, Appendix 1: 12.
[326] Queensland Rail 2015l: 18.
[327] Queensland Rail, sub. 26: 27.
[328] Queensland Rail, sub. 26: 30.
[329] Queensland Rail, sub. 26: 30.
[330] Queensland Rail, sub. 26: 30.
[331] Aurizon, sub. 29: 11-12; New Hope, sub. 31: 4–5.
[332] Queensland Rail, sub. 26: 89–90.

> *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.*[333]

Users said they were denied contracting for paths beyond the constraint at a time when they had sought additional paths. Aurizon said that:

> *[it] 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.*[334]

We have been provided with copies of correspondence in which Queensland Rail asked DTMR to remove the 87-path cap for coal train services, and copies of DTMR's response which showed that the request was not approved.[335] Subsequently, Queensland Rail made representations confirming that the 87-path cap was unchanged and advised coal industry participants that it (Queensland Rail) was unable to contract for coal services above that cap, despite the existence of spare capacity and demand for additional paths by coal train services. Thus, the '87-path' limit for coal services has been applied in practice through Queensland Rail not offering to contract above that level.

To date, Queensland Rail has not provided any evidence to demonstrate that it will behave differently to DTMR's stated position. Indeed, Queensland Rail's inconsistent representations would create substantial uncertainty for investment and contracting decisions by coal industry participants, which is not in the interests of access holders and access seekers, or in the public interest and would affect the efficient use of the network, having regard to section 138(2) of the QCA Act, in particular paragraphs (a), (d), (e) and (h).

Given all these considerations, we are satisfied that the information provided by Queensland Rail and users establishes that it is appropriate to proceed on the basis that the 87-path constraint has applied, and will apply, in practice, as a matter of Queensland Rail's contracting practices, for coal train services through the Metropolitan network.

If Queensland Rail were able to demonstrate that the 87-path constraint does not apply in practice, that would be a matter to which we would have regard in assessing any DAAU or a subsequent DAU. Clearly, the most compelling manner in which Queensland Rail could demonstrate that no such constraint applies in practice would be by providing evidence that it is able and willing to contract coal services above 87 paths. This would be clearest where coal services have contracted up to 87 paths and require additional paths for contracting, and DTMR has removed the 87-path cap.

We accept that, in an environment where coal trains are not contracted up to the 87-path cap, Queensland Rail could seek to demonstrate that DTMR has removed the cap on coal services, and as a result Queensland Rail is able and willing to contract coal services above that cap. In that event, the QCA would be prepared to review its approach to cost allocation within the

[333] Aurizon, sub. 29: 13.

[334] Aurizon, sub. 29: 12.

[335] Queensland Rail 2012, 2014b, 2014c, 2014d, 2014e, 2014f; Queensland Department of Transport and Main Roads (DTMR) 2011, 2014a, 2014b. Queensland Rail had previously informed that coal traffics were allowed through the Metropolitan network until 2024 (Queensland Rail, November 2013(d): 12). In the 2015 DAU submission, Queensland Rail informed that the end date for coal traffics through the Metropolitan network was 2032 (Queensland Rail, sub. 2, Appendix 6: 7). Thus, although the end date over which the 87-path constraint applies has been extended, the constraint remains unchanged. See Section 8.15 of this Decision for our consideration of the end date of 2032 for coal trains.

context of the approval criteria in section 138(2), including by exploring whether there is a need for optimising the network.

For this decision, we have not assessed whether Queensland Rail's conduct of applying the 87-path constraint in practice was consistent with the requirements of section 104 of the QCA Act relating to preventing or hindering access when there were previously requests for capacity above 87 paths for miners, as it is not an issue to be determined in considering the 2015 DAU.

8.3.2 Categorisation of forward-looking costs

In the context of the 2015 DAU, Queensland Rail stated that not all its planned maintenance activities were volume-dependent. For its capital program, Queensland Rail argued that its expenditure was unaffected by the decline in usage, and that its capital program was primarily aimed at 'replacing assets that have reached the end of their useful life'.[336] In Queensland Rail's 2015 DAU supporting submission, PwC observed:

> *Without incurring any additional capital or maintenance expenditure, the Rosewood to Jondaryan (R2J) part of the network could cater for 15.7 gross million tonnes (GMT) (up from 11.5 GMT); while the Jondaryan to Columboola part of the network could cater for 3.6 GMT (up from 3 GMT).*[337]

Our 2015 Draft Decision was that Queensland Rail's 2015 DAU maintenance cost should be categorised into fixed common network cost and variable common network cost and we accepted the assessment of our consultant (B&H), that the fixed proportion of maintenance cost was 67.4 per cent. Our Draft Decision accepted Queensland Rail's treatment of the entire forecast capital program as a common network expenditure, as it related to investments in the shared network and benefitted all users.[338]

Stakeholders' submissions

Queensland Rail disagreed with the categorisation of maintenance costs and the treatment of the forecast capital program.[339]

Queensland Rail said that if the QCA did not accept its 2015 DAU cost allocation methodology, then the Draft Decision categorisation of maintenance costs needed to be modified to include a three-way categorisation into common fixed costs, coal-triggered fixed costs, and variable costs. For the forecast capital program, Queensland Rail said it should be categorised into common fixed costs and coal fixed costs. Queensland Rail submitted reports by Everything Infrastructure and Synergies Economic Consulting (Synergies) in support of its arguments.[340]

QCA analysis and Decision

We have considered Queensland Rail's 2015 DAU and reviewed our 2015 Draft Decision in light of comments and information provided by Queensland Rail and other stakeholders in accordance with our obligations in the QCA Act.

Based on the considerations set out in this section, and having regard to the relevant factors in section 138(2) of the QCA Act, we consider that it is appropriate to categorise maintenance costs into fixed and variable costs, and that the entire forecast capital expenditure should be

[336] Queensland Rail, sub. 2: 38, 52.
[337] Queensland Rail, sub. 2 (Appendix 1): 13.
[338] QCA (October 2015): 154–156, 185–188; Queensland Rail, sub. 2: 55.
[339] Queensland Rail, sub. 26: 40–41.
[340] Queensland Rail, sub. 33: 13–26; Attachments 2 and 3.

treated as a common network expenditure. We require Queensland Rail to amend the 2015 DAU to reflect this.

Categorisation of maintenance costs

Queensland Rail stated that 'the general standard to which the infrastructure must be maintained in order to reliably operate the (63) forecast coal services will be quite different to what would be required only to operate the (three) non-coal services'. Therefore, it argued that cost categorisation should reflect these differences in standard so that 'all costs that are incremental to each type of service are properly allocated to that group of users'.[341] Queensland Rail submitted its analysis identifying the following three categories of maintenance costs:

- common fixed costs (57.3%), which would be incurred even if only a minimal number of services were to utilise the network;
- coal fixed costs (21.7%), which are triggered as a result of the standard to which the network must be maintained to operate the forecast coal services. Queensland Rail said these costs were fixed over the 2015 DAU forecast period, but were variable over the long run; and
- variable costs (21%), which would vary with tonnages on the network within the 2015 DAU forecast period.[342]

We engaged B&H to review Queensland Rail's analysis, including rail-related technical aspects of the Everything Infrastructure and Synergies reports.[343]

B&H's assessment

B&H observed that the proportion of fixed maintenance activity is usually considered in the context of a range of tonnages, the network configuration and the condition of the assets.[344] B&H identified a number of flaws in Queensland Rail's analysis and assertions. For example:

- The majority of the maintenance and engineering standards in the West Moreton network are driven by passenger trains, as evidenced by the rated line speed of 80 kilometres per hour (km/h) for the railway that is set, based on passenger trains. In comparison, the timetabled average speed for coal train services is 25km/h in the Toowoomba to Columboola section.
- Queensland Rail used historical costs of its various rail lines to identify the three categories of maintenance costs for the West Moreton network, but those rail lines do not have the same configuration and the same condition as the West Moreton network.
- Queensland Rail's data analysis did not establish that there were fixed maintenance costs on the West Moreton network due to the operation of the forecast coal services.[345]

[341] Queensland Rail, sub. 33: 14.
[342] Queensland Rail, sub. 26: 40–41; sub. 33: 13–23.
[343] The review was undertaken by Mr Martin Baggott, Principal and Director, B&H. Mr Baggott has over 40 years of experience that spans track infrastructure, railway operations and commercial feasibility. He has managed train operations as well as advised on matters associated with asset valuations, operations optimisation, network capital and maintenance to Australian and overseas railways and economic regulators, and inter–governmental agencies, including the Essential Services Commission of Victoria, Economic Regulation Authority of Western Australia, Australian Rail Track Corporation, Canadian Pacific Railway Company, World Bank and Asian Development Bank.
[344] B&H (2016, Part 4): 4.
[345] B&H (2016, Part 4): 5–10.

B&H concluded that the characteristics of the coal task has, at best, a moderate impact on the way the network is managed for maintenance and capital expenditure, notwithstanding the effect of volume. Thus:

> *in respect to fixed and variable costs, the context of any determination of categorisation of fixed or variable must have a similar context to the line under analysis and the appropriate use of standards. The analysis should not attempt to identify other lines which have somewhat diverse situations.*[346]

We have accepted most (84 per cent) of Queensland Rail's proposed maintenance cost in the 2015 DAU,[347] as they are required given the age and condition of the network and regardless of the low forecast volumes. Those maintenance costs are at a similar level as the 2013 DAU proposal that was developed when the system was nearly capacity-constrained. Given these considerations, we asked B&H to estimate the fixed and variable proportion of maintenance activity based on total network capacity, rather than forecast usage, which is consistent with our approach to allocating fixed common network costs based on the relative proportion of system capacity that is available for contracting by coal services (discussed in the Section 8.3.3 of this Decision).

B&H revised its estimate of the fixed proportion of maintenance activity to account for its revision to some of the maintenance cost items in response to stakeholders' comments (see Section 8.11 of this Decision), and to provide an estimate for a scenario where the network is maintained at its total capacity. Accordingly, B&H assessed that about 57.3 per cent of the maintenance costs related to fixed maintenance activities which were on the common network. B&H said that its estimate of the fixed proportion of maintenance activity was based on Queensland Rail's configuration and condition data for the West Moreton network.[348]

Table 14 compares B&H's revised assessment with Queensland Rail's analysis.

Table 14: Maintenance cost categorisation—B&H and Queensland Rail

Cost category	*Revised B&H assessment*	*Queensland Rail analysis*
Fixed cost	57.3%	
• Common fixed		57.3%
• Coal fixed		21.7%
Variable cost	42.7%	21.0%

Source: B&H (2016, Part 4): 11–12; Queensland Rail: sub. 33: 22

The QCA's view

We agree with B&H's criticism of Queensland Rail's cost categorisation approach in the post-Draft Decision submissions and consider that there are a number of flaws in Queensland Rail's proposed cost categorisation approach.

We consider B&H's approach of identifying and categorising costs by the underlying factors, usage-based (variable costs) and time-based (fixed costs), is transparent and robust and will provide appropriate signals for the efficient use of, and operation of, the network, and is in the

[346] B&H 2016, Part 4: 10.
[347] See Section 8.11 of this Decision for our assessment of Queensland Rail's maintenance cost proposal.
[348] B&H 2016, Part 4: 1.

interests of access seekers and access holders, having regard to s. 138(2)(a), (e) and (h) of the QCA Act.

Accordingly, our Decision is to categorise maintenance costs into fixed and variable components and we adopt B&H's revised assessment that the proportion of fixed common network maintenance cost is 57.3 per cent.

Categorisation of forecast capital expenditure

Queensland Rail relied on its maintenance cost analysis to suggest that forecast capital expenditure should be categorised into common fixed and coal fixed costs and asserted that most of its forecast capital expenditure program was designed to support the (63) forecast coal services.[349]

However, the flaws B&H identified in Queensland Rail's maintenance analysis also apply to Queensland Rail's attempt to re-categorise forecast capital expenditure into common fixed and coal fixed costs.

Besides, our view, as stated in the context of our assessments of the 2009 and 2013 DAUs, is that incremental investment on the network shared by different traffics could benefit all traffics. For example, a project to improve the track standard will result in increased reliability and lower maintenance requirement and will benefit all traffics. Therefore, it is reasonable to consider such investment as a common network capital expenditure and to apply a pro rata allocation to such capital expenditure.[350]

In its 2015 DAU submission, Queensland Rail had proposed to include in the West Moreton common network RAB[351] all forecast capital expenditure on the basis that the capital expenditure was on the shared network and benefitted all traffics, and regardless of whether that expenditure was triggered by coal or non-coal services.[352] Similarly, the 2015 DAU proposal included, in the West Moreton common network RAB, capital projects on the shared network that were triggered by freight services, which provided benefit to other services. Queensland Rail referred to this capital program as the transport service contract (TSC) capital.[353] We have accepted Queensland Rail's TSC capital program in the common network RAB (see Section 8.14 of this Decision for our assessment of the TSC capital).

It is unclear why Queensland Rail has on the one hand sought to include in the common network RAB a freight-triggered capital program on the shared network that benefits other (i.e. coal) services, but on the other hand has now, in response to our Draft Decision, sought to not include in the common network RAB coal-triggered capital expenditure on the shared network that benefits other (i.e. freight) services.

Given these considerations, our Decision is to treat the 2015 DAU forecast capital expenditure on the shared network as a common network capital expenditure, as we are satisfied that it benefits all traffics.

We also recognise that not all rail infrastructure on the West Moreton network is shared by different traffics. For instance, there have been certain capital programs that benefit only coal

[349] Queensland Rail, sub. 33: 23–25.
[350] QCA (December 2009a): 80 and (October 2014): 145–146.
[351] The RAB that is used in determining reference tariffs for coal-carrying train services comprises a share of the West Moreton common network RAB and the entire coal-specific capital expenditure (for example coal-only sidings).
[352] Queensland Rail, sub. 2: 49.
[353] Queensland Rail, sub. 2: 35, 49.

services—the Columboola spur and balloon loop project is an example—and we have treated such capital programs as coal-specific capital expenditure.

We consider our approach to treating the forecast capital expenditure on the shared network as a common network expenditure as the underlying project benefits all traffics, provides appropriate signals for the efficient use of, operation of, and investment in, the network, and is in the interests of access seekers and access holders, having regard to section 138(2)(a), (e) and (h) of the QCA Act.

8.3.3 Cost allocation approach

Queensland Rail said that, for the 2015 DAU, in the changed-volume environment its primary concern was revenue certainty. It proposed allocating around 95 per cent of its forward-looking costs (i.e. forecast capital expenditure, maintenance cost and operating expenditure) to coal traffics based on coal's share of forecast volumes (effectively representing around 63 of 66 paths).[354]

However, Queensland Rail proposed capping coal's share of the opening asset base to around 78 per cent (representing 87 of 112 paths) to reflect government constraints on contracting capacity to coal.[355] On its allocation of the opening asset base, Queensland Rail stated:

> *This approach is consistent with the overarching objectives established by the QCA … of balancing Queensland Rail's right to recover its costs from users with mining customers' right to not be required to pay for capacity that they are not permitted to use.*[356]

New Hope disagreed with Queensland Rail's approach and proposed allocating:

- fixed common network costs based on the higher of coal's forecast or contract paths as a proportion of system capacity (since the 2015 DAU forecast coal paths (63) are greater than contract paths (53), this would represent 63 of 112 paths); and
- variable costs based on coal's share of forecast usage.[357]

New Hope argued that allocating costs on the basis of available capacity rather than forecast usage will avoid coal services bearing the risk of declining demand from non-coal services.

Our 2015 Draft Decision considered that most below-rail infrastructure costs were common and fixed.[358] These comprised the opening asset base and efficient forward looking fixed costs (that

[354] The 2015 DAU proposed total forecast capital expenditure of $141.9 million (coal allocation $133.0 million), total maintenance cost allowance of $143.0 million (coal allocation $139.9 million) and total operating expenditure (excluding working capital) allowance of $37.2 million (coal allocation $34.9 million). The coal allocations reflected coal's share of forecast volumes (gtk-based) for maintenance costs, and coal's share of forecast paths for operating expenditure and forecast capital expenditure. Queensland Rail, sub. 2: 44–56.

[355] Strictly speaking, Queensland Rail proposed to apply the 78 per cent allocator to assets in place since 1995. A lower allocator was proposed for the pre-1995 assets to reflect the impact of metropolitan passenger operations on the availability of West Moreton network paths, which is considered in Section 8.4.1 of this Decision.

[356] Queensland Rail, sub. 2: 48.

[357] New Hope, sub. 9: 24–27.

[358] Common network costs comprise sunk costs (common network opening asset base) and forward-looking costs (forecast common network capital expenditure, maintenance cost and operating expenditure). Whereas opening asset base and forecast capital expenditure are considered as a fixed cost, operating and maintenance costs are categorised into fixed costs and variable costs. For example, about 57 per cent of maintenance costs and about 82 per cent of operating expenditure relate to activities that do not vary with usage (see Section 8.3.2 for the categorisation of maintenance costs and Section 8.12 for the categorisation of operating costs).

is, forecast capital expenditure and fixed maintenance and operating costs). Our Draft Decision proposed to:

- cap coal's share of efficient fixed common network costs to reflect the contracting restriction for coal services in the West Moreton network—that is, the 87 paths constraint less the paths (10 paths at the time) contracted to coal services to operate within the Metropolitan network, resulting in coal's share of 77 of 112[359] paths; and
- allocated efficient variable common network costs (i.e. variable maintenance and operating costs) based on coal's share of forecast usage.[360]

Stakeholders' comments on 2015 Draft Decision

Stakeholders accepted our approach of allocating variable costs based on coal's share of forecast usage.[361] However, stakeholders did not accept our allocation approach for the fixed common network costs.

Queensland Rail said that our Draft Decision allocation approach resulted in it being unable to recover the 'full cost of providing the declared service' and stated that the only legitimate and rational basis for allocating costs was on the basis of forecast volumes. Queensland Rail provided advice from consultants, PwC and Synergies, in support of its argument.[362]

Coal miners said that our proposed allocation approach made the remaining coal producers bear the fixed common network costs of capacity formerly contracted for the now closed Wilkie Creek mine, which they said was unsustainable. They reiterated that fixed common network costs should be allocated to reflect the higher of coal forecast or contract paths as a proportion of system capacity.[363]

QCA analysis and Decision

We support common network costs being allocated amongst the different classes of users in the West Moreton network. However, the point of contention has been the allocation approach—in particular, the allocation of efficient fixed common network costs.

In the face of falling demand, our 2015 Draft Decision had sought to balance the conflicting objectives of:

- Queensland Rail recovering its efficient common network costs relating to coal-carrying train services in the West Moreton network; and
- coal traffics not paying for network capacity they are unable to contract to use.

Nevertheless, the submissions on our Draft Decision show that the positions of Queensland Rail and other stakeholders are far apart.

Based on the considerations set out in this section and having regard to the relevant factors in section 138(2) of the QCA Act, our decision is that:

- coal's share of efficient fixed common network costs be capped to reflect the contracting restriction for coal services in the West Moreton network;

[359] The 112 paths capacity is Queensland Rail's estimate, which is reviewed in Section 8.4 of this Decision.
[360] QCA 2015: 143–146.
[361] Queensland Rail, sub. 26: 41; New Hope, sub. 22: 11–12.
[362] Queensland Rail, sub. 26: 12, 29-31, 42-43, Annexure 4 and sub. 33, Attachment 2. Queensland Rail's comments on re-categorisation of fixed costs are considered in Section 8.3.2 of this Decision.
[363] New Hope, sub. 22: 4, 9, sub. 21: 4; Yancoal, sub. 27: 2.

- efficient variable common network costs be allocated based on coal's share of forecast usage in the West Moreton network; and
- Queensland Rail be entitled to recover these coal-allocated costs from the forecast coal train services.

Cost allocation approaches

The contentious issue is about who should bear the efficient fixed common network costs of spare capacity, which comprise the opening asset base and forward-looking fixed costs (i.e. forecast capital expenditure, and fixed maintenance and operating costs). Therefore, unless otherwise specified, our consideration will primarily focus on the allocation of efficient fixed costs of the common network.

Queensland Rail and coal miners rejected our 2015 Draft Decision allocation approach to cap coal's share of efficient fixed common network costs to reflect the contracting restriction for coal services in the West Moreton network (at the time, 77 of 112 paths).

In response to our Draft Decision, Queensland Rail claimed that 87 paths was not a legally binding constraint and proposed re-categorising fixed costs into common fixed and coal fixed costs with different coal allocators for the two fixed cost categories.[364] Nevertheless, Queensland Rail said that the allocation approach proposed in its 2015 DAU was appropriate and it was prepared to accept and comply with its 2015 DAU approach.[365] Therefore, we have assessed the approach Queensland Rail proposed in its 2015 DAU, although we note Queensland Rail's 2015 DAU approach to allocating the opening asset base to reflect the 87-path constraint is inconsistent with its changed position that there is no such constraint. Queensland Rail's criticisms of our Draft Decision allocation approach are discussed separately in this section.

Coal miners preferred allocating fixed common network costs based on the higher of coal's forecast or contract paths as a proportion of total available paths.[366] The miners' criticisms of our Draft Decision allocation approach are considered separately in this section.

The coal allocators reflecting the three allocation approaches are set out in Table 15.

Table 15: Fixed common network cost allocators under the three allocation approaches

Allocation approaches	*Opening asset base allocator*	*Forward-looking fixed costs allocator*
Queensland Rail's approach	87/112 (78%)	63/66 (95%)[367]
Miners' approach	63/112 (56%)	63/112 (56%)
2015 Draft Decision approach	77/112 (69%) [at the time of Draft Decision]	77/112 (69%) [at the time of Draft Decision]

[364] See Sections 8.3.1 and 8.3.2 of this Decision for our consideration of the 87-path constraint and the categorisation of costs.

[365] Queensland Rail, sub. 26: 29–30 and 39–43 and sub. 33: 5–6.

[366] New Hope, sub. 22: 8–9; Yancoal, sub. 27: 2 and sub. 35: 2.

[367] Queensland Rail proposed a different allocator of 87.5 per cent for the Jondaryan to Columboola section of the West Moreton network, based on coal's share of forecast paths in that section. However, for presentational purposes we have used coal's share of total forecast paths (i.e. 63/66 paths) that Queensland Rail applied in the Rosewood to Jondaryan section. This section accounts for around 79 per cent of the total forecast volume across the West Moreton network.

Assessment of the three allocation approaches

Determining an appropriate allocation of fixed common network costs in a mixed-traffic network with significant spare capacity is a complex matter and requires a balanced consideration. We have assessed the three allocation approaches having regard to the statutory assessment criteria in section 138(2) of the QCA Act.

We engaged Professor Flavio Menezes of the University of Queensland to advise us on the economic efficiency aspects of the three allocation approaches.[368] Following Professor Menezes being appointed to the QCA Board, we engaged Professor Stephen King to conduct an independent review of Professor Menezes' report on allocation approaches.[369]

Queensland Rail's approach

Queensland Rail argued that all users benefited from its proposed 2015 DAU cost allocation approach, as they were better off sharing costs than covering the stand-alone costs attributable to their own demand.[370] However, Queensland Rail's approach makes coal traffics pay common network costs for an option to use up to the total available West Moreton capacity, which they cannot exercise given the contracting restriction on the network. Such an allocation approach would adversely impact the demand by coal services and result in inefficient price discrimination, which would not promote the efficient use of the network and not be in the interests of access holders and access seekers of coal services.

In this context, Professor Menezes observed that under Queensland Rail's approach, miners would pay for an option that they cannot exercise given the 80-path[371] constraint and that 'it has the highest likely adverse impact on the demand for coal transport'.[372]

Queensland Rail said the only legitimate and rational basis for allocating forward-looking costs was on the basis of forecast usage and argued that coal services should bear a higher proportion of those costs, given that only three non-coal services were forecast to run on the West Moreton network.[373]

Thus, Queensland Rail's approach seeks to transfer the risk of bearing the forward-looking costs to coal traffics and allows it the best chance to recover those costs. In that regard, it is likely to advance Queensland Rail's legitimate business interests.

However, Queensland Rail's proposal makes coal traffics pay almost all the forward-looking costs as if the network was designed to serve only coal traffics, but in practice the operation of coal services is subject to the constraints of a mixed-traffic network configuration. Therefore, Queensland Rail's approach will not send appropriate signals to promote the efficient use of the network and its approach would negatively impact the interests of access holders and access seekers of coal services.

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[368] Menezes, F, 2016a.
[369] See King, S, 2016: 10–12.
[370] Queensland Rail, sub. 33: 10.
[371] In our Draft Decision, the 77 paths available for contracting by coal services in the West Moreton network were derived by subtracting from the 87-path constraint, the 10 paths (at the time) contracted to coal services that operated within the Metropolitan network. In its March 2016 submission, Queensland Rail informed us that the paths contracted to coal services that operated within the Metropolitan network had decreased from 10 to 7, which means 80 paths are now available for contracting by coal services in the West Moreton network. Our consideration of this change in the number of paths available for contracting by coal services is discussed below under the heading 'Change in circumstances' in this Section 8.3.3.
[372] Menezes, F, 2016a: 11–12.
[373] Queensland Rail, sub. 26: 30; sub. 33: 13, 26.

Professor Menezes was of the view that it was not clear that allowing Queensland Rail to recover practically all its forward-looking common costs from coal traffic through the regulated tariff aided long-run efficiency and said:

> *This suggests that in the absence of coal traffic, QR [Queensland Rail] would not be able to provide non-coal services. This in turn implies that in a world where QR were not constrained to offer non-coal services, it would not do so as it could not recover its costs. In this world, QR would only provide coal services and the network configuration might have been different, possibly involving different, lower forward looking efficient fixed costs. Such a network might have led to different investment decisions by coal miners.*[374]

Professor King agreed with Professor Menezes' views that there were economic limitations to Queensland Rail's approach to recovering common costs from users according to their capacity to contribute to those costs, and observed:

> *If there is currently excess capacity on the network, but this excess capacity is 'efficient' in the sense that there is likely to be increasing demand for rail services on the network in the future, then it may be economically efficient not to fully recover the common costs in the short term. Rather, it would be recognised that these costs were in part an investment today in the future use of the network and should be allocated over time as well as over current users.*[375]

Queensland Rail argued that a material decrease in non-coal-traffic levels on the West Moreton Network will rightly result in a higher proportion of costs allocated to coal services.[376] However, given the contracting restriction for coal services on the West Moreton network, Queensland Rail's approach makes coal's share of forward-looking costs subject to the non-coal-traffic volumes. Since non-coal volumes are influenced by market and seasonal factors, and by government policy, Queensland Rail's approach will introduce significant unpredictability in setting coal reference tariffs and create regulatory uncertainty. Therefore, Queensland Rail's approach is detrimental to the efficient use of the network and to the public interest.

Queensland Rail argued that its approach sought to align with the QCA's December 2009 and October 2014 Draft Decisions.[377] However, Queensland Rail did not accept our train path allocation based on coal's share of total available paths and proposed a fundamental shift in cost allocation by making it subject to the unpredictable non-coal volumes (see Appendix E for a summary of previous cost allocation assessments).

Previous considerations of the West Moreton network coal reference tariff were undertaken in the context of available capacity being potentially insufficient to satisfy all requests for access rights. We consider that the material reduction in demand for West Moreton network train paths and the contracting restriction for coal services in the West Moreton network necessitates an appropriate approach to allocating common network costs. However, we do not consider Queensland Rail's approach is appropriate, having regard to the factors in section 138(2) of the QCA Act as discussed above.

In summary, our view is that Queensland Rail's approach may advance Queensland Rail's legitimate business interest (s. 138(2)(b)), to the extent it allows Queensland Rail the best chance to recover forward-looking costs.

However, Queensland Rail's approach:

- does not promote the efficient use of the network (s. 138(2)(a));

[374] Menezes, F, 2016a: 11.
[375] King, 2016: 11.
[376] Queensland Rail, sub. 33: 26.
[377] Queensland Rail, sub. 26: 42, sub. 33: 5–6, 14. See also Appendix E in this Decision.

- is not in the interests of access seekers and access holders of coal services (s. 138(2)(e), (h));
- is not in the public interest (s. 138(2)(d)); and
- is not appropriate, having regard to the pricing principle in section 168A(b), as it results in inefficient price discrimination.

Miners' approach

Coal miners argued that allocating fixed common network costs based on the relative proportion of network capacity forecast for use by coal services (i.e. 63/112 paths) will avoid coal services bearing the risk of declining demand from non-coal services.[378] We consider that this would be in the interests of access holders and access seekers of coal services (s. 138(2)(e), (h)).

However, under the miners' approach, coal traffics will not pay for the common network costs reflecting the spare capacity available to coal services to contract on the West Moreton network (i.e. 14 spare coal paths at the time[379]). Professor Menezes was of the view that the miners' approach produced a 'free option' for coal traffic to contract capacity up to the 80-path constraint and said:

> *This may not lead to efficient outcomes in the context of a regulated firm making investment decisions under demand uncertainty.*[380]

Effectively, miners' approach would make Queensland Rail bear the risk of recovering common network costs of the spare capacity available for contracting by coal services, which would discourage efficient operation of, and investment in, the network by Queensland Rail for providing coal services.

Moreover, as long as forecast coal paths (63 paths in the 2015 DAU) are below the capacity available for contracting by coal services (77 paths at the time), Queensland Rail will be unable to recover, under the miners' approach, the common network costs of providing the declared service to coal traffics. In our view, the miners' approach will hinder efficient operation of and investment in the network (s. 138(2)(a)). It is also contrary to Queensland Rail's legitimate business interests (s. 138(2)(b)), and is not appropriate, having regard to the pricing principle in section 168A(a).

To the extent the miners' approach would discourage efficient operation of and investment in the network for the provision of coal services, it would create a misalignment of the network with the operation of the rest of the supply chain and that would not be in the public interest, having regard to section 138(2)(d) of the QCA Act.

In summary, our view is that the miners' approach is in the interests of access holders and access seekers of coal services (s. 138(2)(e), (h)).

However, the miners' approach:

- will hinder the efficient operation of and investment in the network (s. 138(2)(a));
- is contrary to Queensland Rail's legitimate business interests (s. 138(2)(b));
- is not in the public interest (s. 138(2)(d)); and

[378] New Hope, sub. 9: 24–27; Yancoal, sub. 35: 2.
[379] 14 spare coal paths based on 77 paths maximum capacity available for coal services to contract on the West Moreton network less 63 forecast coal paths, at the time of the 2015 Draft Decision.
[380] Menezes, F, 2016a: 12.

- is not appropriate, having regard to the pricing principle in s. 168A(a).

2015 Draft Decision approach

Our Draft Decision proposed allocating fixed common network costs to reflect the share of West Moreton network capacity available to coal services to contract.

Our Draft Decision approach signals to coal train users that they will not pay for the fixed common network costs reflecting the capacity they are unable to contract to use. Therefore, unlike Queensland Rail's approach, coal traffics do not pay for an option they cannot exercise. Our Draft Decision approach will send appropriate signals for the efficient use of the network and is in the interests of access holders and access seekers of coal services.

Furthermore, unlike Queensland Rail's approach, under our Draft Decision approach, coal's share of fixed common network costs is unaffected by the variations in non-coal volumes. That would mitigate the unpredictability in setting coal reference tariffs, as non-coal volumes are influenced by market and seasonal factors, and government policy. The resulting regulatory certainty would promote efficient use of the network and the public interest, having regard to s. 138(2)(a) and (d) of the QCA Act.

Our Draft Decision approach makes coal traffics pay for an option up to the capacity they are able to contract to use, which avoids the free option issue associated with the miners' approach. Therefore, our approach will send appropriate signals for the efficient operation of, and investment in the network for providing coal services.

In comparison, Queensland Rail's approach makes coal services pay for more than what they can contract which is not efficient. Also, the miners' approach does not give any consideration to the spare capacity available for coal services to contract, which creates a free option and is also not efficient.

Professor Menezes said that 'the QCA draft decision approach can also be supported on efficiency grounds' and concluded that:

> *Looking at the allocation of common cost as pricing an option to use capacity beyond expected usage suggests that the 80/112[381] rule in the QCA draft decision approach may provide a superior approach to both the Miners' and QR's proposals.*[382]

Professor King agreed with Professor Menezes' conclusion.[383]

Our Draft Decision approach allows Queensland Rail to recover, from the 63 forecast coal paths, its efficient costs and investments reflecting the capacity (77 paths at the time), including spare capacity that is available for contracting by coal services in the West Moreton network. Therefore, subject to the adjustment amount (see Section 8.18 of this Decision), our allocation approach will generate expected revenue from coal-carrying train services that should be at least enough to meet the efficient costs that reflect the capacity coal services are able to contract on the West Moreton network.

We also analysed whether expected revenue across all traffics under each of the three allocation approaches would be enough to meet the efficient costs of providing access for all traffics on the West Moreton network (i.e. the costs that reflect the capacity of the network to provide all those services). That analysis is presented in Appendix E of this Decision, which

[381] The number 112 refers to Queensland Rail's capacity estimate, which is reviewed in Section 8.4 of this Decision.
[382] Menezes, F, 2016a: 12.
[383] King, 2016: 12.

shows that each of the three allocation approaches results in a shortfall in recovering the efficient costs of providing access for all traffics on the West Moreton network. This outcome is due to the substantial decline in non-coal volumes, which is a commercial matter for Queensland Rail.

In this context, we agree with Professor Menezes' views that the key features of the West Moreton network, where coal traffic pays the regulated tariff but is subject to the 80-path constraint, and non-coal traffic does not pay the regulated tariff and is subject to both market and non-market constraints, along with the existing spare capacity imply that:

> *QR [Queensland Rail] may not be able to recover common or even service-specific costs from non-coal services.*[384]

Professor King said that:

> *The inability of QR to be able to 'fully recover' its efficient forward looking costs in the short term under a specific allocation method does not, as a matter of economics, mean that either:*
>
> *(a) The allocation method is inconsistent with economic efficiency; or*
>
> *(b) An allocation method that does 'fully recover' efficient forward looking costs in the short term is preferable.*[385]

The QCA's approach provides for coal services to pay their share of the efficient costs of the network reflecting the proportion of capacity they are able to contract to use the service. Thus, under the QCA's approach, the expected shortfall in recovering the efficient costs of providing access for all traffics on the West Moreton network is due to the material decline in non-coal services. To the extent that Queensland Rail does not recover, from non-coal services, the efficient costs not allocated to coal services, that is a commercial matter for Queensland Rail.

Stakeholders' concerns

Stakeholders expressed a number of concerns about our Draft Decision allocation approach. These are considered in Table 16.

Table 16: Stakeholders' concerns about the QCA's 2015 Draft Decision approach

Stakeholders' concerns	*QCA response*
Queensland Rail said the Draft Decision approach prevented it from recovering the assessed efficient costs of providing the infrastructure and failed to set an access price that was consistent with section 168A(a) of the QCA Act.[386]	Our allocation approach on its own establishes a reference tariff that entitles Queensland Rail to recover from coal-carrying train services the efficient costs that reflect the capacity coal services are able to contract on the West Moreton network. This is because our approach makes forecast coal services pay the efficient costs that reflect the capacity coal services are able to contract, which includes spare capacity available for coal services to contract. However, we acknowledge that the overall access charge for coal services, given the adjustment amount mechanism (see Section 8.18 of this Decision), will not generate expected revenue in the operative period of the undertaking that is at least enough to meet the efficient costs that reflect the capacity coal services are able to contract on the West Moreton network.

[384] Menezes, F, 2016a: 2–3.
[385] King, 2016: 11.
[386] Queensland Rail, sub. 26: 12, 29–30, 42 and Annexure 4; sub. 33: 5, 8–9, 25.

Stakeholders' concerns	*QCA response*
	If efficient costs of providing access for all traffics on the West Moreton network were considered (i.e. costs that reflect the overall capacity of the network to provide all those services), then none of the three allocation approaches in front of the QCA provides for Queensland Rail to recover those efficient costs (see Appendix E of this Decision). In any event, our Draft Decision approach balanced the conflicting objectives of Queensland Rail recovering the efficient common network costs relating to coal-carrying train services in the West Moreton network and coal traffics not having to pay for network capacity they are unable to contract to use. We consider, for all the reasons given in this section, that our allocation approach is appropriate having regard to section 138(2) as a whole.
Queensland Rail said the QCA cannot prioritise the interests of users over the pricing principles. It said: 'Queensland Rail's receipt of at least its efficient costs and a return, while clearly in Queensland Rail's legitimate business interests, is also a fundamental pricing principle which cannot be traded off.'[387]	We disagree with Queensland Rail and consider that the pricing principles are one of a list of the statutory assessment criteria that we must have regard to in considering a DAU (see Chapter 10 of this Decision). Our Draft Decision approach sought to balance the conflicting interests of Queensland Rail and network users.
Queensland Rail said that the approach forces it to bear the costs not allocated to coal services and by doing so, the QCA would be requiring Queensland Rail to subsidise coal trains. It said: 'It does not reflect … the requirements that must be met to ensure cross subsidies do not occur.'[388]	We disagree with Queensland Rail. Under our Draft Decision approach coal services would be required to pay the full coal-specific capital expenditure, almost all (98 per cent) the variable common network costs reflecting coal's share of forecast usage, and 69 per cent of fixed common network costs reflecting the network capacity coal traffics are able to contract to use. We agree with Professor Menezes' view that coal tariffs that cover the incremental costs of providing coal services are subsidy-free independently of whether or not Queensland Rail is able to recover the fraction of efficient common network costs not assigned to coal traffic.[389] Indeed, as per the analysis presented in Appendix E, Queensland Rail's approach itself is unlikely to provide full recovery of the efficient costs of providing access for all traffics on the West Moreton network (i.e. costs that reflect the overall capacity of the network to provide all those services).[390] This outcome is due to the substantial decline in non-coal volumes, which is a commercial matter for Queensland Rail.

[387] Queensland Rail, sub. 26: 31

[388] Queensland Rail, sub. 26: 30, 42.

[389] Menezes, 2016a: 14.

[390] This result is largely because, under Queensland Rail's approach, capital charges associated with around 22 per cent of sunk costs, which reflects the share of opening asset base not allocated to coal services (see Table 15), are effectively left for recovery from the three forecast non-coal services, which represent 4.6 per cent share of the total forecast paths.

Stakeholders' concerns	*QCA response*
Queensland Rail said the QCA's approach forced non-coal carrying services to bear a high proportion of the costs of providing the declared service as compared to the coal carrying services, which constituted differential treatment. It said: 'The QCA cannot require from Queensland Rail an access undertaking that permits a form of differential treatment that is prohibited by section 138A(2).'[391]	We disagree with Queensland Rail. We consider that coal services should not be made to share the common network costs that reflect the capacity they are unable to contract to use, and our approach does not result in inappropriate differential treatment. Rather, we consider Queensland Rail's approach of making coal services pay for an option they cannot exercise will give rise to inefficient price discrimination.
Queensland Rail said that there was no justification (economic or otherwise) for the QCA to require that common costs be allocated between coal and non-coal users on the basis of their potential share of maximum installed capacity.[392]	We disagree with Queensland Rail. Of the three approaches in front of the QCA, we consider that Queensland Rail's approach will make coal traffics pay for fixed common network costs of capacity they cannot contract to use and the miners' approach will provide them a free option to use the spare capacity they are able to contract to use. Overall, our Draft Decision approach of capping the fixed common network costs to reflect contracting restrictions for coal services in the West Moreton network strikes an appropriate balance and provides for coal services to pay for fixed common network costs reflecting the capacity they are able to contract to use.
Queensland Rail said the approach would prevent efficient signals being given to it in relation to the future maintenance and renewal of the infrastructure that is essential for the ongoing provision of coal services, as it will not have a business case that anticipates full recovery of these future costs.[393]	We disagree with Queensland Rail. Under our Draft Decision approach, Queensland Rail is able to recover the future costs reflecting the capacity that is available for contracting by coal services, which avoids providing coal services a free option to use spare coal capacity. This would send appropriate signals for the efficient operation of, and investment in the network for providing coal services. Besides, as observed by Professor Menezes, our approach provides strong incentives for Queensland Rail to make additional paths available to coal services, once the 80-path capacity limit is reached.[394] To the extent Queensland Rail is unable to recover efficient costs that are not allocated to coal services, that is a commercial matter for Queensland Rail. Our Draft Decision approach sought to balance the conflicting interests of Queensland Rail and network users.
Queensland Rail argued that the declaration under section 250 of the QCA Act and the undertaking covers all services on the West Moreton Network, notwithstanding the undertaking has proposed (and the QCA previously has agreed to) setting a reference tariff only for coal-carrying services. It	Queensland Rail's argument is for Queensland Rail to be able to recover its efficient common network costs of providing access for all services on the West Moreton network. If efficient costs reflecting the overall capacity of the

[391] Queensland Rail, sub. 26: 31.
[392] Queensland Rail, sub. 26: 41–42; sub. 33: 6–7, 25, Attachment 2: 4.
[393] Queensland Rail, sub. 26: 42; sub. 33: 25.
[394] Menezes, F, 2016a: 12.

Stakeholders' concerns	*QCA response*
said: 'The QCA cannot simply ignore the residual of costs that it proposes not to allocate to coal, and the way in which any cost allocation approach impacts on non-coal services'.[395]	network to provide all services were considered, then none of the three options in front of the QCA provides for Queensland Rail to recover the efficient costs of providing access to the West Moreton network. This outcome is due to the substantial decline in non-coal volumes. Our Draft Decision approach balances the conflicting objectives of providing for Queensland Rail to recover its efficient common network costs relating to coal-carrying train services in the West Moreton network and coal traffics not having to pay for network capacity they are unable to contract to use. While Queensland Rail's application did not seek an assessment of cost recovery from non-coal train services, we consider that any anticipated shortfall in non-coal revenue is a commercial matter for Queensland Rail and that reference tariffs for coal services should not recover costs reflecting services coal customers are unable to contract.
Queensland Rail argued that the service provider should not be penalised by a cost allocation approach which denies it from recovering costs that, absent a shared network use, it would be allowed to recoup.[396]	We disagree with Queensland Rail. Queensland Rail's proposal makes coal traffics pay almost all the forward looking costs as if the network was designed to serve only coal traffics, but in practice the operation of coal services is subject to the constraints of a mixed-traffic network. Our approach reflects the shared nature of the West Moreton network, in particular the contracting restriction for coal services.
Queensland Rail said that the West Moreton network was appropriately sized for the forecast network demand, and stated that 'the QCA's own technical advisor has confirmed' that this was the case, noting that B&H's 2015 review did not exclude assets on the basis of surplus or excess network capacity. It said: 'There is no "smaller" asset configuration that could be adopted as the basis of an optimised network configuration and valuation.'[397]	We disagree with Queensland Rail. Queensland Rail has mischaracterised B&H's 2015 review, which observed that 'Queensland Rail now has many redundant assets but in the absence of closure, these assets continue to be inspected and maintained, presumably at minimal but safe levels … In fact a deep review of this network at the forecast traffic levels could conclude that it contained many redundant assets and that an entirely different RAB is constructed and a new maintenance plan conceived'.[398] That said, we have not sought to optimise the network in this Decision for the purposes of determining reference tariffs, given the uncertainty about future demand.[399]
Queensland Rail argued that the 2015 Draft Decision attributed its changed methodology to the fall in demand and the resultant increase in costs to coal services. However, when the QCA's 2014 Draft Decision on the 2013 DAU was released, a Draft	We disagree with Queensland Rail. Our 2014 Draft Decision reflected a capacity constrained network based on Queensland Rail's 2013 DAU proposal.

[395] Queensland Rail, sub. 33: 6.
[396] Queensland Rail, sub. 33: 7.
[397] Queensland Rail, sub. 33: 12.
[398] B&H 2015: 4.
[399] Both Queensland Rail and miners expect demand to rise in future. See Yancoal, sub. 27: 3; New Hope, sub. 22: 9; Queensland Rail, sub. 2: 38 and Appendix 6: 9; sub. 33: 26.

Stakeholders' concerns	*QCA response*
Decision which had the same methodology as proposed in the 2015 DAU, the network was not at full capacity, and there were paths available for contracting to coal services.[400]	Indeed, the drop in volumes was a reason cited by Queensland Rail to withdraw its 2013 DAU in order for it to submit a replacement DAU. The QCA never received a revised volume proposal from Queensland Rail, rather Queensland Rail had submitted that '[it] reserves the right to resubmit volumes for the AU1 period prior to the Authority's Final Decision'.[401] The 2015 DAU is based on a revised (lower) volume forecast as compared to the 2013 DAU and our 2015 Draft Decision took that into account in proposing an appropriate cost allocation approach.
Queensland Rail claimed that its proposed maintenance and operating cost allowance reflected the costs that were necessary to provide forecast services (paths), and argued that it was therefore appropriate that the cost allocation approach allowed Queensland Rail to recover these costs from the customers using the service.[402]	We disagree with Queensland Rail. Our technical consultant (B&H) observed in its September 2015 review that Queensland Rail's proposed costs were higher than would be required to support the forecast services, due to, for instance maintaining assets that would be considered redundant at the forecast traffic levels.[403] That said, for this Decision, we have not sought to optimise the asset base for the purposes of determining reference tariffs, given the uncertainty about future demand and the capacity limit for coal services on the West Moreton network. Also, Queensland Rail's proposed costs are disproportionately high, considering the material drop in demand, because there are fixed and variable components. By nature, fixed costs are time dependent and not usage dependent, so an attempt to link fixed costs to forecast usage and allocating fixed costs on that basis is inappropriate. However, variable costs are affected by usage, and our approach to categorising costs into fixed and variable components, and allocating variable costs based on coal's share of forecast usage does just that.
Coal miners argued that requiring the remaining coal mines to pay tariffs based on the maximum possible paths available for coal, rather than what they contracted for, unfairly punished them for Wilkie Creek's closure and for investment decisions Queensland Rail had made in the past.[404]	We disagree with the miners. If coal services did not pay the fixed costs reflecting the spare capacity they are able to contract, that would create a free option. That would not send efficient signals for the operation of, and investment in, the network by Queensland Rail for providing coal services, and would potentially adversely affect coal miners attempt to increase future coal volumes.[405] Our Draft Decision approach sought to balance the conflicting interests of all parties. Besides, miners' approach would not create an incentive for coal services to contract more paths up

[400] Queensland Rail, sub. 33: 26.
[401] Queensland Rail (July 2014a): 20.
[402] Queensland Rail (14 April 2016): 3.
[403] B&H 2015: 4–5.
[404] Yancoal, sub. 27: 2 and sub. 35: 2; New Hope, sub. 22: 8–9 and sub. 31: 6.
[405] We note Yancoal's above-rail haulage contract is now 1.7 mtpa—21 per cent more than its previous 1.4 mtpa contract (Yancoal, sub. 35: 3–4)—and that coal miners are expecting volumes to rise in future.

Stakeholders' concerns	*QCA response*
	to the spare capacity available to coal services because of the free option, whereas our Draft Decision approach would create incentives for coal services to contract more paths which would mean lower tariffs due to the volume trigger (see Section 8.5.1 of this Decision).
Coal miners argued that the Draft Decision approach could produce a 'death spiral' where the closure of a mine would increase the tariffs to such a significant extent that it would likely shut another mine or damage the viability of remaining mines. Given the closure of Wilkie Creek, coal miners suggested that the QCA consider the following alternative options to mitigate the impact of the death spiral: (a) optimising the asset base; (b) capping tariffs while preserving the asset value for future recovery, should demand increase; or (c) deferring (or capitalising) capital charges on assets not currently required.[406].	We do not consider the alternative approaches submitted by the miners are appropriate and reasonable in the present circumstances. The 2015 DAU has been developed in light of a material fall in demand for below-rail services on the West Moreton network, compared to historical utilisation levels. We have considered the merits of optimising the asset base given the deterioration in demand. However, we have chosen not to optimise the asset base for the purposes of determining reference tariffs. Rather, we have determined the reference tariff for coal services based on the 80-path constraint (which is based on the 87-path constraint that has applied in practice). Were it not for the existence of the constraint, the circumstances for determining the reference tariff would have been different and it would have been open for the QCA to reach a different conclusion, including optimising the network. In particular, we have not sought to optimise the asset base in this decision to reflect, among other things, the 90 per cent decline in the forecast demand for non-coal services, given the uncertainty about future demand[407] and considering that applying the constraint means coal services would have limited exposure to the risk of a decline in non-coal services. If the 80/87-path constraint was removed and demand for below-rail services remained at low levels, we would consider the relevance of optimising the asset base for the purposes of determining reference tariffs. The option to defer capital charges would be appropriate when a capacity expansion, due to its lumpiness, results in capacity that is more than necessary to provide the least cost option for meeting anticipated demand. However, this is not what has occurred here as the current surplus capacity is due to a material drop in demand. The three alternative approaches proposed by miners would create a free option, as those alternatives effectively seek to defer Queensland Rail's recovery of efficient common network costs that reflect the spare capacity available for coal services to contract. Given demand uncertainty at this stage, we consider those approaches will not provide an efficient signal for the operation of, and

[406] Yancoal, sub. 27: 2 and sub. 35: 2; New Hope, sub. 22: 9.

[407] Indeed, both Queensland Rail and miners expect demand to rise in future. See Yancoal, sub. 27: 3; New Hope, sub. 22: 9; Queensland Rail, sub. 2: 38 and Appendix 6: 9; sub. 33: 26.

Stakeholders' concerns	*QCA response*
	investment in, the network by Queensland Rail, and will not be in the public interest.
Coal miners argued that the 77 paths available for contracting by coal services were equally available for contracting by non-coal services. Therefore, some proportion of the costs of unutilised train paths within the 77 paths should be allocated to non-coal services. 'Allocating all of the costs of the spare capacity up to 77 paths to coal traffics, in a mixed use system, is inequitable, will distort competition in markets, and is not appropriate having regard to s. 138(2)(a), (d), (e) of the QCA Act'.[408]	We disagree with the miners. We consider our Draft Decision approach to make coal traffics pay the efficient fixed common network costs that reflect the proportion of capacity they are able to contract, and no more, balances the interests of all parties and is appropriate having regard to the assessment criteria in section 138(2) of the QCA Act.

Change in circumstances

Our 2015 Draft Decision proposed a coal allocator of 77/112 paths for allocating efficient fixed common network costs. There have since been changes in both of those numbers.

We have not accepted Queensland Rail's estimate of West Moreton network capacity of 112 weekly return train paths. Rather, we have accepted B&H's revised estimate of West Moreton network's capacity of 113 return paths per week (see Section 8.4 of this Decision). Therefore, the relevant capacity estimate is 113 paths that applies for the purposes of determining coal reference tariffs in this Decision.

At the time of our 2015 Draft Decision, 10 paths were contracted to coal services to operate in the Metropolitan network, which did not traverse the West Moreton network. Given the 87-path constraint, this resulted in 77 paths being available for contracting by coal services in the West Moreton network. In its March 2016 submission, Queensland Rail informed us that subsequent to the release of the Draft Decision, the number of paths contracted to coal services to operate within the Metropolitan network had decreased from ten to seven[409], which means 80 paths are now available for contracting by coal services in the West Moreton network.

Therefore, under our Draft Decision approach, the coal allocator for fixed common network costs would now be 80/113 paths (71 per cent) as compared to 77/113 paths (68 per cent).

An allocation of fixed common network costs based on 80/113 paths (instead of 77/113 paths) would increase coal traffics' contribution to Queensland Rail's regulatory annual revenue requirement by less than one per cent, which we consider is immaterial.

Besides, 80 weekly coal paths is within reasonable bounds of the paths that were used by coal services on the West Moreton network in the recent past (for example, coal traffics used around 79 paths during 2011–12 and 74 paths during 2012–13).[410]

[408] New Hope, sub. 22: 8–9.

[409] Queensland Rail, sub. 33: 7. Queensland Rail claimed confidentiality over the number of coal contracted paths within the Metropolitan network. The release of that information is governed by section 187 of the QCA Act. Accordingly, we sought information from relevant stakeholders on why that information should not be disclosed. We considered stakeholders' responses pursuant to the requirements in section 187, and decided to release in this Decision the number of coal contracted paths within the Metropolitan network.

[410] QCA calculation based on West Moreton coal export data for individual mines available from the Queensland government's data portal (accessed 20 May 2016).

Therefore, we consider 80/113 paths is an appropriate coal allocator for efficient fixed common network costs.

However, the 77 paths contracting limit applied for a part of 2015–16 and the 80-path limit applies to the remainder of 2015–16 and beyond. For 2015–16, if common network fixed costs were allocated based on the ratio of 80/113 paths, that would mean coal services would pay for additional three paths that were not available for contracting during a part of the year. Conversely, if those costs were allocated based on the ratio of 77/113 paths, that would mean giving coal services a free option to contract additional three paths for a part of the year.

Given these considerations, our view is to apply an average of 77/113 and 80/113 ratios for allocating efficient fixed common network costs for 2015–16 (that is, 69.5 per cent share) and apply the allocator 80/113 for 2016–17 and beyond until that allocator is reviewed as part of any DAAU or a DAU that Queensland Rail may submit.

We consider these coal allocators will:

- provide coal miners an incentive to contract more paths, which is in the interests of access holders and access seekers (s. 138(2)(e) and (h);[411]
- generate expected revenue from coal services that is at least enough to meet the efficient fixed common network costs that reflect the capacity available for contracting by coal services, which would advance Queensland Rail's legitimate business interests to the extent that the risk of spare coal contractible capacity is borne by coal traffics (s. 138(2)(b)); and
- promote economically efficient outcomes and be in the public interest (s. 138(2)(a) and (d)).

Our Decision

Given the above considerations, we consider the approach to allocating efficient fixed common network costs to reflect the share of West Moreton network capacity available to coal services to contract (i.e. a coal allocator of 80/113 paths) and allocating efficient variable common network costs based on coal's share of forecast usage:

- will promote the economically efficient use of, operation of, and investment in the network (s. 138(2)(a))—as it signals to coal train users that they will pay for efficient fixed common network costs that reflect the share of capacity they are able to contract and efficient variable common network costs reflecting their share of usage (and no more), and provides for Queensland Rail to recover its efficient costs and investments relating to the spare capacity that is available for contracting by coal services;
- is in the interests of access seekers and access holders of coal services and their customers (s. 138(2)(e) and (h))—as they are not required to pay for the fixed common network costs of network capacity that reflects the share of capacity they are unable to contract;
- is in the public interest (s. 138(2)(d))—as it promotes the future development of the above-rail market by signalling to customers that they will not have to pay for the fixed common network costs of network capacity that reflects the share of capacity they are unable to contract; and
- will advance Queensland Rail's legitimate business interests, to the extent that the risk of recovering efficient fixed common network costs of spare capacity, reflecting the capacity

[411] We note that the 80 paths available for contracting by coal services is close to the usage of 79.6 paths miners expect towards the end of the 2015 DAU period (New Hope, sub. 19: 3).

available for contracting by coal services, is borne by coal traffics and not by Queensland Rail (s. 138(2)(b)).

The above considerations are in favour of our cost allocation approach.

Moreover, subject to the adjustment amount (see Section 8.18 of this Decision), our allocation approach establishes a reference tariff that will generate expected revenue from coal-carrying train services that should be at least enough to meet the efficient costs that reflect the capacity coal services are able to contract on the West Moreton network.

However, under our allocation approach (as well as under the approaches proposed by Queensland Rail and the miners), Queensland Rail may not be able to recover the efficient costs of providing access for all traffics on the West Moreton network (i.e. costs that reflect the overall capacity of the network to provide all those services). This is due to the risk that Queensland Rail may not be able to recover, from non-coal services, its efficient costs that are not allocated to coal services, and that is a commercial matter for Queensland Rail.

Nonetheless, our allocation approach is appropriate having regard to section 138(2) as a whole, including section 138(2)(a), (d), (e) and (h). Thus, having regard to all of these matters, our decision is that:

(a) coal's share of efficient fixed common network costs be capped to reflect the relative proportion of the West Moreton network capacity available for coal services to contract—that is, the 87 path constraint less the seven paths contracted to coal services to operate within the Metropolitan network, resulting in coal's share of 80 of 113 paths;

(b) efficient variable common network costs be allocated to reflect coal's share of forecast usage in the West Moreton network; and

(c) coal train services' share of efficient common network costs be fully allocated to the 63 forecast coal traffics to derive the reference tariff for coal-carrying train services for the purposes of this Decision.

We consider that a proposal to amend the reference tariffs arising due to a change to the 80/87 path capacity constraints and the 113 paths capacity estimate should occur by way of a DAAU.

We do not consider it is appropriate that a proposal to amend the reference tariffs due to a change to these parameters be included in an application to vary reference tariffs as per clause 5.1 of Schedule D in Appendix F. That is because these parameters reflect the allocation approach we are approving in this Decision based on the circumstances at the time of this Decision, in particular, the circumstances of significant spare capacity with uncertainty about future demand outlook in the face of capacity limit for coal services on the West Moreton network.

Therefore, any change in circumstances that require an assessment of these parameters will require us to review our allocation approach, considering the circumstances prevailing at that time, which may, among other things, require us to consider optimising the network.

Summary 8.2

The West Moreton network reference tariff in the 2015 DAU must provide that efficient common network costs of the West Moreton network are apportioned to coal train services such that:

- **(a) the allocation to coal services is based on the following network capacity constraints:**
  - **(i) the 87 paths per week constraint for coal train services through the Metropolitan network;**
  - **(ii) the 80 paths per week available for contracting by coal train services in the West Moreton network; and**
  - **(iii) a maximum capacity of the West Moreton network of 113 paths per week;**
- **(b) efficient fixed common network costs approved in this Decision are allocated to coal train services in the ratio of 80/113 paths;**
- **(c) efficient variable common network costs approved in this Decision are allocated to coal train services based on coal train services' share of forecast usage in the West Moreton network; and**
- **(d) Queensland Rail is entitled to recover these coal-allocated costs from the 63 forecast coal-carrying train services.**

These network capacity constraints must be included within the 2015 DAU so that any amendment to the reference tariffs arising due to a change to a network capacity constraint can only be made by way of a DAAU, and not by way of an application to vary reference tariffs.

See definition of 'network capacity constraint', 'review event', clause (a) in definition of 'endorsed variation event', and Schedule D, clause 3.1(f)(i)–(iii) and clause 5.1 in Appendix F.

8.4 Capacity assessment

West Moreton network capacity is estimated by reference to the total return train paths available per week, where a 'return train path' refers to a loaded train trip from an origin (e.g. a mine) to a destination (e.g. a port) and an empty train trip back to the origin (the mine).

At the initial step, capacity is estimated as the number of return paths available for operations after considering the time required for trains to traverse the longest section, and allowing for planned maintenance time. This initial capacity estimate is usually reduced by a factor (a 'reduction factor') to account for unplanned infrastructure events in order to determine the actual effective infrastructure capacity.

In the 2015 DAU, Queensland Rail estimated the West Moreton network capacity to be in the order of 112 return paths, based on a reduction factor that took account of, among other

things, above-rail inefficiencies (e.g. train delays, reduced train performance and other unplanned above-rail incidents).[412]

Our 2015 Draft Decision noted that our consultant, B&H, estimated the West Moreton network capacity to be in the order of 135 return paths[413], based on a reduction factor that did not consider above-rail inefficiencies. Although our Draft Decision used Queensland Rail's capacity estimate, the Draft Decision stated that our final views on the West Moreton network capacity were subject to stakeholders' comments.[414]

Stakeholders' submissions

Queensland Rail said that its capacity estimate of 112 return paths was approved by the QCA in the calculation of the approved reference tariff in 2010, and the QCA should not move away from its established precedent.[415]

Queensland Rail rejected B&H's capacity estimate and provided an alternative derivation of its 112 paths capacity estimate. Queensland Rail claimed that the reduction in available capacity due to above-rail factors was relevant and said that its capacity estimate included the impact of Metropolitan network operations on West Moreton network capacity, which was not reflected in B&H's estimate.[416]

Miners said the QCA should use B&H's estimate unless there was compelling evidence that B&H's higher estimate of network capacity was flawed or incorrect.[417]

QCA analysis and Decision

Our Decision is that the West Moreton network capacity is 113 weekly return paths based on a revised assessment done by B&H.

Although our capacity estimate is closer to Queensland Rail's capacity estimate, it reflects two opposite effects in comparison to Queensland Rail's estimate, as we consider:

- Above-rail inefficiencies should be reflected in an access charge and not in calculating a capacity estimate, which has the effect of increasing our capacity estimate as compared to Queensland Rail's estimate; and
- Queensland Rail understated the impact of Metropolitan network operations on West Moreton network capacity, which has the effect of reducing our capacity estimate as compared to Queensland Rail's estimate.

Queensland Rail's reduction factor-based capacity estimate

Queensland Rail's capacity estimate of 112 return paths was based on a reduction factor of 65 per cent.[418]

Queensland Rail variously claimed that:

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[412] Queensland Rail, sub. 2, Appendix 6: 8 and 2015n.
[413] B&H 2015: 65–67.
[414] QCA 2015: 191.
[415] Queensland Rail, sub. 33: 31.
[416] Queensland Rail, sub. 26, Annexure 1: 4–11 and Annexure 9: 3–8.
[417] New Hope, sub. 22: 16; Yancoal, sub. 27: 2.
[418] The reduction in capacity is actually 35%, and the reduction factor of 65% is applied to the initial capacity estimate derived after making an allowance for planned maintenance.

> *The 65% West Moreton reduction factor, and resultant 112 return paths per week capacity was approved by the QCA in the calculation of the current reference tariffs*[419]
>
> *… Queensland Rail's adjustment factor of 65% (as previously approved by the QCA).*[420]

However, Queensland Rail first provided information about the 65 per cent reduction factor in the 2013 DAU process, in its supplementary submission on the QCA's information request about its maintenance expenditure.[421]

The QCA had approved a reference tariff for the West Moreton network in June 2010 that was derived on the basis of, among other things, a cost allocation methodology of which the 112 return paths capacity estimate was an input. However, the QCA's view was that the derivation of that tariff, including the cost allocation methodology, had not been resolved.[422] Moreover, at the time of the 2010 approval, the QCA did not have information which indicated that the 112 paths capacity was based on a 65 per cent reduction factor. In that sense, it is not accurate to say that the QCA previously approved a reduction factor of 65 per cent.

Queensland Rail did not substantiate its reduction factor estimate

Queensland Rail claimed that a number of factors reduced network capacity and influenced its estimate of the 65 per cent reduction factor, which included:

- the prevailing weather conditions;
- temporary speed restrictions;
- minor signal and trackside equipment faults;
- reduced locomotive and rollingstock performance;
- individual train dynamics and driving techniques; and
- unplanned above rail incidents.[423]

The QCA requested Queensland Rail to provide historical data (for example, the number of minutes or the percentage of pathways lost) on each of those six factors identified by Queensland Rail, as that information was relevant to our consideration of Queensland Rail's estimate of the reduction factor-based West Moreton network capacity.

However, Queensland Rail stated that:

> *[it] does not have information that identifies the percentage of pathways lost in these categories.*
>
> *[its] current data recording codes do not record in many of the six categories sought by the QCA. As such, Queensland Rail has had to make assumptions in relation to existing categories to roll these into the categories that are being sought in order to provide information on minutes lost compared to plan. This will lead to inaccuracies.*[424]

Effectively, Queensland Rail failed to substantiate its claim of a 65 per cent reduction factor.

The QCA's view

We consider Queensland Rail's capacity estimate based on a reduction factor that has not been substantiated is not transparent and would not promote economically efficient outcomes;

[419] Queensland Rail, sub. 33: 31.
[420] Queensland Rail, sub. 33: 33.
[421] Queensland Rail 2013d: 5.
[422] QCA, 2010a: 89; QCA 2010b. See also Appendix E of this Decision.
[423] Queensland Rail 2013d: 5 and 2015n.
[424] Queensland Rail, 19 August 2015: 3.

hence it is not appropriate, having regard to section 138(2), paragraphs (a) and (h) of the QCA Act.

We have also considered that Queensland Rail has now provided an alternative derivation of its 112 paths capacity estimate, which is assessed separately in this section.

Given these considerations, we do not accept Queensland Rail's capacity estimate based on the 65 per cent reduction factor.

Queensland Rail's alternative derivation of capacity estimate

In its December 2015 submission, Queensland Rail provided an alternative derivation of its 112 paths capacity estimate, which had three key components:

- a revised time of 30 minute for trains to traverse the longest section in the West Moreton network, to allow for variability in trains and infrastructure performance;[425]
- a reserve path allowance to accommodate unplanned infrastructure events, including events due to above-rail inefficiencies; and
- impact of Metropolitan network operations on West Moreton network capacity.[426]

We engaged B&H to review its previous estimate in the light of the alternative derivation provided by Queensland Rail.

B&H accepted as reasonable Queensland Rail's revised 30-minute time for trains to traverse the longest section on the West Moreton network. However, B&H disagreed that above-rail inefficiency was relevant in estimating network capacity, and found that Queensland Rail understated the impact of Metropolitan network operations on West Moreton network capacity.[427]

The main differences between Queensland Rail's and B&H's capacity estimates are:

- whether above-rail inefficiencies should be taken into account in estimating network capacity; and
- the impact of Metropolitan network operations on West Moreton network capacity.

Above-rail inefficiencies

Queensland Rail said that if a train was running late due to a train operator's fault, it would effectively need to run on the next available path. Queensland Rail argued it was relevant to set aside an allowance for reserve paths to accommodate such circumstances, which reduced available capacity on the network.[428]

However, B&H argued that the capacity estimate should reflect the number of paths the infrastructure could provide, and not the number of paths an operator might require for its operations. B&H stated that 'above-rail inefficiencies are a matter for the contract between the above-rail operator and Queensland Rail'.[429]

[425] Queensland Rail's previous capacity estimate was based on a 26-minute section running time (Queensland Rail, November 2013d: 5).
[426] Queensland Rail, sub. 26, Annexure 1: 3–10 and Annexure 9: 3–7.
[427] B&H 2016, Part 3.
[428] Queensland Rail, sub. 26, Annexure 9: 6–7.
[429] B&H 2015: 66 and 2016, Part 3: 2.

B&H used Queensland Rail's 'minutes lost compared to plan' data to identify an allowance for reserve paths due to below-rail factors. That assessment resulted in a reserve path allowance of 7.8 per cent of the initial capacity estimate, compared to Queensland Rail's 12.8 per cent estimate.[430]

The QCA's view

We consider that Queensland Rail's approach to reducing available network capacity to accommodate above-rail inefficiencies does not appropriately allocate the cost of above-rail inefficiencies to the party (train operator) that is best placed to manage those inefficiencies. Therefore, Queensland Rail's approach does not create a transparent pricing framework and will not send appropriate signals for the efficient use of the network; hence it is not appropriate, having regard to sections 138(2)(a) and (h), and 168A(d) of the QCA Act.

Relevantly, our amendments to the 2015 DAU includes provisions that protect Queensland Rail's business interests from the effect of above-rail inefficiencies. For instance, the amended DAU provides for an access charge to vary from a reference tariff to reflect cost and risk differences associated with differing train operating characteristics.[431] Additionally, Queensland Rail would be entitled to a take or pay charge if a train service is cancelled due to above-rail causes.[432] We consider that accounting for above-rail inefficiencies through such provisions in the DAU will promote pricing transparency and send appropriate signals for the efficient use of the infrastructure, having regard to sections 138(2)(a), (d), (e) and (h) of the QCA Act.

Therefore, our view is that above-rail inefficiencies should not be considered in estimating infrastructure capacity. Accordingly, we consider B&H's estimate is reasonable, as it does not consider above-rail inefficiencies.

Impact of Metropolitan network operations

West Moreton train services travel through the Metropolitan network to port and use portions of several of the Brisbane commuter rail lines. The West Moreton network capacity is affected by the Metropolitan network operations in two ways:

- Peak passenger periods limit access for trains crossing the Metropolitan network; and
- Maintenance activities outside the peak period on the Metropolitan network, which are not aligned in time with maintenance on the West Moreton network, also limit accessibility to the Metropolitan network.[433]

In the 2015 DAU, Queensland Rail estimated that the Metropolitan network reduced the West Moreton network capacity by 12.1 per cent.[434] However, B&H estimated that impact was 17 per cent, which was adopted in our 2015 Draft Decision.[435]

Stakeholders' concerns

Queensland Rail argued that B&H did not consider relevant information provided by Queensland Rail, and B&H's assessment was based on incorrect assumptions. It submitted new information in support of its proposed 12.1 per cent Metropolitan impact.[436]

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[430] B&H 2016, Part 3: 3.
[431] See clause 3.3(b) in Part 3 (Pricing Principles) in Appendix F.
[432] See clauses 8.6, 8.7, 13.6(c) and Schedule 5, clause 5.4 in Appendix G.
[433] B&H 2015: 57; Queensland Rail, sub. 2: 50.
[434] Queensland Rail, sub. 2: 49–52.
[435] B&H 2015: 64.
[436] Queensland Rail, sub. 26: 32–33 and Annexure 1.

New Hope considered that 22 per cent was a more appropriate estimate and said that B&H did not consider the impact of 'the significant number of special events on weekends, which require additional passenger services'.[437]

B&H's assessment

We engaged B&H to review its previous estimate given stakeholders' comments, including to consider new information provided by Queensland Rail and New Hope.

B&H considered that information and concluded that Queensland Rail's proposal underestimated the impact of the Metropolitan network on the capacity of the West Moreton network. B&H stated:

> *This is because it [Queensland Rail] only calculates a narrow part of the overall picture of works scheduling and train operations. It only deals with large possession works. A calculation must also include "weeknight closures", rescheduled works, special events additional trains and the quantity of work conducted on both systems.*[438]

B&H's view on Queensland Rail's estimate and New Hope's estimate was that:

> *[c]learly there is a range between the narrow calculation of Queensland Rail's at 12.1% that omits additional trains for special events and maintenance non-alignment, and higher values previously estimated by B&H and other stakeholders in the range of approximately 20%-22%. This was a conservative estimate prior to the detail provided by Queensland Rail that included train charts and maintenance alignment details.*[439]

B&H concluded:

> *Even allowing for clarification of alignment of the large possession works we are of the view that 17% impact of the Metropolitan system on the capacity of the West Moreton system is still a reasonable estimate.*[440]

The QCA's view

We agree with B&H's assessment that Queensland Rail understated the effect of Metropolitan operations on West Moreton network capacity and that New Hope overstated that effect.

B&H's estimate of the impact of Metropolitan operations on West Moreton network capacity reflects relevant factors including misalignment of maintenance time between the West Moreton network and the Metropolitan network and the effect of unplanned events on the Metropolitan network that reduce the potential capacity of the West Moreton network.

We therefore consider that B&H's assessment that Metropolitan operations reduce the West Moreton network capacity by about 17 per cent, which we note lies between Queensland Rail's 12.1 per cent and miners' 22 per cent estimates, is appropriate to adopt.

Since West Moreton train services travel through the Metropolitan network to the port, the West Moreton network capacity, as the number of return train paths, depends on how many train services can travel through the Metropolitan network to the port and back.

Therefore, it is relevant to consider the Metropolitan impact in determining the capacity of the West Moreton network. We agree with B&H that the Metropolitan impact should be applied

[437] New Hope, sub. 22: 16.
[438] B&H 2016, Part 3: 8.
[439] B&H 2016: Part 3: 8.
[440] B&H 2016, Part 3: 8.

after West Moreton network potential capacity has been assessed, based on constraints from within the West Moreton network.[441]

The effect of the Metropolitan operations means that the actual effective capacity on West Moreton is lower than the potential capacity.

Our Decision

Given the above considerations, our view is that the West Moreton network capacity is 113 weekly return paths as per the derivation summarised in Table 17.

This capacity derivation is:

- transparent, unlike Queensland Rail's reduction factor-based estimate;
- based on relevant factors and does not reflect above-rail inefficiencies; and
- based on a reasonable estimate of the factors that influence capacity, having regard to the Metropolitan operational constraints on the West Moreton network capacity.

We therefore consider our capacity estimate will promote the efficient operation of, use of, and investment in, the network. It is in the interests of access seekers and access holders, as they will be able to better assess whether capacity is available to meet their access requirements. It would also allow an access seeker and Queensland Rail to assess the requirements for an expansion. For those reasons, we consider that the above capacity estimate is appropriate, having regard to all the assessment criteria in section 138(2) of the QCA Act.

Table 17 West Moreton network capacity estimate

Parameter	***Result***
Longest section train scheduling interval[1]	30 minutes
Total theoretical capacity per week (total weekly time (7 days x 24 hours x 60 minutes)/scheduling interval)	336 one-way paths/week
Less planned maintenance allowance of 19 hours per week[2] (planned maintenance time (19 hours x 60 minutes)/scheduling interval)	(38 one-way paths/week)
Available capacity after planned maintenance	298 one-way paths/week 149 return paths/week
Less allowance for unplanned infrastructure events[3] (7.8 per cent of available capacity after planned maintenance)	(12 return paths/week)[4]
Potential West Moreton network capacity	137 return paths/week
Less impact of Metropolitan network operations[3] (17 per cent of potential capacity)	(24 return paths/week)[4]
West Moreton network actual effective capacity	**113 return paths/week**

1 Longest section is Rangeview to Spring Bluff. Average running time over that section is 23 minutes and the additional seven minutes provides for train control allowance (Queensland Rail, sub. 26, Annexure 1: 4 and Annexure 9: 4).

2 Queensland Rail, sub. 26, Annexure 1: 4.

3 B&H 2016, Part 3: 3, 8.

4 These return path numbers are rounded up to a greater loss due to the need to return a single path train (B&H 2016, Part 3: 3).

[441] B&H 2016, Part 3: 8.

Summary 8.3

The West Moreton network tariff derivation in the 2015 DAU must provide that the West Moreton network capacity is 113 return paths per week.

See Schedule D, clause 3.1(f)(iii) in Appendix F.

8.4.1 Metropolitan impact and cost allocation

In the 2015 DAU, Queensland Rail adjusted its coal train path allocation by its estimate of the Metropolitan impact, and applied the resulting 68.3 per cent share to allocate to coal traffics the value of common network assets that were in place before 1995.[442,443]

Although Queensland Rail considered that such an adjustment for pre-1995 assets was not required, it said the approach reflected 'a pragmatic way of addressing the concerns of customers around the impact of the passenger dominated Metropolitan Network on the available capacity of the West Moreton Network'.[444]

Our 2015 Draft Decision proposed to accept Queensland Rail's adjustment for allocating pre-1995 assets, but proposed a coal train path allocation of 57.1 per cent that reflected in part our assessment of a greater impact of the Metropolitan network on West Moreton network capacity.[445]

Stakeholders' submissions

Queensland Rail reiterated that, although it considered the adjustment for Metropolitan impact in allocating pre-1995 assets to coal traffics was inappropriate and resulted in it not recovering its efficient costs, it was prepared to make that adjustment. Queensland Rail also stated that the QCA had no power to impose such an adjustment or an adjustment that was more adverse to Queensland Rail.[446]

New Hope said the train path allocator should be adjusted to reflect the reduction in West Moreton network capacity due to the Metropolitan network operations.[447]

QCA analysis and Decision

Our Decision accepts Queensland Rail's proposed approach to consider the Metropolitan impact in allocating the pre-1995 asset values; however, our coal path allocation reflects our decision to accept a 17 per cent Metropolitan impact.

As assessed in Section 8.4 of this Decision, the *potential* West Moreton network capacity is 137 return paths per week. However, about 17 per cent of this potential capacity is lost due to the

[442] The 68.3 per cent share represented an adjustment to the 77.7 per cent train path allocation (representing 87 of 112 paths) by 12.1 per cent Metropolitan impact—that is, 77.7% * (1 – 12.1%)).
[443] The pre-1995 assets refer to assets that were in place before West Moreton coal traffic began in the mid-1990s.
[444] Queensland Rail, sub. 2: 49–52.
[445] QCA 2015: 191. The 57.1 per cent allocation of pre-1995 assets represented an adjustment to the 68.8 per cent train path allocation (representing 77 of 112 paths) by 17 per cent Metropolitan impact—that is, 68.8% * (1 – 17%).
[446] Queensland Rail, sub. 26: 32–33.
[447] New Hope, sub. 9: 26.

operations of the Metropolitan network, resulting in an *actual effective* West Moreton network capacity of 113 return paths.

Stakeholders' comments relate to the treatment of the metropolitan impact in allocating common network fixed costs to coal traffics for the purposes of deriving the coal reference tariff.

We consider that, for common network fixed costs that pertain to the period before coal traffics commenced on West Moreton network (i.e. pre-1995 assets), coal traffics should bear a pro rata share based on *potential* West Moreton network capacity. This approach provides that coal traffics would not pay for sunk costs that reflect West Moreton network capacity that was unavailable due to the Metropolitan impact when coal train services commenced in 1995.

In previous assessments, the pre-1995 assets coal path allocation was derived by adjusting the general coal path allocation by the Metropolitan impact. However, the West Moreton capacity derivation is now better understood (see Table 17 in Section 8.4 of this Decision). Therefore, we consider that the coal path allocation for pre-1995 assets should be the proportion of potential West Moreton network capacity available for contracting by coal services on the West Moreton network—that is, 58.4 per cent representing 80 of 137 paths.[448,449]

We also consider that, for common network fixed costs that pertain to the period after coal train services commenced operations on West Moreton network, coal traffics should bear a pro rata share based on the *actual effective* West Moreton network capacity. This approach provides that coal traffics are allocated common network fixed costs relating to investment decisions that were made after coal train services commenced operations in 1995, in the knowledge of the Metropolitan impact. None of those investments changed the capacity of the West Moreton network in terms of the number of paths. Rather they were driven by the increased traffic on the network and undertaken to strengthen the network for all services. Therefore, they were on the common network and should be allocated as per the approach recommended in Section 8.3.3 of this Decision.[450]

We consider our approach is appropriate having regard to all the assessment criteria in section 138(2) of the QCA Act.

[448] The 58.4 per cent share for pre-1995 assets is very close to the 58.8 per cent share that results from applying the previous method that had been used until now of adjusting the general coal path allocation (now 70.8 per cent representing 80 of 113 paths) by the Metropolitan impact (now 17 per cent) – that is, 70.8% * (1 – 17%).

[449] As discussed in Section 8.3.3 of this Decision, the 77-path contracting limit applies for a part of 2015–16 and the 80-path contracting limit applies to the remainder of 2015–16. Therefore, for 2015–16, the allocation for pre-1995 assets is the average of 77/137 and 80/137 (that is, 57.3%).

[450] See also Appendix E of this Decision that summarises our previous draft assessments.

Summary 8.4

The West Moreton network tariff derivation in the 2015 DAU must provide that:

(a) the pre-1995 common network asset base is allocated to coal traffics based on the proportion of potential West Moreton network capacity available for contracting by coal services on the West Moreton network—that is, representing 80 of 137 paths.

(b) The post-1995 common network asset base is allocated to coal traffics based on the proportion of actual effective West Moreton network capacity available for contracting by coal services on the West Moreton network—that is, representing 80 of 113 paths.

8.5 Form of regulation, take-or-pay and tariff structure

The form of regulation and pricing structure developed within a regulatory framework should, amongst other things, promote economic efficiency and the public interest, provide incentives for investment and allocate risks to the parties best able to manage them.

West Moreton and Metropolitan coal reference tariffs have operated using a price cap arrangement in combination with access agreements that include take-or-pay obligations.

A price cap form of regulation incentivises a monopoly infrastructure owner to provide access and achieve efficiencies, but exposes it to volume risk. A revenue cap reduces or eliminates the infrastructure provider's revenue risk, but can blunt or remove performance incentives.

An associated take-or-pay regime helps limit the revenue risk faced by the infrastructure provider, by providing that it will be paid for contracted capacity even if it is not used.

Queensland Rail's 2015 DAU proposed to continue the price cap form of regulation with take-or-pay obligations set at 80 per cent of the access charge payable.

Our Draft Decision also proposed a price cap form of regulation for Queensland Rail's West Moreton and Metropolitan networks. However, we proposed:

- requiring Queensland Rail to submit a 'volume trigger' endorsed variation event[451] to review reference tariffs when contracted volumes were greater than the forecast volumes used to develop reference tariffs;
- capping take-or-pay revenue from coal services at the total revenue allocated to coal services in assessing coal tariffs; and
- applying take-or-pay obligations at 100 per cent of access charges.[452]

Stakeholders' submissions

Queensland Rail said the QCA's proposed volume reset and take-or-pay regime restricted its ability to receive revenues from railing above its forecasts, while exposing Queensland Rail to

[451] 'Endorsed variation events' are defined in the undertaking. They set out specific circumstances including a change in law, in which Queensland Rail is required to apply to amend a reference tariff. Our proposal adds an additional endorsed variation event for changes in contracted volumes.
[452] QCA 2015: 196–201.

downside risk, including from force majeure events.[453] Other stakeholders favoured retaining a price cap, applying a volume reset and capping take-or-pay, but said the take-or-pay percentage should reflect that some operating and maintenance costs could be avoided.[454]

QCA analysis and Decision

The QCA requires Queensland Rail to apply a price cap form of regulation, with a tariff reset where access holders contract above forecast volumes, and take-or-pay at 100 per cent of access charges.

Much of our decision is consistent with our October 2015 Draft Decision.

That said, we have reviewed our form of regulation and take-or-pay framework and made changes where necessary in light of a reconsideration of Queensland Rail's 2015 DAU and stakeholder submissions.

Given the complexity of the issues, this analysis:

- considers the form of regulation and tariff reset;
- considers the take-or-pay regime, including capping and force majeure; and
- sums up the balance of risks and incentives from the QCA's overall approach.

8.5.1 Form of regulation and tariff reset

A price cap gives Queensland Rail a strong incentive to provide capacity, either through contracted or ad hoc services. Given the West Moreton network has substantial spare capacity, we accept the proposal in Queensland Rail's 2015 DAU to apply a price cap.

However, one of the persistent issues with a price cap is the incentive for the regulated infrastructure provider to under-forecast demand, in order to increase the price.

Queensland Rail's tariff proposal provides a forecast by using both contracted services and expected ad hoc services to derive its volume forecasts (see Section 8.10 of this chapter).

Queensland Rail's proposal has merit to the extent that while its revenue can increase if actual volumes end up higher than its forecast, it is also exposed to a reduction in demand for ad hoc services, to which take-or-pay protection does not apply. However, if access holders contract for volumes higher than Queensland Rail's forecast, then Queensland Rail's downside risk will be removed, while the tariff remains at a level based on lower volumes.

An unchanged price when contract volumes were higher than Queensland Rail's forecast volumes would be against the interests of access holders and access seekers (s. 138(2)(e), (h)). Such a price would also be against the public interest, as it would have the potential to reduce demand for coal haulage and diminish competition in related markets (s. 138(2)(a), (d)).

Our October 2015 Draft Decision proposed to address this issue by providing for an endorsed variation event to recalculate the West Moreton and Metropolitan network tariffs where contracted volumes for any origin or in aggregate rose above the volumes used to calculate the tariff.[455]

[453] Queensland Rail, sub. 26: 50–54.
[454] New Hope, sub. 22: 17–19; sub. 31: 14–17; Yancoal, sub. 27: 2, Aurizon, sub. 20: 24.
[455] QCA 2015: 196–198.

The volume reset would apply up to the 80-path contracting limit for coal services[456] (see Sections 8.3.3 of this Decision). Since coal services cannot contract beyond the path limit, any paths used beyond 80 per week would be provided on an ad hoc basis, so would not trigger the contract volume reset. Therefore, the lowest the price could go under the contract volume reset would be the point where 80 paths of contracted capacity were paying for the 80 paths worth of costs allocated to coal.[457]

Queensland Rail said in its December 2015 submission that the QCA's proposed volume reset approach mimicked a revenue cap in terms of restricting above-forecast revenues, while exposing Queensland Rail to the downside risk that came with a price cap.[458]

We disagree with Queensland Rail's position. The contract volume reset still leaves Queensland Rail able to increase its revenue through selling any uncontracted paths on an ad hoc basis. Queensland Rail's concerns about its downside exposure, even where it benefits from take-or-pay provisions, are considered below in the discussion of take-or-pay.

Aurizon said a price cap was essential to allow Queensland Rail to 'recover any revenue deficit' by providing ad hoc coal services.[459] Aurizon said that, on the other hand:

> *[b]y increasing contract volumes above this amount [the forecast volumes] Access Holders would obtain a reduction in their reference tariff and are provided a strong incentive to contract for available capacity.*[460]

New Hope favoured retaining a price cap and applying a volume reset.[461] It said:

> *In the event that volumes increase beyond 63 paths to up to 77 paths, then QR (in the absence of the Endorsed Variation Event) will be paid twice for the same fixed costs. NHC can understand this proposal to the extent that the additional services are ad-hoc, as QR faces reciprocal upside and downside risk, but considers that the double recovery of these costs is not appropriate where QR is protected from downside risk by ToP.*[462]

We agree with Aurizon and New Hope. The contract-based volume trigger recognises that Queensland Rail has forecast more than contracted volumes, by including expected ad hoc services as well as contracted services in its projected tonnages. At the same time, the endorsed variation event trigger protects the interests of access holders, access seekers and their customers, if there is significant contracting for new services during the term of the undertaking that largely removes Queensland Rail's exposure to volume risk.

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[456] For the Draft Decision, the West Moreton coal contracting limit was 77 paths, derived by subtracting 10 paths contracted to coal services with an origin in the Metropolitan network, from the government-imposed limit of 87 paths through the Metropolitan network. Queensland Rail subsequently advised that 'the contract for coal paths [with an origin in the Metropolitan network] has been renegotiated resulting in a decrease in the number of coal train paths from ten to seven' (Queensland Rail, sub. 33: 7). This leaves 80 of the 87 coal paths through the Metropolitan Network available to contract on the West Moreton network. See Section 8.3.3 of this Decision.

[457] This could change if the number of paths with an origin in the Metropolitan network changed, or the 87-path contracting limit changed. But in those circumstances, Queensland Rail would have an incentive to submit a DAAU to amend the reference tariff.

[458] Queensland Rail, sub. 26: 50–53.

[459] Aurizon, sub. 20: 24.

[460] Aurizon, sub. 20: 24.

[461] New Hope, sub. 22: 17-18; sub. 31: 15–16.

[462] New Hope, sub. 31: 16.

We also consider it necessary to have a volume reset mechanism because of Queensland Rail's incentive to under-forecast volumes. Indeed, there is some evidence that its forecasts are less than West Moreton actual volumes for periods where that information is now available.[463]

Therefore, while accepting Queensland Rail's volume forecasts would advance Queensland Rail's legitimate business interests, it would not promote efficient use of the rail network or be in the interests of access seekers and holders to accept those forecasts without the protection of the contract volume reset (s. 138(2)(a), (b), (e), (h)). The volume forecasts, including comparisons with actual volumes and our assessment of Queensland Rail's forecasts under the section 138(2) approval criteria, are discussed in more detail in Section 8.10 below.

We acknowledge Yancoal's argument that, while the proposed endorsed variation event would give access holders an incentive to contract for more capacity, it would also give Queensland Rail an incentive to frustrate and delay access negotiations in order to provide access on an ad hoc basis at the existing reference tariff.[464] However, we note that the QCA Act requires Queensland Rail to negotiate in good faith (s. 100), and that the 100 per cent take-or-pay (discussed below) gives Queensland Rail an incentive to contract.

We also note that there is potential for Queensland Rail's maintenance and operating costs to rise if coal volumes are substantially above those it has forecast. We consider, having regard to all the approval criteria in the QCA Act, including Queensland Rail's legitimate business interests, the efficient use and operation of the network, and the pricing principles (ss. 138(2)(a), (b), (g) and 168A(a)), that it is appropriate to take this potential cost increase into account when applying the volume reset.

We have therefore amended the drafting proposed in the Draft Decision in relation to the volume reset. The required drafting now explicitly provides that the review of tariffs would have regard to the possible increase in maintenance and operating costs arising from increased utilisation of the West Moreton capacity (see Schedule D, clauses 5.4(a)(ii)(C) and 5.4(g), in Appendix F of this Decision).

Volume increases for individual origins

We agree with the comments of New Hope and Yancoal that the endorsed variation event trigger should clarify that a change in volumes applies where contracts exceed forecasts for any individual origin, rather than just for the overall volumes on the West Moreton network.[465]

Therefore, for the avoidance of doubt, we have amended the drafting from the Draft Decision to specify that the trigger will apply if the number of contracted coal-carrying train services for any single origin or in aggregate is greater than the forecasts used to develop the West Moreton and Metropolitan reference tariffs (see definition of 'Endorsed Variation Event' in Appendix F of this Decision).

We have also amended the drafting to:

- provide for the endorsed variation event to apply to any contract above forecast volumes that was agreed before the approval date (see Schedule D, cl. 5.1(a)(ii)(b) in Appendix F, and discussion in Section 8.10 of this Decision); and

[463] See Section 8.10 of this Decision.
[464] Yancoal, sub. 27: 2.
[465] New Hope, sub. 22: 17–18; Yancoal, sub. 27: 3.

- require Queensland Rail to notify the QCA as soon as reasonably practicable after it has contracted coal-carrying train services on the West Moreton and Metropolitan networks (see cl. 5.4.1(c) in Appendix F).

Provisional contracting

We note Aurizon's proposal that the volume reset would work better if access seekers were able to contract on a provisional basis until access negotiations were completed.[466] We are unclear how such a measure would operate in practice. However, it would not be appropriate for provisional contracting to have the effect of reducing the tariff, without giving Queensland Rail the long-term certainty of revenue that would be provided from a finalised access contract. We do not consider that such a proposal appropriately balances the interests of Queensland Rail and access seekers and holders. Therefore, we consider that finalised, rather than provisional, contracts should trigger the volume reset.

8.5.2 Take-or-pay

Take-or-pay encourages customers to contract for capacity they are most likely to need, and provides a degree of revenue certainty to Queensland Rail. Both of these objectives are served by applying take-or-pay at 100 per cent of access charges.

However, we consider that, in providing revenue certainty to Queensland Rail, it is not reasonable for the take-or-pay regime to enable Queensland Rail to recover more than the share of network costs used to assess the reference tariff.

As New Hope said:

> *The primary purpose of take or pay is to mitigate QR's downside volume risk ... Upside earned from the collection of take or pay, which requires no particular level of performance from QR, is not appropriate, and is likely to involve double payment for the same path, once through take or pay and again through another party using that path on an ad-hoc basis.*[467]

Queensland Rail has proposed that its take-or-pay revenue not be capped—that is, it could recover more than the revenue used to assess its proposed reference tariffs, by collecting take-or-pay revenue for unused paths from one origin, while also receiving ad hoc revenue for selling the same paths for services from another origin.

Increasing revenues (as opposed to helping secure revenues) through take-or-pay may serve the legitimate business interest of Queensland Rail in receiving a degree of revenue certainty from take-or-pay provisions (s. 138(2)(b)). But it would not promote the efficient use of Queensland Rail's network, as it rewards Queensland Rail for providing paths it has already contracted to provide and been paid for, rather than for providing additional capacity (s. 138(2)(a)). Such a position is also not in the interest of access seekers and holders who would be required to pay for paths which can then be re-sold by Queensland Rail to generate revenue through ad hoc services, to the point where it is receiving extra revenue without providing extra capacity (s. 138(2)(e), (h)). Therefore, on balance, we do not consider Queensland Rail's proposal to be appropriate.

Accordingly, we require a limited take-or-pay capping mechanism to avoid over-recoveries of revenue. Queensland Rail will be able to recover sufficient take-or-pay to bring its West Moreton and Metropolitan network revenue up to coal's share of the network costs used to assess the coal reference tariff—the 'approved ceiling revenue limit'. But it will not be able to

[466] Aurizon, sub. 20: 24.
[467] New Hope, sub. 22: 18.

charge take-or-pay once its revenues have reached that level. The capping would include both take-or-pay and the revenue from payments such as relinquishment fees, as these are the outstanding future access/take-or-pay revenue paid to Queensland Rail when train service entitlements are surrendered.

The take-or-pay cap may not advance Queensland Rail's legitimate business interests, as it places some limits on Queensland Rail's ability to charge take-or-pay to increase its revenue. However, to the extent that Queensland Rail will be able to recover more than coal's share of network costs from coal services if it outperforms by delivering more than the total tonnes or paths that it has contracted to provide, we consider that it may advance Queensland Rail's legitimate business interests (s. 138(2)(b)). For the same reason, the take-or-pay cap promotes the efficient operation and use of the network (s. 138(2)(a)). It is also in the public interest and in the interests of access seekers and holders as it provides Queensland Rail with an incentive to provide capacity, without allowing for windfall gains (s. 138(2)(d), (e), (h)). Therefore, having regard to all the approval criteria in section 138(2), we consider it appropriate to require the take-or-pay cap.

The relevant revenue amount above which take-or-pay may not be levied (the approved ceiling revenue limit) is set out in the reference tariff table in Appendix A. This limit would be subject to review if tariffs were amended through the contract volume reset provisions discussed above (see Sch. D, cl. 5.4(a)(ii)(C) in Appendix F).

The approved ceiling revenue limit approach to preventing over-recovery through take-or-pay is consistent with our Draft Decision. However, Queensland Rail and other stakeholders have raised concerns about this approach.

Queensland Rail said 100 per cent take-or-pay increased its revenue protection, but that the 'downside exposure' remained for a number of reasons, including where take-or-pay was not payable during a force majeure event. It said this was not appropriate given the price cap model and would reduce its incentive to accept ad hoc services.[468]

Other stakeholders (Aurizon, New Hope, Yancoal) supported capping take-or-pay but said the take-or-pay percentage should reflect that some operating and maintenance costs could be avoided if a service did not operate.[469] Yancoal said 100 per cent take-or-pay would result in windfall gains to Queensland Rail if trains did not run.[470]

We have discussed ad hoc services, force majeure and the take-or-pay and relinquishment fee percentages in turn below. Note that the treatment of interim take or pay notices is discussed in relation to the SAAs in Appendix C.

Ad hoc services

Queensland Rail has argued that a cap on take-or-pay revenue will work against the objective of making more paths available.

> *Queensland Rail's strong incentive would be to remove the option of ad hoc railings, and require all shippers to agree to take-or-pay terms for the full (potential) demand they may require from the West Moreton Network. This would protect Queensland Rail's revenue (to the level permitted*

[468] Queensland Rail, sub. 26: 52–54.
[469] Aurizon, sub. 20: 24; New Hope, sub. 22: 18; sub. 31: 3, 16; Yancoal, sub. 27: 2.
[470] Yancoal, sub. 27: 2.

> *by the QCA), but result also in there being less available capacity to support the entry of any new users into the system.*[471]

New Hope said:

> *We note that the QCA's capping mechanism achieves a similar outcome to that which would occur if the DAU includes a flexible short term transfer mechanism (which NHC would welcome in the future) ... NHC does not agree with QR's claim that the capping of ToP creates an inappropriate 'hybrid' price cap/revenue cap approach. QR's revenue under the Draft Decision is uncapped; only ToP collections are capped in certain circumstances.*[472]

We agree with New Hope. Our mechanism does not remove Queensland Rail's ability to increase its revenue beyond the revenue used to calculate the reference tariff (i.e. the approved ceiling revenue limit) by operating ad hoc services. Rather, our proposed approach simply does not allow Queensland Rail to use take-or-pay revenue to exceed the approved ceiling revenue limit.

But while Queensland Rail would not be able to collect take-or-pay once revenues reached this limit, it could still sell all of its unused contract (and non-contract) paths to coal as ad hoc services, and keep that revenue. In other words, the incentive to provide capacity under the price cap would continue to operate, exactly as it is supposed to.

Moreover, given Queensland Rail would have sold those ad hoc paths and been paid for them, up to and beyond the approved ceiling revenue limit, its revenue downside would be removed for that year. It is not clear why Queensland Rail would remove the option of ad hoc railings in these circumstances, given that doing so would reduce its expected revenue.

Force majeure

Queensland Rail proposed in its 2015 DAU to exclude force majeure as a 'Queensland Rail Cause' for the network not being available. Our October 2015 Draft Decision proposed not to accept that change, so that force majeure would continue to be treated as a 'Queensland Rail Cause'. This meant, among other things, that take-or-pay would not be payable where Queensland Rail did not provide access after declaring force majeure.

Queensland Rail said that, as a result of this position, it would receive little downside protection from take-or-pay. It added that the QCA Draft Decision approach was not consistent with the force majeure treatment in central Queensland, both for Aurizon Network's below-rail services, and for access to DBCT's port. It said the solution was to change the standard access agreement to remove force majeure as a 'Queensland Rail Cause'.[473]

New Hope said customers should receive take-or-pay relief during force majeure events. It said that deciding whether Queensland Rail should be able to recover those amounts in the way Aurizon Network does in Central Queensland:

> *requires a consideration of the package of risks and benefits which QR receives under the proposed undertaking. We consider that the package as proposed under the Draft Decision is reasonable.*[474]

We agree with Queensland Rail that the way force majeure is treated in central Queensland is different from the QCA Draft Decision approach, both for DBCT and Aurizon Network, each of which enjoys a degree of revenue protection even when force majeure applies.

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[471] Queensland Rail, sub. 26: 53.
[472] New Hope, sub. 31: 17.
[473] Queensland Rail, sub. 26: 52.
[474] New Hope, sub. 31: 17.

By definition, most force majeure events are beyond the control or influence of either Queensland Rail or its customers.[475] Yet these events, be they flooding or some other natural disaster, have a cost that must be borne by someone. Given that Queensland Rail's revenue upside is limited, it seems appropriate that its downside exposure to events beyond its control should also be limited.

However, we do not consider it appropriate to change the contractual risk balance that has existed in the standard access agreements in relation to force majeure and take-or-pay through more than 15 years of regulation (see Section 7.4 of this Decision). In this context, we have looked to the examples in central Queensland for ways to provide Queensland Rail with a degree of revenue protection when force majeure applies.

For DBCT, the revenue protection during force majeure events is through the take-or-pay provisions, as access holders remain liable for take-or-pay when force majeure has been declared.[476] DBCT's situation is different from that of Aurizon Network and Queensland Rail because the terminal is operated by a company owned by the DBCT users, not by the infrastructure owner.[477] This means, among other things, that the operator's (as opposed to the owner's) incentive to get the terminal up and running quickly will not be distorted by strong take-or-pay.

Aurizon Network has force majeure as an 'Aurizon Network Cause', so that take-or-pay is not payable when force majeure is declared. However, its revenue protection for force majeure is through an 'unders' and 'overs' mechanism in the revenue cap provisions in its access undertaking, that provides another way of recovering the forgone take-or-pay.[478]

Given that Queensland Rail is similar to Aurizon Network, in that it both owns and operates the below-rail infrastructure, we consider that the best model for addressing the consequences of force majeure is an approach similar to the one which applies for Aurizon Network.

We therefore propose to retain force majeure as a below-rail cause in Queensland Rail's SAAs, but address the cash flow effects of force majeure through an ex post revenue and tariff adjustment. This will be implemented as a review event, where Queensland Rail can apply for an adjustment that recovers 50 per cent of its forgone take-or-pay through future tariffs, if force majeure in any financial year reduces its revenue from an origin by more than 2.5 per cent of contracted annual revenue for that origin.

We have chosen 50 per cent after considering the comments from both Queensland Rail and the customers. Given that the event will have been beyond any of the parties' control, it is reasonable that the cost to Queensland Rail in terms of forgone revenue be shared equally. The 50-50 sharing is appropriate having regard to the legitimate business interest of Queensland Rail and the interests of access seekers and access holders (s. 138(2)(b), (e), (h)).

We note that, if the damage is substantial, Queensland Rail could seek capital underwriting and/or funding from access holders or their customers, for the cost of restoring the network (see Chapter 9 of this Decision).

We accept that our approach differs from that adopted for DBCT and Aurizon Network. But our approach for Queensland Rail reflects a different package of measures, both proposed to us and

[475] While force majeure mainly covers events such as natural disasters, that are entirely beyond the parties' control, it also includes events, particularly strikes, where this is not the case.
[476] DBCT Management 2010, Schedule C.
[477] QCA 2016a, section 1.2.2.
[478] QCA 2016b, Volume III—Pricing & tariffs, section 19.5.5.

considered by us. In particular, we consider that our proposed price cap framework, coupled with 50 per cent take-or-pay recovery for force majeure events, provides incentives for Queensland Rail to expedite any repairs that are necessary to restore the network.

We also note that the definition of force majeure covers a variety of events, not all of which relate to damage to the network that would result in trains not operating.[479] We have therefore specified in the review event drafting that the take-or-pay recovery applies for a 'force majeure event which resulted in a part of the network being damaged or destroyed' (see definition of 'review event' in Appendix F).

Take-or-pay and relinquishment fee percentages

Queensland Rail's 2015 DAU proposed that West Moreton Network take-or-pay be levied at 80 per cent of access charges, which is the same as in the 2008 undertaking.

Our October 2015 Draft Decision proposed that this be increased to 100 per cent of access charges, to balance the take-or-pay capping by giving Queensland Rail more certainty about its revenue from contracted services.[480]

Aurizon, New Hope and Yancoal have argued that, as Queensland Rail can avoid costs when trains do not run, take-or-pay should be charged at less than 100 per cent of the associated access revenue.[481] Queensland Rail, on the other hand, said:

> *Take or pay is not a "windfall" to Queensland Rail. Queensland Rail plans for maintenance in each 12-month period, on the assumption that the Operator will operate 100% of contracted services. This is obviously necessary for safety and operational reasons. Maintenance costs are therefore fixed in each 12-month period.*[482]

On Aurizon Network's central Queensland rail network, take or pay is levied at 100 per cent, but only for four out of five components of the access tariff. Take or pay does not apply to the 'AT1' tariff component, which is designed to represent variable maintenance costs that can be avoided if a train service does not run. The 'AT1' component represents less than 10 per cent of overall tariff revenue in central Queensland, so take or pay covers more than 90 per cent of the access charges.[483]

Given that the West Moreton and Metropolitan tariffs are two-part prices that are not suited to the Central Queensland approach (i.e. there is no West Moreton/Metropolitan tariff component that is intended to signal short-term variable costs alone), we consider that a different compromise is appropriate.

We agree with Queensland Rail that it has only limited ability to vary planned maintenance tasks to respond to temporary fluctuations in usage. However, if capacity is unused over an extended period of time, then it is reasonable to expect Queensland Rail to adjust its maintenance planning accordingly.

We therefore adopt the 100 per cent take-or-pay proposed in the Draft Decision, but require that the lower maintenance operating and costs for unused capacity be recognised in the relinquishment fees, by making them 80 per cent of the present value of remaining future take-or-pay obligations.

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[479] Queensland Rail, 2015 DAU, definition of 'Force Majeure Event'.
[480] QCA 2015:200–201.
[481] Aurizon, sub. 20: 24; New Hope, sub. 22: 18; sub. 31: 3, 16; Yancoal, sub. 27: 2.
[482] Queensland Rail, sub. 33, Att. 5: 66.
[483] QCA, 2016b, Volume III—Pricing & tariffs and Volume IV—Maximum Allowable Revenue.

This will have the benefits of:

- encouraging access holders to relinquish unused capacity quickly, making it available for access seekers to contract (in contrast, 100 per cent relinquishment fees give some incentive to hoard capacity, as the cost will be the same as 100 per cent take or pay regardless of whether the contracted capacity is handed back or not used); and
- giving Queensland Rail an incentive to re-contract those paths, to recover the higher take-or-pay proportion.

Applying relinquishment fees at 80 per cent therefore promotes the efficient use of and investment in the rail network, and may advance the legitimate business interest of Queensland Rail (s. 138(2)(a), (b)). It is also in the interest of access seekers and access holders (s. 138(2)(e), (h).

8.5.3 Balanced proposal

We have developed a form of regulation and pricing structure, including a take-or-pay regime that, among other things, promotes economic efficiency and the public interest, and provides incentives for investment. In doing so, it allocates risks to the parties best able to manage them.

Queensland Rail has argued that the QCA's approach is like a revenue cap, in that it restricts above-forecast revenues, yet exposes Queensland Rail to downside risk.[484] Queensland Rail said:

> *While Queensland Rail theoretically receives some increase in revenue protection due to take or pay , in actuality the benefit is negligible—given the gap between forecast demand and the level of contracted demand for which take or pay applies, Queensland Rail's "losses" from a reduction in ad hoc demand would far outweigh any incremental value offered by the increase in take-or-pay from 80% to 100%.*[485]

It also said:

> *Where demand falls short of Queensland Rail's forecast, then the business' revenue will be reduced. However, where demand is higher, Queensland Rail will need to adjust Reference Tariffs and/or cap the application of take-or-pay. Given any probability of distribution around demand, this means that Queensland Rail's expected revenue must be less than that determined as efficient by the QCA.*[486]

Other stakeholders favoured the QCA approach. New Hope said:

> *[T]he form of regulation and the ancillary arrangements proposed in the Draft Decision provide a reasonable balance and a fair allocation of risks.*[487]

The evidence from Queensland Rail's revenues over recent years is that the combination of a price cap and take-or-pay has served Queensland Rail well. The data provided by Queensland Rail for the 2009–13 undertaking period shows that Queensland Rail's revenue was at or close to the revenue stream modelled by the QCA in three of those years. In the fourth year (2010–11), flood damage after extreme weather shut the range crossing for several months.[488]

Importantly, if the QCA's approved ceiling revenue limit approach had been applied during that period, it would not have restricted Queensland Rail's revenue in any of the four years. Further,

[484] Queensland Rail, sub. 26: 36–37; 50–54.
[485] Queensland Rail, sub. 33: 37.
[486] Queensland Rail, sub. 26: 54.
[487] New Hope, sub. 31: 15.
[488] Queensland Rail, sub. 26: 51, Figure 1.

the take-or-pay approach we propose for force majeure events would have allowed Queensland Rail to recover half of the take-or-pay revenue forgone during the 2011 floods that closed the Toowoomba Range crossing, if it had been in place.

Queensland Rail is also wrong to assert that, given the probable range of demand outcomes, the QCA's volume reset and take-or-pay approach means its expected revenue will be less than that determined as efficient.[489] The fact that the forecast volumes include some ad hoc paths leaves Queensland Rail exposed to some fluctuations in demand—both upwards and downwards. However, in the circumstances where the contract volume endorsed variation event is triggered, Queensland Rail will have contracted volumes for at least as much as its forecast volumes, and will therefore not depend on ad hoc services to achieve its forecasts. For example, if Queensland Rail contracted 10 more paths, and its contracted volumes rose to 63 paths, it would no longer be exposed to downwards fluctuations below 63 paths.[490] So, by definition, Queensland Rail's exposure to downwards fluctuations will have been removed where the contract volume reset is applied.

We therefore consider that the combination of a contract volume reset with take-or-pay protection provides an effective balance of all parties' interests. Key features of the approach include:

- exposing Queensland Rail to volume risk to the extent that actual volumes are less than its forecasts, while providing Queensland Rail with an increasing share of take-or-pay protection when contracted volumes are greater than forecasts;
- providing Queensland Rail with an incentive to sell ad hoc paths above the 80-path contracting limit, as this will not reduce its price and will increase its revenue;
- enabling access holders to use capacity on an ad hoc basis above the 80-path limit, while paying a cost per path that represents an efficient share of fixed costs;
- providing 100 per cent take-or-pay to Queensland Rail to promote revenue certainty and drive access seekers and holders to contract only for the amount of capacity that they expect to use;
- protecting Queensland Rail by providing for 50 per cent of take or pay forgone during a force majeure event to be recovered from access holders if services are restored;
- providing incentives for users to contract capacity as, to the extent the contracted volumes are greater than those forecast to develop reference tariffs, the variation approach results in a lower approved reference tariff;
- mitigating incentives for access holders and access seekers to use ad hoc services in preference to contracting capacity;
- encouraging users to relinquish, rather than hoard, unused capacity by applying relinquishment fees at 80 per cent of the present value of remaining future take-or-pay obligations; and
- protecting Queensland Rail by adjusting the approved ceiling revenue limit, if necessary, to reflect amendments to the reference tariffs through the contract volume reset process.

[489] Queensland Rail, sub. 26: 54.

[490] Queensland Rail's forecast volume is actually 62.8 weekly paths, although we have used 63 paths for presentational purposes. So the contract volume reset would apply for 63 or more contracted paths.

The volume trigger may not advance Queensland Rail's legitimate business interest, as it will reduce the reference tariff if contracted volumes from an origin or in aggregate increase above Queensland Rail's forecasts. However, having regard to Queensland Rail's legitimate business interests, the trigger only applies to contracted capacity (i.e. it does not apply to ad hoc paths), and it provides an incentive for access seekers to contract capacity (s. 138(2)(b)).

At the same time, the trigger is in the interests of access seekers/holders, as they benefit when contracting access rights above forecast volumes by means of lower prices (s. 138(2)(e), (h)). It also promotes efficient use of capacity (s. 138(2)(a)). Therefore, having regard to all the approval criteria in section 138(2), we consider it appropriate to require the volume trigger.

The take-or-pay cap may not advance Queensland Rail's legitimate business interests, as it places some limits on Queensland Rail's ability to charge take-or-pay to increase its revenue. (s. 138(2)(b). However, to the extent that Queensland Rail will be able to recover more than coal's share of network costs from coal services if it outperforms by delivering more than the total tonnes or paths that it has contracted to provide we consider that it may advance Queensland Rail's legitimate business interests (s. 138(2)(b)). For the same reason, the take-or-pay cap promotes the efficient operation and use of the network (s. 138(2)(a)). It is also in the public interest and in the interests of access seekers and holders as it provides Queensland Rail with an incentive to provide capacity, without allowing for windfall gains (s. 138(2)(d), (e), (h)). Therefore, having regard to all the approval criteria in section 138(2), we consider it appropriate to require the take-or-pay cap.

The overall take-or-pay and volume trigger approach may not advance Queensland Rail's legitimate business interest as it places some limits on what Queensland Rail may charge access holders (s. 138(2)(b)). However, it supports efficient use of the network by encouraging access seekers and Queensland Rail to sign contracts (s. 138(2)(a)). It also advances the interests of access seekers and holders as they will benefit from lower prices when they contract for access rights above forecast volumes and from Queensland Rail's incentive to provide capacity without allowing for windfall gains (s. 138(2)(e), (h)). Therefore, having regard to all the approval criteria in section 138(2), we consider it appropriate to require that Queensland Rail's tariff regime include the take-or-pay and volume trigger mechanisms.

Summary 8.5

The form of regulation and take-or pay-approach in the 2015 DAU must provide as follows:

(a) **An endorsed variation event be included for the reference tariff to be adjusted if contracted train services, the description of which accords with the reference train service, exceed the forecasts used to develop reference tariffs for any origin-destination pair or in aggregate, including having regard to possible increases in operating and maintenance costs.**

See the definition of 'endorsed variation event' and Schedule D, clause 5.4(a)(ii)(C) in Appendix F.

(b) **The endorsed variation event also apply to any contract for above-forecast volumes that is agreed before the approval date.**

See Schedule D, clause 5.1(a)(ii)(b) in Appendix F.

(c) **Queensland Rail is required to notify the QCA as soon as reasonably practicable after it has contracted coal train services on the West Moreton or Metropolitan networks.**

See clause 5.4.1(c) in Appendix F.

(d) **Queensland Rail will be able to recover take-or-pay sufficient to bring its West Moreton Network and Metropolitan network revenue from contracted train services, the description of which accords with the reference train service, (including access charges, take-or-pay and the revenue from payments such as relinquishment fees, but not including that portion of access charges that relate to a difference in cost or risk) up to the approved ceiling revenue limit (i.e. coal's share of the network costs used to assess the coal reference tariff), and be able to retain ad hoc revenues above that level.**

See clause 3.2.2, the definition of 'approved ceiling revenue limit' and Schedule D, clause 4(c), (d)(vi), (d)(vii), (e), (f), (g) and (h) in Appendix F.

(e) **Take-or-pay will be applied at 100 per cent for train services the description of which accords with the reference train service.**

See Schedule D, clause 4(d) in Appendix F and Schedule 3, clause 4.1 in Appendix G.

(f) **Force majeure will be retained as a Queensland Rail cause in the SAAs insofar as the event relates to Queensland Rail's network, but Queensland Rail will be able to recover 50 per cent of the forgone take-or-pay through a review event if track damaged or destroyed by a force majeure event is restored such that access holders can recommence their train services.**

See the definition of 'review event' and 'Queensland Rail cause' and Schedule D, clause 5.4(a)(iii)(B) in Appendix F.

(g) **Relinquishment fees will be set at 80 per cent of the present value of remaining future take-or-pay obligations.**

See the definition of 'relinquishment fee' in Appendix G.

8.5.4 Tariff structure

The structure of West Moreton coal reference tariffs has varied over time. The first approved reference tariff was a single charge, levied based on weight and distance (i.e. per thousand gtk),

that applied from July 2005 to June 2009. Since July 2009, a two-part tariff has applied, with a charge per thousand gtk and an additional train-path tariff component.

Our Draft Decision proposed to accept Queensland Rail's proposal for a two-part tariff.

New Hope said in its December 2015 submission that recovering half of the tariff through a train path charge gave a 'strong discount, in terms of cost per gtk, to the Cameby Downs mine'. New Hope said it was not seeking to alter the tariff structure at this time, but it was important for the QCA to confirm that the proposed reference tariffs complied with the pricing limits in the undertaking, such that there was no cross-subsidy.[491]

We note that a cross-subsidy requires that one access holder pay less than its incremental costs. We have assessed whether the Cameby Downs tariff covers the incremental cost of providing services from that origin, and confirm that this is the case. The assessment is discussed below in Section 8.17, on the QCA's required reference tariff.

As no stakeholder has opposed the two-part tariff, and we have assessed that it complies with the pricing limits, we have adopted the Draft Decision approach, and approved Queensland Rail's proposed tariff structure. We consider this appropriate having regard to all the criteria in section 138(2). The tariff structure is discussed in greater detail in Section 8.9.2 of our Draft Decision.

8.6 Metropolitan network tariff approach

Surat Basin coal trains travel through the Metropolitan network for more than one-quarter of their journey from mine to port. They follow a complicated route that uses portions of several of the Brisbane commuter rail lines, as well as some sections of track that are largely or entirely dedicated to freight traffic.

The 2009–13 tariffs approved for QR Network applied the West Moreton network tariff across the Metropolitan network—that is, the same tariff calculated for the sections west of Rosewood was applied to the track east from Rosewood to the port. This avoided the complicated and potentially inconclusive task of determining specific costs and asset values for the metropolitan section. The tariff included an allowance for incremental capital spending for freight services on the Metropolitan network, but there was no separate Metropolitan component of the AT2 train path charge.[492] The 2009 Draft Decision approach also had the effect of double-counting the asset return, as the west of Rosewood tariff applied as a proxy for the Metropolitan tariff included capital investments from the same period covered by the Metropolitan incremental capital spending.

Queensland Rail said in the material accompanying the 2015 DAU that it would continue the approach of applying a tariff developed for the West Moreton network to the Metropolitan network.

It said it would also recover 'incremental capacity expansion capex' on the Metropolitan network through a charge added to the AT2-path-based tariff component, adding:

> *While this results in a small increase in the total reference tariff, it also enables the payment of rebates to mining companies in relation to user funded capex within the Metropolitan Network.*

[491] New Hope, sub. 22: 19.
[492] See QCA, 2009a: 92–93.

This is consistent with the approach recommended by the QCA in its Draft Decision on the 2013 DAU.[493]

Our October 2015 Draft Decision proposed to accept Queensland Rail's overall approach of extending the tariff developed for the West Moreton network to apply for the Metropolitan network. We also proposed to accept the principle of having a Metropolitan incremental capacity charge as it provided incentives for efficient future investment.[494]

However, we proposed rejecting Queensland Rail's proposed treatment of incremental investment on the West Moreton network, where it was applied across the Metropolitan network. We said Queensland Rail's proposal to escalate the tariff at the approval date, and also charge access holders the Metropolitan incremental capacity charge for investments dating back to 2002, would result in double-counting of returns for the period between 2002 and the approval date.

Accordingly, the QCA proposed to set the metropolitan tariff so that it gave Queensland Rail an incentive to make efficient investments in the Metropolitan network by:

(a) maintaining a RAB for investments made since 2002 and into the future to support coal and freight traffic in the metropolitan system (the incremental RAB) and using it to derive an annual revenue requirement; and

(b) adjusting the West Moreton network asset base used for deriving the Metropolitan network tariff to exclude incremental capital investment from 2002 onwards, then increasing the resulting Metropolitan tariff annually by CPI.

Stakeholders' submissions

Queensland Rail said the QCA's proposal to use the West Moreton asset base only up to 2002 for deriving the Metropolitan tariff was a 'dramatic move away' from the QCA's past practice. Queensland Rail proposed to resolve double-counting issues by removing the Metropolitan incremental RAB.[495] New Hope and Yancoal supported the QCA's Draft Decision approach.[496] New Hope also said the QCA should be clear about what would happen for future undertakings.[497]

QCA analysis and Decision

The QCA requires Queensland Rail to extend the West Moreton network tariff so that it applies to coal services as they cross through the Metropolitan network, and to apply a separate Metropolitan incremental capacity charge to recover coal-specific investment and a share of relevant freight-specific investment on the network after 1 July 2013.

Much of our Decision on the Metropolitan tariff has adopted the positions in our October 2015 Draft Decision. That said, we have reviewed our Metropolitan network tariff framework and made changes where necessary in light of a reconsideration of Queensland Rail's 2015 DAU and stakeholder submissions. As such, this Decision also relies on and incorporates our analysis in section 8.9.3 of our Draft Decision, unless revised in this section.

Given the complexity of the issues, this analysis:

[493] Queensland Rail, sub. 2: 5.
[494] See explanation in QCA 2014b: 38–40.
[495] Queensland Rail, sub. 26: 46–47; sub. 33: 38–39.
[496] New Hope, sub. 22: 19; sub. 31: 18–19; Yancoal, sub. 35: 3.
[497] New Hope, sub. 22: 19–20.

- considers the overall Metropolitan network tariff approach and sets out the QCA's required approach to extending the West Moreton tariff;
- considers incentives and the treatment of the incremental RAB and capacity charge; and
- provides some more general comments on the Metropolitan tariff approach.

8.6.1 Overall Metropolitan network tariff approach

Applying the West Moreton network tariff across the Metropolitan network through a proxy approach is a reasonable methodology for determining how much coal trains should contribute to the common costs of providing Metropolitan below-rail services.

The proxy approach means that the coal contribution is based on costs assessed on a network where the specific costs that apply to coal services are easier to identify. This promotes the efficient use of the network, and is in the interests of Queensland Rail, access holders and access seekers (s. 138(2)(a), (b), (e), (h)).

Queensland Rail proposed in its 2015 DAU to apply the same tariff derived for the West Moreton network for access to the Metropolitan network. It also proposed a separate train path charge to recover its investment in coal- and freight-specific infrastructure in the Metropolitan network since 2002.

As we said in our October 2015 Draft Decision, the proposal to recover Metropolitan capital expenditure since 2002, and also use a tariff extended from the West Moreton network that includes capital expenditure over the same period, leads to double-counting.

Queensland Rail's proposal does not promote efficient investment in the rail network as it provides for double-counting of the capital expenditure since 2002 on the West Moreton and Metropolitan networks (s. 138(2)(a)) For similar reasons, and because it would provide a return on investment that exceeded the regulatory and commercial risks of providing access, it is not in the public interest and does not advance the interests of access holders and access seekers (s. 138(2)(d), (e) and (h)).

So, while such a proposal may advance the legitimate business interest of Queensland Rail (s. 138(2)(b)), having regard to all the approval criteria, we do not consider it appropriate to approve Queensland Rail's proposal to both escalate the Metropolitan tariff that applies at the approval date, and apply a Metropolitan incremental capacity charge for investments dating back to 2002.

Queensland Rail, in responding to our Draft Decision, said the QCA's 2014 Consultation Paper and Draft Decision were in favour of 'effectively using the West Moreton tariff as a "proxy" for the Metropolitan tariff'.[498] It said the QCA's 2015 Draft Decision approach meant 'the Metropolitan Network tariff will no longer bear any real resemblance to a verified efficient cost structure for providing West Moreton coal services'.[499] Queensland Rail said:

> *The purpose of using the West Moreton Network as a proxy for the Metropolitan Network was to avoid the difficulties in determining a reference tariff that is based on a more accurate building block approach. This will result in swings and roundabouts in terms of individual elements. As such, it is not appropriate to cherry pick individual items in the way the QCA has sought to do, and which, for example, did not include renewal capital.*[500]

[498] Queensland Rail, sub. 33: 38.
[499] Queensland Rail, sub. 26: 46.
[500] Queensland Rail, sub. 26: 47.

Queensland Rail said the asset renewal costs on the West Moreton network since 2002 had been used to improve the asset quality on the network to allow the continued operation of coal services.[501] It said that the effect of the QCA's October 2015 Draft Decision proposal was to 'strip out' $301.8 million of capital expenditure between 2002 and 2020 on the West Moreton network, to address $21.7 million of Metropolitan capital expenditure over the same period.[502]

It proposed that, instead of removing the West Moreton assets since 2002 in deriving the Metropolitan network tariff, it would 'remove' the Metropolitan network incremental RAB and 'retain the other elements of the 2014 Draft Decision requirements'.[503]

New Hope said both the QCA's Draft Decision approach and Queensland Rail's revised approach had the potential to resolve the double-counting issue. It questioned Queensland Rail's statements that the QCA approach failed to recognise the work done to improve the standard of the West Moreton network since 2002. New Hope said it had 'seen no evidence of substantial reductions in QR's future maintenance costs arising from the claimed improvement in asset condition'[504].

New Hope said that if the QCA agreed with Queensland Rail that the 2015 Draft Decision proxy approach reflected the lower maintenance cost that came from renewing assets, while excluding the cost of renewing those assets, the solution was to include an 'appropriate proportion of the renewals cost within the proxy' costs from West Moreton that were applied for reference tariffs across the Metropolitan network.[505]

We are of the view that using forward-looking efficient costs and an appropriate allocation of sunk costs determined for the West Moreton Network as a proxy for forward-looking efficient costs of providing below rail services for coal traffic on the Metropolitan network is appropriate, having regard to the approval criteria in the QCA Act (s. 138(2), including paragraphs (a), (b), (e) and (h)).

The proxy methodology means that the coal contribution to common costs on the Metropolitan network is based on costs assessed on a network where the specific costs that apply to coal services are easier to identify and assess (i.e. the West Moreton network). This is because, among other things, the West Moreton costs reflect coal's share of fixed costs and a share of the wear and tear (i.e. variable costs) that the coal trains originating in the West Moreton network impose on rail infrastructure (see Sections 8.11 and 8.17).

Coal trains traverse portions of a variety of different lines within the Metropolitan network as they move through the network, so identifying and allocating the relevant costs in an efficient and representative way would involve a large number of subjective judgements, that would be unlikely to result in a transparent and appropriate outcome. As Queensland Rail said in the submission accompanying its June 2013 DAU:

> *Assessing a cost for coal-carrying train services for this section of track would be a sizeable task requiring a valuation, optimisation (in relation to track quality) and allocation (in relation to track type). … Subsequent optimisation and allocation processes … would be complex and difficult to carry out.*[506]

[501] Queensland Rail, sub. 26: 46.
[502] Queensland Rail, sub. 33: 39.
[503] Queensland Rail, sub. 26: 47.
[504] New Hope, sub. 31: 18–19.
[505] New Hope, sub. 31: 19.
[506] Queensland Rail, 2013a: 7.

In contrast, the proxy approach means the coal trains travelling through the Metropolitan network are making a contribution to common costs as they are covering more than the incremental cost of using a network that carries similar traffic, over similar terrain, in a similar climate (i.e. the West Moreton network).[507]

The proxy approach may impact negatively on Queensland Rail's legitimate business interests as it involves a degree of estimation of efficient costs, so the amount that Queensland Rail is permitted to recover may be less than what those costs are (s. 138(2)(b)). Equally, the estimation may be contrary to the interests of access holders and access seekers if the amount Queensland Rail is permitted to recover is higher than those costs (s. 138(2)(e) and (h)).

However, we note that Queensland Rail continues to favour the proxy methodology, as do New Hope and Yancoal.[508] We infer from this that the parties consider that, on balance, the proxy approach better serves their interests than the alternative approaches that might be used. Therefore, we consider that using the tariff derived from efficient West Moreton costs to apply when the trains that have an origin in the West Moreton network traverse the Metropolitan network is appropriate, having regard to all the criteria in section 138(2).

We have had regard to the 2015 DAU and various submissions, including those in response to our October 2015 Draft Decision, in considering the best approach to applying the West Moreton tariff as a 'proxy' for the Metropolitan tariff, while avoiding double-counting of capital expenditure across the two networks.

We note Queensland Rail's submission that the West Moreton tariff that is used as a proxy for Metropolitan costs (i.e. instead of separately deriving a tariff from costs assessed for the Metropolitan network) should bear a 'resemblance to a verified efficient cost structure'.[509] And we consider that the West Moreton building blocks discussed elsewhere in this chapter, including the maintenance and asset value, achieve that goal (see Sections 8.11 and 8.17).

As such, the tariff derived from those building blocks also provides an appropriate representation of asset value and other costs in determining a contribution to common costs for West Moreton coal trains traversing the Metropolitan network.

Therefore, we require that Queensland Rail extend the West Moreton network tariff that would have applied in relation to the period from 1 July 2013 (see Section 8.20 of this Decision), and apply it for the Metropolitan network as well. This is consistent with our October 2014 Draft Decision.

8.6.2 Incentives and Metropolitan incremental capacity charge

We consider that, when using the West Moreton tariff as a proxy, it is also desirable to provide Queensland Rail with an incentive to make efficient investments in the Metropolitan network that support West Moreton coal services. However, we seek to avoid double-counting of the returns on those Metropolitan investments.

Our October 2015 Draft Decision proposed to achieve this by including the Metropolitan incremental capacity charge for assets dating back to 2002, and calculating the tariff that would be 'extended' across the Metropolitan network with an asset base that excluded West Moreton assets built since 2002.

[507] See QCA 2009a: 92–93.
[508] Queensland Rail, sub. 26: 47; New Hope, sub. 31: 18; Yancoal, sub. 35: 3.
[509] Queensland Rail, sub. 26: 46.

Queensland Rail, in its December 2015 submission, has proposed an alternative way to avoid double-counting—by extending the West Moreton tariff without adjusting the asset base, but not applying the Metropolitan incremental capacity charge for investments dating back to 2002.[510]

We acknowledge the proposal by Queensland Rail in its December 2015 submission achieves the objective of avoiding double-counting. However, we note that removing the Metropolitan incremental capacity charge entirely would also reduce Queensland Rail's incentive to make efficient investments for coal and freight services in the Metropolitan network, as opposed to the West Moreton network.

Omitting the incremental capacity charge would not promote efficient investment in the infrastructure required to provide below-rail access to coal trains as they cross the Metropolitan network or be in the public interest or the interests of access seekers and holders (s. 138(2)(a), (d), (e), (h)).

We require that Queensland Rail apply a Metropolitan incremental capacity charge to recover efficient investments made on the Metropolitan network to serve coal and freight traffic after 1 July 2013. This promotes efficient investment in the infrastructure required to provide below-rail access to coal trains as they cross the Metropolitan network (s.138(2)(a). The incremental capacity charge may advance the legitimate business interest of Queensland Rail as it receives a return on the necessary investment and it may be in the interest of access seekers and access holders because Queensland Rail has an incentive to make those efficient investments (s. 138(2)(b), (e), (h)).

We note that, while the metropolitan investments since 2002 will not explicitly be covered by a separate tariff component, they are covered by the extended West Moreton tariff, that includes incremental investments since 2002. We therefore consider that Queensland Rail will be receiving revenue from the Metropolitan tariff that should be used to pay rebates on assets covered by capital underwriting through access facilitation deeds.

Our Decision is that using a proxy is an appropriate methodology for providing Queensland Rail with its efficient costs of operating coal services on the Metropolitan network, and a return on investment consistent with the regulatory and commercial risks of providing access (ss. 138(2)(b) and (g) and 168A(a)). The proxy methodology means that the coal contribution to common costs on the Metropolitan network is based on costs assessed on a network where the specific costs that apply to coal services are easier to identify and assess. For the same reasons, the extension or proxy methodology is in the interests of access seekers, access holders and their customers (s. 138(2)(e) and (h)).

The Metropolitan incremental capacity charge from 1 July 2013 provides Queensland Rail with a return on investment commensurate with the regulatory and commercial risks of providing access and promotes the economically efficient investment in infrastructure by which services are provided (ss. 138(2)(a), (b) and (g), 69E and 168A(a)). It is also in the public interest and in the interest of access seekers and access holders, given it provides Queensland Rail with an incentive to make efficient investments in rail infrastructure (s. 138(2)(d), (e), (h)).

8.6.3 General observations

The Metropolitan tariff will apply for the term of the undertaking. However, we also seek to give some guidance on the QCA's approach to the Metropolitan tariff more generally. What is

[510] Queensland Rail, sub. 26: 47.

said below does not predetermine our decision on any future DAU. Any such DAU will need to be (and will be) considered in accordance with the requirements of the QCA Act at the time it is submitted. However, a relevant matter for the purposes of our Decision is its impact on certainty. We consider that the following comments provide appropriate general guidance in that regard.

New Hope said that the Draft Decision was unclear on whether the QCA proposed in future undertakings to escalate the Metropolitan tariff derived for the 2015 DAU regulatory period, or use a cost-based assessment. New Hope said it preferred for the QCA:

> *to re-calculate this portion of the Metropolitan revenue requirement at each regulatory reset, so that this portion reflects the capital charges (excluding post 2002 assets), operating costs and maintenance of the West Moreton network, updated based on the assessment of costs for the next undertaking period.*[511]

We envisage that a proxy methodology will continue to be appropriate, having regard to section 138(2), for deriving the Metropolitan tariff. Further, we acknowledge the broad support for the proxy or extension methodology and we anticipate it will continue to apply. As Queensland Rail said in its March 2016 submission, a proxy 'reflects an efficient and reasonable approach, particularly given the challenges in separately building up the cost structure for the Metropolitan Network'.[512]

We note that our required amendments to the undertaking include tariff reviews if the reference train configuration changes, the contracted volumes change substantially, or the proportion of paths available for coal to contract changes. The resulting reviews would all include consideration of any required changes to the Metropolitan tariff.

Summary 8.6

The Metropolitan network tariff approach in the 2015 DAU must provide as follows:

- **(a) The West Moreton network tariff is extended so that it applies to coal services as they cross through the Metropolitan network.**
- **(b) A separate Metropolitan incremental capacity charge is applied to recover coal-specific investment and a share of relevant freight-specific investment on the network after 1 July 2013, but not before.**

See Schedule D, clause 1.2 (deleted) in 2015 DAU and Schedule D, clauses 1.1 and 3.1(e) in Appendix F.

8.7 Productivity, innovation and incentives

The QCA Act provides that an access price should, among other things, 'provide incentives to reduce costs or otherwise improve productivity' (s. 168A(d)).

Our Draft Decision had regard to incentives to reduce costs and improve productivity. However, the discussion in the Draft Decision document focused more on incentives for efficient operation of, use of, and investment in, capacity.

[511] New Hope, sub. 22: 19–20.
[512] Queensland Rail, sub. 33: 38.

Stakeholders' submissions

Aurizon said the Draft Decision did not provide sufficient incentives for operational efficiencies, particularly where those efficiencies resulted in a reduced number of train services entitlements to deliver the same volumes.[513]

QCA analysis and Decision

The QCA requires Queensland Rail to include a review event in the 2015 DAU to provide for a reference tariff to be varied if a productivity improvement changes the amount of capacity that is used for a given haulage task.

It is not the QCA's role to prescribe train configurations or any other productivity improvements. Rather, we seek to create a regulatory framework that enables access seekers and holders, their customers, and Queensland Rail, to work together to find ways to improve the operation of the rail network.

Aurizon said it was exploring alternatives to existing operations, including longer trains and different configurations, that might 'benefit all parts of the relevant supply chain, in particular through the freeing up of capacity within existing systems'.[514] However:

> *the Draft Decision has the effect of creating significant financial disincentives in terms of rail operators pursuing productivity improvements. This is because under the proposed access undertaking, Queensland Rail is not required to participate with rail operators in negotiating fair pricing and capacity outcomes for these improvements. Aurizon Operations believes this is a fundamental flaw in the framework adopted in the proposed access undertaking and strongly recommends that appropriate changes be made to ensure that improvements in the utilisation of capacity, and not just paths, [are] incentivised.*[515]

We accept that Queensland Rail's undertaking, including any reference tariffs, should provide a framework that encourages innovations that increase productivity.

We are aware that the two-part West Moreton reference tariff structure proposed in our October 2015 Draft Decision would reduce Queensland Rail's revenue for a given annual haulage task, if train configurations were changed to carry more coal per train path (e.g. longer trains).

We note that the reference tariff applies to the train services whose description accords with the reference train service, including characteristics such as length, weight and sectional running times (see Schedule D, cl. 3.1 in the 2015 DAU). Therefore, the DAU implicitly provides for the tariff paid by access holders to differ from the reference tariff to reflect changes in cost or risk arising from operating a train with different characteristics (see Section 3.3 of this Decision).

However, a broad 'variation for cost or risk' provision does not provide the certainty to Queensland Rail, access seekers, access holders and their customers that a reference tariff for the new configuration would offer. We therefore propose that the undertaking include a review event for an altered or additional reference tariff that would apply where an innovation was introduced—by either Queensland Rail or its customers—that improved productivity or efficiency.

[513] Aurizon, sub. 20: 32–34.
[514] Aurizon, sub. 20: 32.
[515] Aurizon, sub. 20: 33.

Such a review event would provide for efficient investment in and use of rail infrastructure, provide incentives to reduce costs, or otherwise improve productivity and serve the public interest in better operation of the supply chain and development of coal mines and other investments (ss. 138(2)(a), (d), (g) and 168A(d)). Running the network more efficiently and productively would also advance Queensland Rail's legitimate business interest, and would be in the interest of access seekers, access holders and their customers (s. 138(2)(b), (e), (h)). We therefore consider it appropriate to include a productivity review event having regard to all the criteria in section 138(2).

The QCA will consider any application under this review event provision on its merits, and does not seek to pre-judge the outcome of the QCA's future deliberations.

The best approach, consistent with the negotiate-arbitrate model, is for the new tariff structure to be worked out by Queensland Rail and its customers before it is submitted for approval.

We note that whether or not the tariff approach is agreed between the parties when submitted, a key objective of the QCA in assessing the proposal will likely be to give all parties an incentive to reduce costs or otherwise improve productivity, consistent with section 168A(d) of the QCA Act.

In doing so, we may consider whether any amendment to the undertaking created 'win–win' outcomes for both Queensland Rail and access seekers/holders, namely by having regard to matters including whether:

- the train operators and their customers were able to benefit from their proposed innovation through reduced overall unit costs of rail transport (i.e. including both above- and below-rail charges); and
- Queensland Rail's revenue from providing access was at least protected and preferably increased during the term of the undertaking in place at the time, and potentially beyond that period.

A 'win–win' approach would balance the interests of Queensland Rail and its customers, while providing for efficient operation of, use of and investment in the rail network. It would also benefit competition on the basis of innovation, which is one of the strongest drivers of productivity.

Summary 8.7

The 2015 DAU must provide for incentives to improve productivity by including a review event that provides for Queensland Rail to propose a variation to the reference train service and reference tariff (or propose a new reference train service or reference tariff) to accommodate productivity or efficiency improvements to Queensland Rail's below-rail services or access seekers' or access holders' above-rail services.

See definition of 'review event' in Appendix F.

8.8 Variation of reference tariffs

The 2008 undertaking provided for reference tariffs to be varied during the term of the undertaking for a variety of reasons, including changes to laws and changes to contracted services on particular track sections, through endorsed variation events and review events.[516]

Queensland Rail's 2015 DAU included an endorsed variation event to provide for a change in law and review event provisions to provide for a material change in circumstances. It included a process for Queensland Rail to submit proposed changes to the QCA, and for the QCA to consider those changes. It specified that the QCA may approve the changes if it is satisfied that, among other things, they are consistent with the undertaking.[517]

Our Draft Decision left the provisions for varying reference tariffs (in respect of endorsed variation events and review events) in the 2015 DAU largely unchanged, apart from amendments related to the contract volume reset and take or pay provisions (see section 8.9 of the Draft Decision).

QCA analysis and Decision

The QCA requires Queensland Rail to amend the process for varying reference tariffs in relation to review events to explicitly state that, in considering such proposed variations, the QCA will have regard to the approval criteria in section 138(2) of the QCA Act.

QCA considers this appropriate because the provisions relating to review events can potentially give rise to wide range of possible tariff adjustments. Given that such variations provisions are to be included in an undertaking which QCA can only approve if it considers it appropriate to do so having regard to the matters in section 138(2), it is appropriate that the power to approve such variations also be conditioned by reference to the matters in section 138(2).

Omission of a provision that permits the QCA to have regard to the matters in section 138(2) would risk setting an inappropriately narrow scope of matters that QCA could take into account in that process. It would have the potential to prejudice the efficient use of and investment in rail infrastructure; the interests of Queensland Rail, its access seekers and holders, and their customers; and the public interest.

The variation process for review events gives Queensland Rail an ability to seek variations that is not dissimilar from its ability to submit a voluntary DAAU under section 142 of the QCA Act. The QCA could only approve such a voluntary DAAU if it considered it appropriate to do so, having regard to the matters in section 138(2) (see s. 143). This further supports our view that the process for varying reference tariffs in relation to review events should provide for the QCA to have regard to the matters in section 138(2).

The 2015 DAU also contains a provision which permits Queensland Rail to seek a variation which will promote efficient investment in the coal supply chain in the West Moreton or Metropolitan network. The above considerations also apply to that provision, and accordingly we also consider it appropriate that the QCA have regard to the matters in section 138(2) when considering variations which are said to promote efficient investment in the coal supply chain in the West Moreton or Metropolitan network.

[516] See Schedule F, Part A, cl. 2.2 and definitions of 'Endorsed Variation Event' and 'Review Event' in the 2008 undertaking.
[517] See Schedule D, cl. 6 and definitions of 'Endorsed Variation Event' and 'Review Event' in the 2015 DAU.

We note that there are other provisions in our amended version of Queensland Rail's 2015 DAU which provide for amendments to reference tariffs to be made without requiring QCA to have regard to the matters in section 138(2)—namely, variations in relation to an endorsed variation event. We consider this difference in approach to be appropriate because of the more restricted nature of variations that can result from an endorsed variation event. That is, the amended 2015 DAU itself specifies a method for determining the tariff amendments to be made upon the happening of an endorsed variation event (which method we have already determined to be appropriate having regard to the matters in section 138(2)), whereas review events involve a much broader scope of possible outcomes.

Summary 8.8

The mechanism for varying reference tariffs in the 2015 DAU must provide that, in the process of deciding whether to approve a variation in a reference tariff through a review event, or an application to promote efficient investment under Schedule D, clause 5.1(a)(i), the QCA will have regard to the QCA Act, including the approval criteria in section 138(2).

See Schedule D, clauses 5.4(a)(i) and 5.4(a)(iii)(A) in Appendix F.

8.9 Capital expenditure assessment process (Schedule E)

The 2008 undertaking provided detailed criteria for the QCA to assess whether a capital expenditure project was prudent, and the project should therefore be included in the RAB.[518] Our 2014 Draft Decision proposed a similar capital expenditure assessment process.[519]

Queensland Rail's 2015 DAU included a capital expenditure assessment process (Schedule E) that was in many respects consistent with the process we had set out in our 2014 Draft Decision.[520] The DAU provided for Queensland Rail to submit capital expenditure projects to the QCA for acceptance into the RAB, and for the QCA to assess those projects based on whether their scope, standard and cost were prudent.

Our October 2015 Draft Decision proposed to accept most of Queensland Rail's proposal. However, we proposed requiring changes including that Queensland Rail consult with access holders affected by a capital project and maintain a separate RAB for the Jondaryan to Macalister section of the West Moreton network. We also proposed that Schedule E not prescribe a DORC asset valuation methodology, enable an access funder to seek a prudency assessment, and provide for the possibility of actual bypass as a basis for optimising assets.

Stakeholders' submissions

Queensland Rail said it was 'generally satisfied' with the capital expenditure assessment approach in the Draft Decision, but raised concerns about some proposed changes.[521] New Hope supported the QCA's proposed amendments to Schedule E.[522]

[518] Queensland Rail, 2008 undertaking, Schedule FB.
[519] QCA, 2014 October, 2013 DAU Draft Decision, pp. 126–128.
[520] The 2014 Draft Decision capex process was based on Schedule A of the QR Network 2010 undertaking which, in turn, carried over substantial parts of Schedule FB from the 2008 undertaking.
[521] Queensland Rail, sub. 26: 25-27.
[522] New Hope, sub. 22: 16.

QCA analysis and Decision

We require Queensland Rail to amend its proposed capital expenditure assessment process to, among other things, require it to consult with access holders affected by a capital project, remove a requirement for using a DORC valuation methodology, and include the potential for actual bypass as a reason for optimising the asset base.

Many aspects of Queensland Rail's proposed prudency assessment process in Schedule E can be expected to promote the efficient investment in rail infrastructure, and are in the interests of Queensland Rail, and its access seekers and holders and their customers.

However, we consider that some aspects are not appropriate, having regard to the approval criteria in the QCA Act, namely:

- Queensland Rail's proposal to require that the asset value for determining a ceiling revenue limit be set solely on the basis of a DORC methodology is not in the interests of access seekers, access holders or their customers (s. 138(2)(e) and (h)). We require Queensland Rail to remove this requirement and to not prescribe any asset valuation methodology (see Section 3.5 of this Decision).
- The capital expenditure approval process does not enable an access funder to seek an assessment of the prudency of scope, standard and cost of a capital expenditure project. As a result, the process does not promote economically efficient investment in the significant infrastructure Queensland Rail uses to provide its service, and is not in the interests of access seekers, access holders or their customers (s. 138(2)(a), (e) and (h)). It is also likely that providing this ability to access funders will be in the interest of Queensland Rail, where it is seeking to secure a capital contribution as a condition of access (s. 138(2)(b)). We require Queensland Rail to amend the process to provide for an access funder to seek a prudency assessment (see Chapter 9 of this Decision).
- Queensland Rail's DAU does not provide for it to consult with the access holders that may be affected by a capital project. This does not promote economically efficient investment in the significant infrastructure Queensland Rail uses to provide its service, and is not in the interests of access seekers, access holders or their customers (s. 138(2)(a), (e) and (h)). We require that the 2015 DAU be amended to provide that affected users of capital projects are consulted, as the projects will affect the assessment of the reference tariffs the users pay (see Schedule E, cl. 3.2(b) in Appendix F).
- Queensland Rail has not provided for assets to be optimised if there is a possibility of actual bypass. We consider that Queensland Rail's proposal could therefore result in a duplication of facilities, which would not be in the public interest and would not promote the efficient use and operation of the declared service (s. 138(2)(a), (d)). We require Queensland Rail to amend its 2015 DAU so that the reasons the asset base may be optimised include the possibility of actual bypass.
- Queensland Rail has proposed maintaining separate RABs for the Rosewood to Jondaryan and the Jondaryan to Columboola sections of the network. We consider it will be in the interest of all parties to also maintain a separate RAB for the Jondaryan to Macalister section (s. 138(2)(b), (e) and (h)) (see Section 8.7.3 of October 2015 Draft Decision).

Much of our Decision adopts our October 2015 Draft Decision. As such, this Decision relies on and incorporates our analysis in Section 8.7.3 of our Draft Decision, unless revised in this section.

Queensland Rail said in its December 2015 submission that it was 'generally satisfied' with the QCA's approach in the Draft Decision, but it raised concerns about:

- a DORC valuation for additional sections of the network;
- the right of an access funder to seek acceptance; and
- optimisation for actual bypass.

These matters are discussed in turn below.

DORC valuation

Queensland Rail said it had made 'specific submissions' about the treatment of the RAB and the valuation methodologies that should be used when setting a ceiling for prices.[523] Consistent with those submissions, it did not support the QCA's proposal to remove the DORC approach as the valuation method when 'additional, pre-existing parts of the network' are reviewed under the capital prudency process.[524]

We note that the pricing principles in the QCA Act provide that the price should 'generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved' (ss. 138(2)(g) and 168A(a)). The QCA Act does not specify how assets should be valued.

While Queensland Rail has enumerated a number of examples where the DORC methodology has been applied in the past for regulatory asset valuations in Australia,[525] there are also many examples where regulators have applied valuation approaches suited to the circumstances of the assets being valued.

Given the varied configuration, standard, age and condition of Queensland Rail's network, we do not consider it appropriate to specify an asset valuation approach. Rather, the QCA should consider the appropriate approach, with regard to the approval criteria in section 138(2) of the QCA Act.

We have therefore adopted our Draft Decision, and require that Queensland Rail amend the 2015 DAU to remove the requirement that additional sections of the network incorporated into the West Moreton network are reviewed under the capital prudency process using a DORC methodology (see Schedule E, cl. 1.2(a)(ii) in Appendix F).

Providing flexibility about valuation methodology promotes efficient use of the rail infrastructure and is in the interests of access seekers and access holders, as a DORC valuation may not be appropriate in all circumstances (s. 138(2)(a), (d), (e), (h)). So, while Queensland Rail has favoured a DORC valuation requirement, indicating it considers this will advance its interest (s. 138(2)(b)), we do not consider it appropriate to include such a requirement, having regard to all the criteria in section 138(2).

[523] See, for example, Queensland Rail, sub. 2, App. 2: 6, 9–11; sub. 17.
[524] Queensland Rail, sub. 26: 25–26.
[525] See, for example, Queensland Rail, sub. 2, App. 2: 6, 9–11; sub. 17.

Access funder

Queensland Rail said it 'agrees with the spirit of the QCA's proposal' to enable an access funder to seek a prudency assessment.[526] However it said the drafting would need to reflect that:

- any costs from the assessment would not be passed on to Queensland Rail, including through the QCA fee; and
- any decision on prudency of user-funded capital expenditure did not negatively affect Queensland Rail or alter any amount it could recover from the funder.[527]

We note that our approach to user funding provides that there is no obligation for Queensland Rail to fund an extension, including the costs of any studies required in preparing for that extension. However, it would be open for the parties to negotiate an agreement that shared the costs and risks in a way that resulted in Queensland Rail bearing some cost.

Regardless of what is agreed between Queensland Rail and its customers, the scope, standard and cost of the asset would need to be assessed for prudency if it was to be included in the RAB (see Chapter 9 of this Decision).

Queensland Rail has indicated our proposal may advance its legitimate business interest, if we address its concerns about bearing any costs from a user-funded investment and altering the amount it may recover from the funder, as we have done (See Chapter 9 of this Decision). We consider that enabling an access funder to seek a prudency assessment would promote efficient investment in rail infrastructure and the public interest, and be in the interests of access seekers and access holders (s. 138(2)(a), (d), (e), (h)). So, we consider it is appropriate to provide for an access funder to seek a prudency assessment under Schedule E, having regard to all the approval criteria in section 138(2).

We have therefore adopted our Draft Decision position, and require Queensland Rail to amend the DAU to provide for an access funder to seek a prudency assessment.

Actual bypass

The 2008 undertaking provides that the QCA can optimise the RAB if:

- it accepted capital expenditure based on false or misleading information;
- demand has deteriorated so much that regulatory prices based on an unoptimised asset value would result in a further decline in demand; or
- there is a possibility of actual bypass.[528]

Queensland Rail's 2015 DAU provided for false information and demand deterioration to be grounds for optimising, but not the possibility of actual bypass.[529] Our Draft Decision required that all three criteria be retained, including the possibility of actual bypass.[530]

Queensland Rail said in its December 2015 submission that it did not consider that the possibility of actual bypass was a reason for optimising the RAB value. Queensland Rail quoted the QCA's draft decision on Aurizon Network's 2014 DAU, which proposed 'to accept Aurizon Network's proposal to remove the threat of actual bypass as a reason for reducing the RAB'. It

[526] Queensland Rail, sub. 26: 26.
[527] Queensland Rail, sub. 26: 26.
[528] Queensland Rail, 2008 undertaking, Schedule FB, cl. 1.4.
[529] Queensland Rail, 2015 DAU, Schedule E, cl. 1.2(b).
[530] QCA 2015: 188.

said that if there was a 'credible alternative supply option' the parties could negotiate a price within the floor/ceiling model. Further, Queensland Rail said that its proposed 'de-coupling' of the ceiling price and reference tariff would negate the need for the RAB to be adjusted.[531]

We agree with the approach of letting market forces address the threat of actual bypass. However, Queensland Rail's situation is different from that of Aurizon Network. For example:

- Queensland Rail is more likely than Aurizon Network to face actual bypass, including through the Inland Rail project in southern Queensland, or through increased use of road transport on the Mount Isa route in the north;
- the two rail companies' networks are very different in standard, capacity and traffic mix; and
- Queensland Rail's networks are not fully contracted—demand has in fact been falling.

Therefore, each network needs to be assessed on its own characteristics and in light of the regulatory requirements, and it is not automatically appropriate to apply the Aurizon Network approach for Queensland Rail.

We have therefore adopted our Draft Decision position that the possibility of actual bypass should be retained as one of the reasons for optimising assets in the context of an annual roll-forward of asset values in the RAB. Then, if the market fails to address the issue of actual bypass, the QCA has effective options to achieve a workable outcome.

This will enable efficient use of the network and protect the interests of access seekers and access holders, as well the public interest (s. 138(2)(a), (d), (e), (h)). While Queensland Rail has indicated that providing for possible actual bypass as grounds for optimising assets may be contrary to its legitimate business interests (s. 138(2)(b)), we consider that it is appropriate to include that criterion, having regard to all the criteria in section 138(2).

As discussed above, we do not consider that the 'de-coupling' approach proposed by Queensland Rail is appropriate (see Section 8.2.2).

Summary 8.9

The capital expenditure assessment process in the 2015 DAU must:

(a) Remove the requirement that the asset value for additional sections of the network incorporated into West Moreton network be set solely on the basis of a depreciated optimised replacement cost methodology.

(b) Enable an access funder to seek an assessment of the prudency of scope, standard and cost of a capital expenditure project.

(c) Provide for consultation with access holders that may be adversely affected by a customer-initiated capital project

(d) Enable optimisation of assets if there is a possibility of actual bypass.

(e) Provide for Queensland Rail to maintain separate regulatory asset bases for the three sections of Rosewood to Jondaryan, Jondaryan to Macalister and Macalister to Columboola on the West Moreton network.

See Schedule E in Appendix F.

[531] Queensland Rail, sub. 26: 26–27.

PART B—TARIFF BUILDING BLOCKS

We have assessed the efficient costs and return on investment for Queensland Rail's West Moreton and Metropolitan network tariffs. Key issues are summarised in Table 18 below. Matters that require a more detailed explanation are discussed in Sections 8.10 to 8.17.

Table 18: Summary of key positions and decision—tariff building blocks

Summary of the 2015 draft decision	*Queensland Rail's position*	*Other stakeholders' position*	*QCA Decision*
1. Volumes			
Accepted Queensland Rail forecast of 62.8 weekly paths, including ad hoc paths.	Said it had requests for more contracted volumes.	Said Queensland Rail forecast was too low.	See Section 8.10 below
2. Forecast maintenance costs			
Proposed maintenance costs of $114.6 million, and identified 67.4 per cent was fixed cost and 32.6 per cent was variable cost.	Disagreed and submitted new information in support of its maintenance cost proposal.	Miners said the QCA's estimate was likely to be excessive. However, Aurizon was concerned with our reduction in resurfacing allowance.	See Section 8.11 below.
3. Forecast operating Costs			
Proposed to accept operating cost allowance based on Queensland Rail's 2012–13 below-rail financial statements with lower train control costs, and identified 82 per cent was fixed cost and 18 per cent was variable cost.	Accepted categorisation of operating costs into fixed and variable cost.	Miners said the proposed operating costs were not efficient and exceeded comparable benchmarks.	See Section 8.12 below.
4. Regulatory asset base			
Recognised the value of assets that have reached the end of their useful lives through the cost allowance given for maintenance, or through the value given to the network as a whole.	Opposed the valuation and said it broke with regulatory precedent.	New Hope, Yancoal and Aurizon supported the QCA's valuation, as it reflected the high maintenance costs for the network.	See Section 8.13 below.
5. Past capital expenditure			
Did not consider historical (TSC) capex for the purposes of coal reference tariff and found that the capex incurred during the two years 2013–15 was excessive.	Disagreed with our treatment of TSC capex.	Generally supported our draft decision.	See Section 8.14 below.

Summary of the 2015 draft decision	*Queensland Rail's position*	*Other stakeholders' position*	*QCA Decision*
6. Forecast capital expenditure			
Proposed a capital indicator of $144.2 million.	Disagreed and provided new information in supports of its forecast capex proposal.	Supported our Draft Decision.	See Section 8.15 below.
7. Capital charges for the coal RAB			
Applied an indicative WACC of 6.93 per cent and specified asset lives for the purposes of straight-line depreciation.	Said risk-free rates were higher in previous periods.	New Hope said an alternative depreciation profile might address issues with a tariff derived from building blocks.	See Section 8.16 below.
8. QCA-required ceiling price			
Indicative draft ceiling price for West Moreton network coal services of $18.88/'000 gtk, calculated as if it were to apply from 1 July 2015.			See Section 8.17 below.

8.10 Volumes

Traffic forecasts are important, because any variation from forecast will result in a corresponding variation to revenues from access charges. Minimising volume risk in the first instance by using the best forecast information means the parties best placed to manage volume risk are able to do so.

Queensland Rail proposed to use forecast coal and non-coal volumes that it said were based on actual, rather than contracted use of the network in the period before it submitted the 2015 DAU. It said this was the best approach as both coal and non-coal services were operating above contracted levels.

In the October 2015 Draft Decision, we proposed to accept Queensland Rail's forecasts as, among other things:

- Queensland Rail had not proposed reference tariffs for non-coal services;
- there was significant uncertainty about coal and non-coal volumes on the West Moreton network; and
- the effects of volume uncertainty would be addressed, in part, by the endorsed variation event for changes in contracted volumes (see Section 8.5.1 of this Decision).

Stakeholders' submissions

Queensland Rail said that if it had known the QCA would change its risk allocation framework for the West Moreton tariff, 'a forecast based on contracted tonnes would be appropriate'.[532] It

[532] Queensland Rail, sub. 26: 54.

also said that while overall tonnages were down, 'Queensland Rail currently has access requests in excess of current capacity'.[533]

New Hope said it accepted the Draft Decision for non-coal volumes, but that the QCA needed to re-examine the coal volumes.[534] Yancoal said the coal volume forecast did not allow for sustained ad hoc demand above forecast levels.[535] It also said the QCA should take into account that Yancoal had increased its rail haulage contract from 1.4 to 1.7 million tonnes a year.[536]

QCA analysis and Decision

The QCA accepts Queensland Rail's proposed coal and non-coal volume forecasts for services operating on the West Moreton network.

Much of our Decision adopts our October 2015 Draft Decision. As such, this Decision relies on and incorporates our analysis in Sections 8.4.2, 8.4.3 and 8.4.4 of our Draft Decision, unless revised in this section.

Substantial uncertainty remains about volumes on the West Moreton network. We address stakeholders' comments on volumes and demand below, discussing both non-coal and coal volumes.

Non-coal volumes

Queensland Rail's 2015 DAU proposed weekly non-coal volumes of two return passenger paths and one ad hoc return freight path. It said all of the access agreements for non-coal services had expired since 2013 and there had been a 'dramatic move from rail to road transport for agricultural products'.[537]

We note that the Queensland Government in April 2016 said it was investing in infrastructure on the West Moreton network to increase the number of cattle train services.[538] Notably too, the 2015 southern Queensland grain harvest was more than double that in 2014, increasing pressure to move grain haulage off the roads.[539]

These facts indicate that non-coal freight volumes over the undertaking period are likely to be higher than the one path a week forecast by Queensland Rail. Stakeholders have also suggested this is likely to be the case. New Hope said that, while the recent reduction in non-coal traffic had been substantial, this was likely to underestimate the volumes over the longer term.[540] New Hope also said:

> *This [the fall in non-coal volume] is not a risk which coal producers are able to manage or to which coal producers should reasonably have expected to be exposed.*[541]

However, we have not considered the non-coal volumes in detail at this stage or required Queensland Rail to use different volumes. We have sought to minimise coal miners' exposure to

[533] Queensland Rail, sub. 33: 26.
[534] New Hope, sub. 22: 9–10; sub. 31: 13.
[535] Yancoal, sub. 27: 3.
[536] Yancoal, sub. 35: 2–3.
[537] Queensland Rail, sub. 2: 20.
[538] See http://statements.cabinet.qld.gov.au/Statement/2016/4/6/palaszczuk-government-delivers-25-million-to-upgrade-oakey-rail-facilities.
[539] See 'Agricultural Seeds' exports on p. 2 of https://www.portbris.com.au/PortBris/media/General-Files/MTR/2016/Feb2016MonthlyTradeReport.pdf.
[540] New Hope, sub. 22: 7, 9.
[541] New Hope, sub. 22: 7.

fluctuations in non-coal volumes by providing for pricing for coal services that is based on capacity that is available for them to contract.[542] This is appropriate, given that coal miners have no ability to control non-coal volumes, or manage the risks that might arise from fluctuations in those volumes.

Given that, among other things, coal miners' exposure to non-coal volumes will be minimised, and that Queensland Rail is not proposing reference tariffs for non-coal services, we accept Queensland Rail's proposed non-coal volumes. The allocation approach that minimises the exposure is discussed in more detail in Section 8.3.3 of this Decision.

We note that the 90 per cent decline in forecast non-coal volumes could be grounds to consider optimising the West Moreton asset base. However, we have not sought to do so at this time, given the uncertainty about future non-coal volumes, and because applying the 80-path contracting constraint means that the effect on coal reference tariffs of the collapse in non-coal demand is minimised (see Table 16 in Section 8.3.3).

Coal volumes

Queensland Rail's 2015 DAU proposed weekly West Moreton network coal volumes of 53 contracted paths, plus 9.8 forecast ad hoc paths. On this basis, Queensland Rail's 2015 DAU West Moreton pricing was developed based on a coal volume forecast of 62.8 paths a week, compared with the 80 weekly paths that are available for coal services to contract (see Section 8.3.3 of this Decision). Queensland Rail said contracted coal paths had decreased due to the closure of the Wilkie Creek mine.[543]

However, there is substantial uncertainty about the outlook for coal volumes. Queensland Rail said in its March 2016 submission that it had coal access requests in excess of current capacity.[544] This contrasts with Queensland Rail's argument in its December 2015 submission that a volume forecast excluding ad hoc paths (i.e. just including the contracted volumes) would be appropriate:

> *Queensland Rail has provided a forecast including significant ad hoc railings, based on both these being allowable under current agreements, and resulting in a reasonable allocation of costs as between contracted and non-contracted demands. Importantly, though, Queensland Rail made these forecasts with the expectation of how changes in demand - either higher or lower ad hoc railings, for instance — would impact on its revenue profile. Had Queensland Rail known the QCA intended to change its approach, then this may have caused Queensland Rail to approach the demand forecast differently. Given the QCA's proposed approach, a forecast based on contracted tonnes would be appropriate.*[545]

Queensland Rail's December submission also said that:

> *as the reference tariffs are based on a forecast greater than contract, where access holders rail solely to contract Queensland Rail will receive insufficient money to fund the maintenance specified in the build up of the reference tariff.*[546]

New Hope and Yancoal both said that coal volumes were likely to be above those forecast by Queensland Rail.[547]

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[542] Note that coal services are also able to use ad hoc paths above the 80-path constraint, and the tariff structure provides for them to pay the same price they pay for contracted paths.
[543] Queensland Rail, sub. 2: 16–18.
[544] Queensland Rail, sub. 33: 26.
[545] Queensland Rail, sub. 26: 53–54.
[546] Queensland Rail, sub. 26: 25.
[547] New Hope, sub. 22: 9–10; sub. 31: 13; Yancoal, sub. 27: 3; sub. 35: 2–3.

We agree there is a significant chance that coal volumes will end up higher than Queensland Rail's forecast. Indeed, publicly available export data indicates that actual volumes in 2014–15 were higher than the volumes Queensland Rail has proposed for 2015–20 (see Table 19).

Table 19: West Moreton network coal export volumes 2011–2015[548]

Actual coal volumes (million tonnes)				
	2011–2012	***2012–2013***	***2013–2014***	***2014–2015***
Jondaryan/New Acland	4.7	4.4	4.8	5.0
Wilkie Creek	1.6	1.6	0.9	0.0
Columboola/Cameby Downs	1.4	1.3	1.5	1.6
Total actual volumes (mt)	***7.8***	***7.3***	***7.1***	***6.6***
Actual coal volumes (estimated weekly train paths)[a]				
	2011–12	***2012–13***	***2013–14***	***2014–15***
Jondaryan/New Acland	48.4	44.9	48.5	50.9
Wilkie Creek	16.3	16.1	8.9[549]	0.0
Columboola/Cameby Downs	14.6	13.0	15.2	16.8
Total actual coal paths (estimated)	***79.3***	***74.0***	***72.7***	***67.7***
Contracted coal paths (excluding Wilkie Creek)	53.0	53.0	53.0	53.0
Estimated ad hoc (excluding Wilkie Creek)[b]	10.0	5.0	10.8	14.7

a Calculated by dividing actual annual volumes by 50 weeks and by 1960 tonnes per train.

b Calculated by subtracting 53 contracted paths from total paths for New Acland and Cameby Downs.

Source: Queensland Government, Export by Collieries workbook for actual volumes; Queensland Rail, sub. 2: 17 for contracted paths.

Based on this data, Queensland Rail averaged 14.7 ad hoc coal paths per week in the year ended June 2015, which is 50 per cent more than the 9.8 weekly ad hoc coal paths used in Queensland Rail's forecast. Overall, the estimate of 67.7 weekly actual coal paths, based on the 2014–15 export data, is 7.8 per cent higher than Queensland Rail's forecast (62.8) coal paths.

Further, as discussed below, Yancoal has agreed a haulage contract for a higher tonnage than Queensland Rail has used in its volume forecast. At the same time, Queensland Rail remains exposed if ad hoc volumes are below the 9.8 weekly paths it has included in its volume forecast.

However, given Queensland Rail has proposed to take on some volume risk, we consider it is appropriate having regard to the approval criteria in section 138(2) of the QCA Act to accept Queensland Rail's volume forecast. We note Queensland Rail's argument that its maintenance costs may not be covered by access revenue if coal miners only rail to contract. However, the

[548] The export volumes will correlate closely with the volumes of coal hauled on the West Moreton network, as all coal is transported to the port by rail. However, the correlation will not be exact, mostly due to the timing of ship departures at the beginning and end of each reporting period.

[549] As Wilkie Creek closed in December 2013, we estimate that it used 17.9 paths a week for the first six months of the financial year, and none for the remaining half of the year. The 8.9 path weekly figure for 2013–14 in Table 8.7 is an average over 12 months.

evidence to date is that actual volumes have been higher than its forecasts, and the tariff mechanism provides for Queensland Rail to retain any ad hoc revenues, whether volumes be lower or higher than its forecast.

This situation will change to further reduce Queensland Rail's risk if Queensland Rail agrees access contracts for more than its forecast volumes. As discussed in Section 8.5.1, a contract that exceeds the forecast volumes will largely eliminate Queensland Rail's exposure to lower volumes from that origin. In such a situation, it will therefore be appropriate to re-set the tariff to take account of those higher volumes, as provided for in the endorsed variation event for triggered by increases in contracted volumes.

Another approach might be to review Queensland Rail's forecasts now, with a view to approving volumes that would be set in stone over the life of the new undertaking. However, given that there are only two coal mines using the West Moreton network, any assessment of volumes would necessarily depend on reaching a firm conclusion on a small number of uncertain future events.

We have therefore decided to adopt an approach to volumes that does not require us to seek to resolve the uncertainty regarding expected demand over the next four years. It is on that basis that we have used Queensland Rail's forecasts for setting the West Moreton Network tariff, in the knowledge that the interests of access holders and access seekers are protected by the contract volume reset endorsed variation event (see Section 8.5.1).

Our decision will promote the efficient operation and use of the West Moreton network, and the interests of access seekers, access holders and their customers (s. 138(2)(a), (e), (h)). It uses the volume forecasts Queensland Rail has provided, which presumably advances its legitimate business interests (s. 138(2)(b)). Therefore, we consider that using Queensland Rail's forecast volumes, in combination with the contract volume reset, is appropriate having regard to all the criteria in section 138(2).

Volume trigger

Yancoal said that since the Draft Decision it had replaced its previous 1.4 million tonnes a year rail haulage agreement with a new one for 1.7 million tonnes.[550] Aurizon Operations in January 2016 said the 1.7 million tonne haulage contract for Cameby Downs had been signed for two years starting on 1 February 2016, with an option to extend it for a further two years.[551]

A below-rail access agreement for those volumes would trigger the contract volume reset endorsed variation event (see Section 8.5.1 of this Decision).

At the time of making this Decision we are not aware that such an access agreement has been signed. We have therefore retained Queensland Rail's forecasts for assessing tariffs in this Decision. However, if contracted volumes for Yancoal's Columboola loading loop increase above the volumes in Queensland Rail's forecast, the tariffs will be recalculated in accordance with the endorsed variation event.

We have required amendments to the DAU to provide for this trigger to work even if a contract is finalised before the new undertaking is approved (see Section 8.5.3 of this Decision, and Schedule D, cl. 5.1(a)(ii)(B) in Appendix F).

[550] Yancoal, sub. 35: 2–3.

[551] The haulage agreement announced by Aurizon was with Yancoal subsidiary Syntech Resources. See https://www.aurizon.com.au/news/news/aurizon-announces-coal-haulage-agreement-with-syntech-resources.

Summary 8.10

We retain Queensland Rail's proposed forecast volumes for the West Moreton and Metropolitan network reference tariffs for this Decision.

8.11 Forecast maintenance costs

In the 2015 DAU, Queensland Rail estimated total maintenance costs of $143.0 million for the five-year period July 2015 to June 2020.[552]

Our 2015 Draft Decision considered as reasonable total maintenance costs of $114.6 million, having regard to our consultant's (B&H) advice. B&H assessed that aspects of Queensland Rail's maintenance costs were excessive either in scope or cost (e.g. resurfacing allowance and resleepering costs), and that some maintenance activities were capital in nature (e.g. ballast undercutting).[553]

Stakeholders' submissions

Queensland Rail had significant concerns with B&H's maintenance cost assessment and it provided new information in support of its maintenance cost proposal.[554]

Aurizon had concerns with the reduction in resurfacing allowance and cautioned about treating ballast undercutting as a capital activity.[555]

Miners said that B&H's assessment indicated Queensland Rail's proposed maintenance costs were excessive and reflected inefficiencies; however, they also said that the QCA's estimate was likely to exceed efficient costs.[556]

QCA analysis and Decision

Our Decision accepts as reasonable total maintenance costs for the five-year period July 2015 to June 2020 of $120.4 million, which is 84 per cent of Queensland Rail's proposed costs of $143.0 million. We accept that Queensland Rail needs to maintain its ageing railway to maintain the integrity of its network.

Approach to assessing maintenance costs

We engaged B&H to review its previous assessment of maintenance costs in light of stakeholders' comments, including new information provided by Queensland Rail in its post-Draft Decision submission.

B&H retained its previous assessment relating to certain aspects of maintenance costs on which stakeholders raised concerns. For example, B&H did not accept:

- Queensland Rail's claim of a higher resleepering costs, because B&H considered that Queensland Rail's proposed standard and consequently the unit sleeper cost was high and inappropriate, given the track configuration in the sections where resleepering activity was planned; and

[552] Queensland Rail, sub. 2: 41 and Appendix 6: 22.
[553] QCA 2015: 151–154.
[554] Queensland Rail, sub. 26: 47 and Annexure 2.
[555] Aurizon, sub. 20: 26–29.
[556] New Hope, sub. 22: 4, 10–11 and sub. 32: 22–24; Yancoal, sub. 27: 2.

- Queensland Rail and Aurizon's arguments that ballast undercutting should not be capitalised, because B&H considered that the scope proposed by Queensland Rail was actually a reconstruction of track, which was a capital activity.[557]

However, B&H revised its previous assessment of certain other aspects of maintenance costs, considering stakeholders' comments. For example, B&H:

- increased its previously recommended allowance for mechanised resurfacing, as it accepted Queensland Rail's argument that resurfacing activity would increase towards the end of the 2015 DAU period due to reduced effect of related maintenance activities (e.g. resleepering) that were planned at the start of the regulatory period; and
- accepted treating rail renewal as a maintenance activity rather than as a capital item, given the smaller scope and lower cost submitted by Queensland Rail in its December 2015 submission.[558]

Ultimately, B&H's revised assessment resulted in a total West Moreton network maintenance cost allowance of $120.4 million for the five-year period July 2015 to June 2020.[559]

QCA Decision

We accept B&H's assessment that aspects of Queensland Rail's maintenance cost proposal are excessive and unreasonable. It may be that Queensland Rail's proposal advances its legitimate business interests. However, we consider that it would allow Queensland Rail to recover inefficient costs. We do not consider this to be appropriate, having regard to the object of Part 5 of the QCA Act (s. 138(2)(a)); the public interest (s. 138(2)(d)); the interests of access seekers and access holders (s. 138(2)(e) and (h)); and the inappropriateness generally of allowing the recovery of windfall gains and monopoly profits (s. 138(2)(h)). For those reasons, we do not consider Queensland Rail's proposal to be appropriate.

Based on B&H's recommendation, we consider that total maintenance costs of $120.4 million are reasonable for the five-year period July 2015 to June 2020. We consider these maintenance costs represent efficient costs for maintaining the West Moreton network that will promote efficient use of the network and are in the interests of access seekers and access holders, and the public interest, having regard to sections 138(2)(a), (d), (e), (g) and (h) and 168A(a) of the QCA Act.

Furthermore, as assessed in Section 8.3.2 of this Decision, we consider the proportion of fixed maintenance costs is 57.3 per cent. Thus, of the $120.4 million maintenance costs that we consider acceptable, about $69.0 million is fixed cost and $51.4 million is variable cost.

As per Summary 8.2 (see Section 8.3.3 of this Decision), we have allocated:

- about 71 per cent of the fixed cost to coal train services, reflecting the ratio of 80/113 paths[560], which results in a coal-allocated fixed maintenance cost of $48.6 million; and

[557] B&H 2016, Part 1: 2, 4–5.
[558] B&H 2016, Part 1: 3–4.
[559] This is equivalent to the B&H recommended total maintenance cost of $112.4 million (in June 2015 dollars). B&H 2016, Part 1: 5 and 2015: iii.
[560] As considered in Section 8.3.3 under the heading 'Change in circumstances' the fixed cost allocator for 2015–16 is 69.5 per cent.

- about 98 per cent of the variable cost to coal train services, reflecting coal's share of forecast usage in the West Moreton network, which results in a coal-allocated variable maintenance cost of $50.3 million.

Consequently, we have allocated $98.9 million to coal services for the purposes of deriving the West Moreton reference tariff, which is about 82 per cent of the $120.4 million total efficient maintenance costs.[561]

As discussed in Section 8.3.3 of this Decision, we consider our approach to allocating efficient costs to coal traffics is appropriate, having regard to the assessment criteria in the QCA Act (s. 138(2)).

8.12 Forecast operating costs

In the 2015 DAU, Queensland Rail proposed to establish its operating cost allowance based on its 2012–13 below-rail financial statements, but with a downward adjustment for train control costs to reflect our October 2014 Draft Decision. Queensland Rail escalated the adjusted 2012–13 costs by CPI using actual inflation for 2013–14 and forecast inflation (2.5 per cent) for the period thereafter, and proposed a total operating cost allowance of $37.2 million for the five-year period July 2015 to June 2020.[562]

Our 2015 Draft Decision proposed to accept Queensland Rail's approach to establishing an operating cost allowance based on the 2012–13 financial statements, with lower train control costs. Additionally, we categorised operating costs into fixed and variable components, with about 82 per cent of the costs identified as being related to fixed activities. Our 2015 Draft Decision allocated the fixed costs reflecting the proportion of West Moreton network capacity available to coal services to contract and variable costs based on coal's share of forecast usage.[563]

Stakeholders' submissions

Queensland Rail accepted the QCA's categorisation of operating costs into fixed and variable components, and said that fixed operating costs were common network costs. However, Queensland Rail did not support QCA's proposal to allocate fixed operating costs to reflect the 87-path constraint, and said costs should be allocated based on forecast usage.[564]

Miners were concerned that the proposed operating costs were not efficient and argued that aspects of operating costs exceeded comparable benchmarks.[565] In particular, New Hope suggested that Queensland Rail's allocation of its network-wide costs (for example, corporate overheads) to the West Moreton network required further consideration.

QCA analysis and Decision

Our Decision accepts Queensland Rail's proposal to establish its 2015 DAU operating cost allowance based on its 2012–13 financial statements but with a lower allowance for train control costs. We have escalated those costs by CPI using actual inflation data for 2013–14 and

[561] This compares to the $139.9 million Queensland Rail considered for deriving the ceiling price for West Moreton coal services in the 2015 DAU.
[562] For presentational purposes, we have not included working capital allowance, which is set at 0.3 per cent of West Moreton network coal-related allowable revenues.
[563] QCA, 2015: 157–159.
[564] Queensland Rail, sub. 26: 40–41 and sub. 33, Attachment 2: 17.
[565] Yancoal, sub. 27: 2; New Hope, sub. 22: 4, 11–12 and sub. 32: 26.

2014–15 (now available) and an assumed inflation of 2.5 per cent for the period thereafter, which results in a total operating cost allowance of $36.9 million for the five-year period July 2015 to June 2020.

We have adopted our Draft Decision which identified that about 82 per cent of operating costs relate to fixed activities with the remainder being for variable activities. We have allocated fixed operating costs to coal train services based on the relative West Moreton network capacity available for contracting by coal services, and allocated variable costs based on coal's share of forecast volumes.

Consequently, we have allocated $27.9 million operating costs to coal services for the purposes of determining the West Moreton reference tariff.

Approach to assessing operating costs

Queensland Rail's proposed operating costs were based on its 2012–13 below-rail financial statements with a downward adjustment for train control costs as recommended in our 2014 Draft Decision. Queensland Rail did not consider the operating costs data from its 2013–14 financial results because they were higher than the 2012–13 results.[566]

We consider Queensland Rail's proposed operating costs are commensurate with comparable benchmarks, as reported in B&H's assessment of the 2013 DAU proposal; therefore, we do not agree with New Hope that the proposed costs exceed comparable benchmarks.[567]

Queensland Rail's 2012–13 financial statements allocated its network-wide costs (e.g. corporate overheads) to the West Moreton network based on the allocators set out in the costing manual that was approved by the QCA in April 2013. New Hope suggested that the allocators in the costing manual required further consideration.

We do not consider it is relevant to review the costing manual allocators for the purpose of this Decision. That is because the costing manual provides a framework for Queensland Rail to keep accounting records for below-rail services separate from the accounting records for its other operations. In particular, the costing manual allows identifying actual operating costs relating to Queensland Rail's below-rail services in a particular year. We understand that past operating costs can be a starting point for estimating an allowance for future operating costs, but they are not relevant for determining efficient operating costs. For instance, in our 2014 Draft Decision, we accepted most operating cost allowance components based on Queensland Rail's 2012–13 financial statements, having regard to our consultant's assessment that those costs were commensurate with comparable benchmarks. However, we did not accept the train control costs based on the 2012–13 financial statements because we considered them excessive compared to other benchmarks.

Given these considerations, we accept Queensland Rail's approach of establishing its operating costs allowance based on its 2012–13 financial statements, with lower allowance for train control costs. We applied actual inflation where available to escalate the 2012–13 cost data,

[566] The operating costs reported in the 2013–14 financial statements were about 35 per cent more than those reported in the 2012–13 financial statements, based on a comparison of the costs of train operations management, corporate overhead and other expenses. The 2014–15 financial results were not available at the time Queensland Rail submitted its 2015 DAU. They are now available on Queensland Rail's website, and the costs reported in the 2014–15 financial statements are about four per cent more than the costs recommended in our 2014 Draft Decision that were based on the 2012–13 financial statements with a downward adjustment for train control costs.

[567] B&H 2014: 48–52.

which resulted in a total operating cost allowance of $36.9 million for the five-year period July 2015 to June 2020. We consider these operating costs represent efficient costs for operating the West Moreton network and are appropriate having regard to section 138(2) of the QCA Act.

Furthermore, since stakeholders did not object to our 2015 Draft Decision categorisation of operating costs into fixed and variable components, we have adopted our 2015 Draft Decision and determined that about 82 per cent of operating costs relate to fixed activities and the remainder (18 per cent) display variable activities—that is, about $30.1 million is fixed and $6.8 million is variable cost.

As per Summary 8.2 (see Section 8.3.3 of this Decision), we have allocated:

- about 71 per cent of the fixed cost to coal train services, reflecting the ratio of 80/113 paths[568], which results in a coal-allocated fixed operating cost of $21.2 million; and
- about 98 per cent of the variable cost to coal train services, reflecting coal's share of forecast usage in the West Moreton network, which results in a coal-allocated variable operating cost of $6.6 million.

Consequently, we have allocated around $27.9 million[569] to coal services for the purposes of deriving the West Moreton reference tariff, which is about 76 per cent of the $36.9 million total efficient operating costs.[570]

As discussed in Section 8.3.3 of this Decision, we consider our approach to allocating efficient costs to coal traffics is appropriate, having regard to the assessment criteria in the QCA Act (s. 138(2)).

8.13 Opening asset base

The RAB is a key component in determining a tariff using a building block approach. This RAB needs to be established through a regulatory process when an existing asset becomes regulated. Establishing an investment value for the RAB for the coal services provided by the West Moreton network has been particularly contentious over some time.[571] It has been contentious because the rail line was constructed in the 19th century for regional traffic (e.g. livestock, grain and other agricultural commodities, passengers and general freight). It was not designed for the heavy-haul coal services that are now its largest source of traffic and to which the reference tariff applies. Particular attributes of the West Moreton network are:

- a maximum length of 675 metres for coal trains, with an axle load of 15.75 tonnes. In contrast, in the central Queensland coal network, coal trains are two kilometres long with axle loads of 26 tonnes or more;
- train speeds limited by sharp curves and steep grades on the range east of Toowoomba; and

[568] As considered in Section 8.3.3 under the heading 'Change in circumstances' the fixed cost allocator for 2015–16 is 69.5 per cent.

[569] Due to rounding to one decimal, the coal allocated operating cost of $27.9 million would not appear to be a strict sum of the $21.2 million of coal allocated fixed operating cost and $6.6 million of coal allocated variable operating cost.

[570] This compares to the $34.9 million Queensland Rail considered for deriving the ceiling price for West Moreton coal services in the 2015 DAU.

[571] For a discussion of the history of West Moreton network tariff proposals, including asset valuations, see QCA, 2014d, Appendix C: 195–199.

- trains carrying less than 2,000 tonnes, compared with about 10,000 tonnes in central Queensland.

High ongoing maintenance and capital spending

Queensland Rail's maintenance and capital spending are high relative to the capacity of its West Moreton network, to compensate for the age, standard and configuration of the rail infrastructure (see Sections 8.11 and 8.15 of this Decision).

Our assessed 2016–17 maintenance cost for Queensland Rail is $9.79 per thousand gtk. This is almost five times the $2.03 per thousand gtk that we have assessed as efficient for Aurizon Network on the Goonyella system in Central Queensland for 2016–17. Put another way, Queensland Rail's proposed maintenance cost for a kilometre of track carrying 6.2 million tonnes a year is about 68 per cent of the per-kilometre maintenance cost for 106 million tonnes a year in Goonyella.[572] This high level of spending on a low-volume network does not reflect a major difference in terrain—Goonyella has many similar natural challenges. Rather, it reflects, in large part, the obsolete infrastructure and alignment of the West Moreton network.

Queensland Rail has also proposed $141.9 million of capital spending to renew its network over the five years covered by its tariff proposal, even though it has forecast that its volumes will not increase during the period. This is on top of the $173.8 million post-1995 common network asset value at 1 July 2015, approved in this Decision (representing the rolled-forward value of capital spending between 1995 and 2015).

Queensland Rail said in its submission accompanying the 2015 DAU that:

> *[a]s the network was initially designed to cater for non-coal traffics, investment in infrastructure improvements, by both Queensland Rail and West Moreton Network end-users, has been necessary to accommodate coal carrying train services. Being built on a black soil plain and having tight radius curves down the Toowoomba and Little Liverpool Ranges has created additional challenges.*[573]

Queensland Rail has predicted in its West Moreton System Asset Management Plan that the elevated levels of maintenance and capital spending on the network infrastructure will continue for at least another decade.[574]

West Moreton network would not be built today

The West Moreton network is an unusual regulated asset in that it was not built for the traffic for which it is largely being used. It therefore departs significantly from the sort of network that would be built today to transport coal.[575]

Indeed, if the network was built today it would have much greater capacity and a different configuration. Evidence from coal and rail projects proposed for the Galilee Basin in central Queensland is that a new entrant, where there was no railway line, would only develop a new

[572] Queensland Rail proposed a 2016–17 cost of $55,991 per track kilometre for maintaining the West Moreton network (not including the cost of mechanised resleepering), while we have assessed that the efficient cost for Aurizon Network to maintain the Goonyella network in central Queensland is $82,570 per track kilometre (Queensland Rail, sub. 2: 20; QCA 2016b, Volume IV—Maximum Allowable Revenue).
[573] Queensland Rail, sub. 2: 9.
[574] Queensland Rail, sub. 2, Appendix 6—West Moreton System Asset Management Plan.
[575] Queensland Rail, sub. 33, Att. 3: 14–15.

rail system at a scale several times the size of the West Moreton network.[576] The Galilee projects were planned to be served by modern rail lines with above- and below-rail scale efficiencies including trains carrying as much as 25,000 tonnes of coal—more than 12 times as much as West Moreton network trains—and lower maintenance costs than the West Moreton network.

The Australian Rail Track Corp's (ARTC's) proposed alignment for its Inland Rail project provides further evidence that there is no direct modern engineering equivalent, as required for a DORC valuation, for Queensland Rail's West Moreton network assets. The ARTC plan includes some sections that use the route of the West Moreton network track. But it would not use any of Queensland Rail's tunnels—rather it would 'include a 5km tunnel near Toowoomba to create an efficient route through the steep terrain of the Toowoomba Range'.[577]

Context of asset value

Queensland Rail's June 2013 DAU derived an asset valuation of $419.6 million (in June 2013$) for the West Moreton network, using a DORC methodology.[578]

In our October 2014 Draft Decision we concluded that this valuation was not consistent with the high maintenance costs and capital spending proposed by Queensland Rail. We proposed an asset value of $246.6 million for the common network between Rosewood and Columboola, as at 1 July 2013.[579]

Queensland Rail's 2015 DAU proposed an asset value of $463.6 million for the common network, as at 1 July 2013.[580]

The QCA's 2015 Draft Decision was to refuse to approve the DAU and to require Queensland Rail to amend the DAU to include an asset value of $235.8 million for the common network, at 1 July 2013, that was derived by:

- giving value to assets such as rail, concrete sleepers and concrete bridges that have been replaced as capital items and have not been fully depreciated;
- assigning no additional value to assets where the nature of the asset is such that it has been funded and will continue to be funded from maintenance expenditure (itself a cost taken into account separately in assessing the revenue to be recovered by Queensland Rail). These include items such as wooden sleepers, fences, ballast and wooden bridges; and
- not giving tunnels, cuttings and embankments any additional value beyond that given to other assets and hence the network as a whole.[581]

[576] See https://publications.qld.gov.au/dataset/queensland-coal-mines-advanced-projects: 2–3. Planned annual production of Galilee Basin thermal coal export projects ranges from 15 million tonnes to 60 million tonnes, with an average of 35 million tonnes. Queensland Rail forecasts that the West Moreton network will have annual volumes of 6.2 million tonnes of thermal coal during the 2015–20 regulatory period (Queensland Rail, sub. 2: 17).
[577] ARTC 2015.
[578] Queensland Rail, 2013a: 3.
[579] QCA 2014d: 140.
[580] Queensland Rail, sub. 2: 35. Queensland Rail proposed an asset value at 1 July 2013, then rolled it forward to derive the regulatory asset base value for the start of its proposed regulatory period. We have adopted the same approach for consistency in this analysis. The roll-forward is discussed below in Section 8.17.
[581] QCA 2015: 168–169, 176.

We said:

> *The QCA's valuation approach addresses the imbalance between Queensland Rail's need to spend money on the network and its proposed asset value, and the inefficiency consequences of that imbalance.*[582]

Stakeholders' submissions in response to the Draft Decision

Queensland Rail said the QCA's proposed asset valuation broke with regulatory precedent and that the updated Menezes Valuation Report had serious flaws.[583] New Hope, Yancoal and Aurizon supported the QCA's proposed valuation, as it reflected the high maintenance costs for the network.[584]

Menezes valuation report

We engaged Professor Menezes as an independent expert to provide opinions on the economic issues relating to the West Moreton network asset valuation. Professor Menezes was subsequently appointed to the QCA Board. This appointment is discussed in more detail in the introduction to this Decision, under the heading 'Independent economic advice'.

A key aspect of his expert advice was to provide an opinion on which asset valuation approaches were most appropriate for the network, with regard to the economic principles of allocative, productive and dynamic efficiency that are relevant to the matters mentioned in the approval criteria in the QCA Act, including sections 138(2)(a) and (d).

Professor Menezes provided a preliminary report that we published in May 2015, to allow stakeholders to comment before our Draft Decision. The Menezes Valuation Report published with the Draft Decision gave regard to matters raised by Queensland Rail (including reports prepared for Queensland Rail by PwC and Frontier Economics), and by stakeholders, including New Hope, Yancoal and Aurizon, in response to the preliminary report.

The Menezes Valuation Report found that valuing assets whose lives have exceeded their expected useful lives increases the chances of setting a price that:

(a) includes a component of monopoly rent;

(b) would yield windfall gains to Queensland Rail; and

(c) is sufficiently high to adversely impact competition in relevant markets.[585]

Queensland Rail responded in its December 2015 submission with a further report by PwC that argued Professor Menezes had:

(a) not demonstrated windfall gains would arise, as that required knowing the expectations of the original investors;[586]

(b) not addressed that excluding assets from a DORC valuation would create regulatory risk;[587]

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[582] QCA 2015: 177.
[583] Queensland Rail, sub. 26: 6, 15, 20–25, 27; sub. 26, Annexure 3: 1–8; Queensland Rail, sub. 33: 4, 8, 27; sub. 33, Att. 4.
[584] Aurizon, sub. 20: 22; sub. 29: 4–5; New Hope, sub. 22: 14–15; sub. 32: 18–-22; Yancoal, sub. 27: 2; sub. 35: 5.
[585] Menezes, F 2015b: 32–35.
[586] Queensland Rail, sub. 26, Annexure 3: 4–5.
[587] Queensland Rail, sub. 26, Annexure 3: 6–7.

(c) not shown Queensland Rail's proposal would affect allocative efficiency or competition in other markets;[588]

(d) used an inconsistent approach to Queensland Rail's and access holders' expectations in the treatment of the asset valuation and adjustment amount; [589]and

(e) ignored Queensland Rail's proposal to 'de-couple' the reference tariffs on the West Moreton Network from the ceiling revenue limit.[590]

Professor Menezes provided a supplementary report titled 'Response to Stakeholder comments on comments', that addressed PwC's comments. He advised that:

(a) allowing a firm to earn a return on assets with expired expected useful lives increased the risk of recovering windfall gains regardless of the motivation that underpinned the original investment;[591]

(b) not allowing a regulated entity to make a return on assets beyond the expected useful lives of those assets does not increase regulatory risk;[592]

(c) there are no gains to allocative efficiency but there are potential losses from allowing Queensland Rail to earn a return on assets with expired expected useful lives;[593]

(d) there is no inconsistency between the approach to the treatment of the asset valuation and adjustment amount;[594] and

(e) Queensland Rail's 'de-coupling' proposal to price below a 'ceiling price' but retain the discretion to raise that price does not prevent allocative efficiency from being adversely impacted in the future.[595]

We also engaged Professor Stephen King of Monash University to conduct a peer review of Professor Menezes reports, including the valuation reports. Professor King found that Professor Menezes' reports were 'based on a high standard of rigorous economic analysis' and the conclusions in the reports were reasonable as a matter of economics.[596]

Professor King's report and Professor Menezes supplementary report are published with this Decision.

QCA analysis and Decision

We have considered Queensland Rail's 2015 DAU and reviewed our Draft Decision in light of stakeholder comments and further information provided by Queensland Rail.

Having regard to the assessment criteria in section 138(2) of the QCA Act, our Decision is to require Queensland Rail to amend the DAU to include a value of the regulatory asset base of $254.5 million for the network from Rosewood to Columboola, as at 1 July 2013.

[588] Queensland Rail, sub. 26, Annexure 3: 7–8.
[589] Queensland Rail, sub. 26, Annexure 3: 10.
[590] Queensland Rail, sub. 26, Annexure 3: 8.
[591] Menezes, F 2016b: 7–8.
[592] Menezes, F 2016b: 8.
[593] Menezes, F 2016b: 11.
[594] Menezes, F 2016b: 18.
[595] Menezes, F 2016b: 12.
[596] King, S 2016: 2.

We have considered the value of the RAB with regard to the nature of the West Moreton network and its history. The discussion below addresses a range of relevant issues, including matters raised by Queensland Rail and other stakeholders:

- the regulatory framework;
- discussion;
  - regulatory approaches can vary for the valuation of a regulatory asset base;
  - valuing a rail network;
  - regulatory certainty;
    - no settled value of the regulatory asset base;
    - no settled valuation methodology for the West Moreton network; and
    - no 'material departure' or impact on future investment;
  - consistency and expectations;
  - the treatment of renewal assets;
  - service potential;
    - tunnels, cuttings and embankments; and
    - assets replaced through maintenance; and
  - the mindset of investors and evidence.

The analysis then:

- considers Queensland Rail's proposal with regard to the approval criteria in the QCA Act;
- sets out our required valuation; and
- sets out our Decision.

Much of our Decision is consistent with our October 2015 Draft Decision. As such, this Decision also relies on and incorporates our analysis in section 8.7.1 of our Draft Decision, unless revised in this section.

Regulatory framework

The QCA may approve a DAU only if it considers it appropriate to do so having regard to each of the criteria in section 138(2) of the QCA Act. The criteria of most focus for the value of the regulatory asset base are:

- the object of Part 5 of the QCA Act, which is to promote the economically efficient operation of, use of and investment in, significant infrastructure by which services are provided, with the effect of promoting competition in upstream and downstream markets (ss. 138(2)(a) and 69E);
- the pricing principles which specify, among other things, that the access price should:
  - generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved (s. 168A(a)); and
  - provide incentives to reduce costs or otherwise improve productivity (s. 168A(d));
- the legitimate business interests of the owner or operator of the service (s. 138(2)(b));

- the public interest, including the public interest in having competition in markets (whether or not in Australia) (s. 138(2)(d));
- the interests of persons who may seek access to the service (s. 138(2)(e));
- the effect of excluding existing assets for pricing purposes (s. 138(2)(f)); and
- the interests of access holders and avoiding monopoly rents and windfall gains (s. 138(2)(h)).

Chapter 10 of this Decision provides further discussion of section 138(2) of the QCA Act.

The QCA has had regard to each factor in section 138(2) in considering the value of the regulatory asset base.

Discussion

Regulatory approaches can vary for the valuation of a regulatory asset base

Australian regulators have, over time, considered and used a variety of valuation approaches for monopoly infrastructure assets. For example, the QCA's Statement of Regulatory Pricing Principles for the Water Sector endorses deprival value, which in turn is bounded on the high side by DORC. It says:

> *[T]he Pricing Principles should be viewed as a broad statement of regulatory intent to be applied with a discretion that reflects particular circumstances.*
>
> *As a result, any particular approach cannot be considered to be definitive or binding on the Authority in a specific instance.*[597]

For similar issues in Western Australia, Allen Consulting Group advised the Economic Regulation Authority that:

> *[w]hile economic principles suggest that regulated assets should not be valued at less than scrap value or more than a (correctly-determined) DORC value, the principles do not provide guidance as to whether a regulatory asset value should be set as scrap value or at DORC value, or at any particular value in between. There is no economic efficiency reason for regulated assets to be valued at a level that is commensurate with the cost structure of a hypothetical (efficient) new entrant.*[598]

Professor Menezes said in his Valuation Report that DORC is used in particular contexts and the characteristics of the West Moreton network, that was not built for carrying heavy haul coal services, create particular challenges for a DORC valuation.[599] As Professor Menezes noted, the history of initial asset valuations by regulators:

> *illustrates that while DORC has played a prominent role, there is a range of asset valuation methods that have been used by regulators in Australia, and highlights that determining initial asset values also entails wider considerations that are likely to vary on a case-by-case basis.*[600]

A well-known example of applying valuations to suit the circumstances came with the five Victorian electricity distribution businesses in the 1990s, where the DORC values were adjusted up or down to promote uniform pricing across urban and rural consumers.[601]

[597] QCA 2000a: ii.
[598] Allen Consulting Group 2005: 3.
[599] Menezes, F 2015b: 11.
[600] Menezes, F 2015b: 29.
[601] See Institute of Public Affairs 1999: 6.

Valuing a rail network

Railway networks have a large number of essential individual parts, including sleepers, rails and tunnels. No single element has service potential until it is combined with the other parts of the network. The service potential and valuation of individual assets is an input to the service potential and value of the network as a whole. The task is to value the network, not the sum of its parts.

In a competitive market the value of a network is based on buyers' and sellers' assumptions about the present value of expected future returns from it. However, where these returns are set by reference to the regulated asset value, the present value of those returns cannot guide the asset value. This 'circularity problem' is typically solved in two ways by Australian regulators:

(a) For new assets built once regulation has started, the predominant valuation methodology has been depreciated actual cost (DAC).[602] This is because, among other things, the necessary cost information is available and the DAC approach gives an incentive for the asset owner to invest as it can expect to recover its efficient investments through return on and of capital over the life of the asset. However, DAC has the potential to understate or overstate service potential because it is a cost-based approach.

(b) For the assets that are in place at the start of regulation, regulators and governments have applied a variety of methodologies to establish an opening asset value. These have included:

  (i) DAC, although this has tended to be difficult, particularly for older assets, due to a lack of information;[603]

  (ii) line in the sand, often imposed by a government to achieve a policy outcome; and

  (iii) DORC, usually adjusted to suit the particular nature of the asset being valued, and requiring the identification of the modern engineering equivalent.[604]

The Productivity Commission did a thorough review of asset valuation techniques in its first review of the national access scheme more than a decade ago. The Commission found that there were:

> *two implications that the characteristics of infrastructure have for the choice of asset valuation method:*
>
> - *to the extent that the assets are sunk, the facility owner will continue to supply infrastructure services so long as the regulated value exceeds scrap value (the next best alternative use); and*
> - *if the facilities providing these services are natural monopolies, inefficient duplication is likely to occur only rarely regardless of the asset valuation method.*

[602] For example, the capital expenditure approval process applied for Aurizon Network is a DAC approach. Queensland Rail has proposed a similar DAC-style mechanism for new assets in Schedule E of its 2015 DAU (see Section 8.9 of this Decision).

[603] Queensland Rail, sub. 3, Att. D: 12–14.

[604] For example, the QCA opted to use a brownfields DORC approach when establishing the asset value for the central Queensland coal region assets in 2001. Other asset valuations have departed from a 'standard' DORC approach, including those for the Victorian electricity distribution networks and Queensland's gas distribution networks.

> *This suggests that a range of valuation methods could reasonably be used and that no method is likely to be intrinsically superior. Indeed, at least conceptually, both DORC and DAC would appear to be equally able to deliver outcomes which are allocatively and productively efficient.*[605]

Additionally:

> *Clearly, the myriad of specific issues that arise across infrastructure sectors means that regulators should not be bound to use one particular asset valuation approach in all situations. Rather, the Commission considers that the approach used should have regard to specific circumstances.*[606]

Past practice has shown that regulators and governments have tailored the valuation approach to the situation.[607]

Regulatory certainty

We canvassed the appropriate valuation and valuation approach for the West Moreton network in our October 2015 Draft Decision and Queensland Rail responded by reiterating its arguments that:

- the QCA approved an initial asset value for the West Moreton network when it approved the 2010 pricing amendments to QR Network's 2008 access undertaking;[608]
- there is a 'longstanding application of a DORC valuation methodology … to the assets comprising the West Moreton Network';[609] and
- the QCA had made a 'material departure' with its valuation approach and this created regulatory uncertainty.[610]

No settled value of the regulatory asset base

The valuation of the regulatory asset base for the West Moreton network has been unresolved since access regulation for Queensland's rail networks began in the 1990s.

A reference tariff for coal services on the West Moreton network was first introduced into the 2006 undertaking, however no regulatory asset base valuation was settled in so doing.

In response to QR Network's 2009 DAU, the QCA in its December 2009 Draft Decision proposed a tariff that rejected QR Network's proposed valuation and proposed an alternative. In response to that Draft Decision, in its 2010 DAU QR Network submitted a tariff at the level proposed by the QCA. However, in making that proposal QR Network indicated it did not accept the rationale that sat behind the QCA's Draft Decision.[611]

The QCA stated in its June 2010 draft pricing decision that 'the Authority has not achieved its desired objective of finalising a repeatable and transparent methodology for deriving the western system [West Moreton network] tariff'.[612] The June 2010 Final Decision on QR

[605] Productivity Commission, 2001: 360.
[606] Productivity Commission, 2001: 366.
[607] For a discussion of regulatory practice in applying DORC, see Appendix B of our October 2014 Draft Decision (QCA 2014: 188–194).
[608] Queensland Rail, sub. 26: 6, 20–23; sub. 26, Annexure 3: 7.
[609] Queensland Rail, sub. 26: 6, 7, 23.
[610] Queensland Rail, sub. 26: 23–24; sub. 26, Annexure 3: 6–7.
[611] QR Network, 2010a:116–118; 2010b: 105, 114–115.
[612] QCA, 2010 a: 89.

Network's June 2010 Extension DAAU approved new prices for the West Moreton network, but did not change the fact that the derivation of that price had not been resolved.[613]

Queensland Rail said that its July 2015 further submission on RAB valuation matters raised in the 2015 DAU:

> *pointed to the QCA's persistent and consistent application and advocacy for a DORC valuation methodology (without the zero valuing of "life expired assets") to the assets in the West Moreton Network which culminated in the QCA approving a reference tariff based on just such a valuation by its own independent consultants.*[614]

New Hope and Yancoal said the QCA was not bound to adopt a DORC valuation and that Queensland Rail was wrong to claim that the QCA approved the asset values discussed in the December 2009 Draft Decision.[615] New Hope said:

> *QR now seeks to rewrite this history and claim the existence of an approved valuation of the initial asset base in order to limit the QCA's discretion in applying the statutory criteria to the assessment of the 2015 DAU ... In reality, no stakeholders (including Aurizon Network) supported the asset values set out in the Draft Decision, and other factors led to acceptance of the tariff (but not the asset values or the methodology).*[616]

The QCA's June 2010 decisions did not reflect a concluded view on the valuation of the regulatory asset base for the West Moreton network. To the contrary, it is apparent from these decisions that the valuation had not been settled.

Queensland Rail has previously shared this view:

> *[I]n past undertakings the QCA and QR Network were unable to reach agreement on exact building block parameters for the West Moreton system ... The establishment of a transparent and repeatable building blocks approach, including the creation of a Regulatory Asset Base (RAB), would provide a degree of revenue/cost certainty going forward ...*[617]

Queensland Rail has now, however, in its December 2015 submission, put the contrary position. Queensland Rail has quoted our entire discussion of the Western system (West Moreton) price from our June 2010 draft pricing decision.[618] It said this supported its argument that the methodology for setting the tariff was not settled, but the regulatory asset base valuation had been resolved. In particular, Queensland Rail submits that 'any disagreement related to the allocation of the value between different traffics, not the value itself'.[619]

Whilst the extracted passage from the 2009 Draft Pricing Decision does discuss allocation issues, it is wrong to treat what is said in the 2009 Draft Pricing Decision as only relating to allocation issues. The discussion extracted in Queensland Rail's December 2015 submission sits below, and distinct from, the general point made that, in accepting the Western system tariffs, the QCA said 'there remains outstanding the question of the most appropriate way of deriving these tariffs'. As accepted by Queensland Rail in 2013, the derivation of tariffs involves the consideration of all the building blocks, including the regulatory asset base. It is apparent that neither the methodology for establishing the value of the regulatory asset base, nor that value, has ever been settled.

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[613] QCA, 2010b.
[614] Queensland Rail, sub. 26: 23.
[615] New Hope, sub. 22: 13–14; sub. 32: 18–21; Yancoal, sub. 35: 5.
[616] New Hope, sub. 22: 13.
[617] Queensland Rail, June 2013: 6.
[618] Queensland Rail, sub. 26: 21–22.
[619] Queensland Rail, sub. 26: 22.

Queensland Rail also submitted:

> *even if there was a disagreement between the QCA and Aurizon Network over asset value issues, that disagreement is not relevant to determine the value for Queensland Rail's asset base. Indeed, Queensland Rail accepted the QCA's asset value and rolled it forward.*[620]

However, this is not a matter for just the regulated party and the QCA—we also need to have regard to the views of affected stakeholders. We have therefore reviewed all the stakeholder submissions on the Western system tariff in response to our 2009 Draft Decision, leading up to our approval of the June 2010 pricing amendments. We have reprinted those comments in full in Appendix B.

The submissions from 2010 do not cover any of the details in the QCA's 25-page discussion of the Western system tariff in the December 2009 Draft Decision. But they make it clear that the lack of detailed response was because the stakeholders expected a 'proper assessment of tariffs and other issues for the Western System' for the next tariff period.[621]

That 'proper assessment' with extensive comments on all aspects of the tariff, including the value of the regulatory asset base, is what is happening now. Given the importance of the matter, and the issues raised, it would not have been appropriate to reach a settled view without such a process.

Queensland Rail's submission, that any 'disagreement' from the past can be put to one side as it has now accepted the QCA's asset value and rolled it forward, involves a misunderstanding of the role of the QCA under the QCA Act. The QCA may approve a DAU only if it considers it appropriate to do so having regard to the matters in the paragraphs of section 138(2).

In any event, Queensland Rail did not accept the QCA's valuation and roll it forward, but instead sought in its June 2013 DAU to establish a different starting value for the RAB. Queensland Rail proposed changes to the asset valuation in the 2009 Draft Decision, including reinstating most of an adjustment for the present value of future capital expenditure that the QCA had proposed to deduct.[622] It further amended the valuation in the 2015 DAU to add additional capital spending and new assets and to provide for interest during construction.[623] This too shows that at other times Queensland Rail has not regarded the RAB value as having been settled in 2009.

No settled valuation methodology for the West Moreton network or 'material departure'

Queensland Rail has, in its December 2015 and March 2016 submissions, argued that the QCA's approach in its October 2014 and October 2015 Draft Decisions departed from regulatory precedent and that we created 'regulatory uncertainty' by seeking to apply a valuation approach other than the DORC methodology it proposed.[624] Queensland Rail said:

> *The QCA has given little regard to its own past regulatory decisions relating to the West Moreton Network. Queensland Rail is concerned that any investment that it and other stakeholders make will be at risk should the QCA 'change its mind' again.*[625]

Queensland Rail's adviser PwC said the QCA's valuation was a 'material departure' from approaches approved in previous access undertakings. PwC said:

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[620] Queensland Rail, sub. 26: 23.
[621] QRC, 2010a: 9; QRC 2010b: 10–11; QRC 2010c: 9; Syntech, 2010: 3.
[622] Queensland Rail, 2013a June: 10–11.
[623] Queensland Rail, sub. 2: 35.
[624] Queensland Rail, sub. 26: 23–24; sub. 33: 4.
[625] Queensland Rail, sub. 26: 24.

> *Queensland Rail might reasonably perceive that the regulatory framework has become less stable and predictable, contributing to an increase in regulatory risk.*[626]

And Queensland Rail said in its March 2016 submission that:

> *the QCA's Draft Decision sets new precedents which raise concerning issues for other regulated services providers. It signals the regulator's willingness to reopen previously settled matters such as asset valuation …*[627]

To be clear, the QCA has not 'changed its mind' on the West Moreton network asset valuation or methodology. As shown above, the QCA has not previously formed a final considered view on the value of this network. There has not been a 'longstanding application of a DORC valuation methodology … to the assets comprising the West Moreton Network'. In the process that has been ongoing since 2005 the QCA has explored a DORC-based methodology, but has never committed to it.

Indeed, in 2005 we said Western system tariffs should be assessed based on a 'well-accepted framework such as the DORC methodology'. However we also said the actual age of the system assets needed to be considered, as 'many of the assets included in the valuation have either reached, or are approaching the end of their economic lives'.[628]

In assessing Queensland Rail's 2013 DAU and 2015 DAU tariff proposals, the QCA has needed to address, among other things, the issues raised by a more than 80 per cent jump in annual maintenance costs, compared with those proposed by the QCA in its 2009 Draft Decision. In doing so, the QCA has canvassed different valuation methodologies in the context of the assessment criteria in section 138(2) of the QCA Act.

The difficulty of settling the matter is shown by the widely diverging views of the various parties.

As Aurizon said:

> *Queensland Rail's submission has not acknowledged the fundamental basis for the rejection of the prior valuation. ... The QCA has not ignored the regulatory precedent but correctly noted that the precedent needed to be reviewed in light of a material change in circumstances.*[629]

The QCA does not agree with Aurizon's submission to the extent it suggests there was a settled prior valuation or a relevant regulatory precedent. However, the QCA notes Aurizon's contention that the very significant jump in annual maintenance costs and ongoing high levels of renewal capital expenditure necessitated a review of appropriate methodologies and values for the West Moreton network.

The QCA acknowledges that the review has been an important element of this regulatory process that Queensland Rail has had to engage with, and the QCA has had regard to the interests of Queensland Rail that arise from the review. However, the QCA does not accept the characterisation submitted by Queensland Rail that the QCA, or the review, has created regulatory uncertainty because a certainty from the past has been displaced.

As discussed above, DORC is neither the sole regulatory valuation approach adopted in Australia, nor the settled valuation approach for the West Moreton network.

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[626] Queensland Rail, sub. 26, Annexure 3: 6–7.
[627] Queensland Rail, sub. 33: 4.
[628] QCA 2005: 77.
[629] Aurizon, sub. 29: 4.

After having regard to all of the criteria in the QCA Act (s. 138(2)), we have valued the assets using a methodology appropriate to the circumstances of the West Moreton network, including its standard, configuration and condition. Those circumstances include that the network is so far from modern engineering equivalent that a conventional DORC valuation is not appropriate. This is shown by various factors, including a near-doubling of maintenance spending from a level we previously considered reasonable, and Queensland Rail's forecast that high levels of maintenance and capital spending would continue for at least another decade. Nevertheless, our valuation approach uses aspects of a DORC methodology, particularly for recognising the value of assets dating from before coal services began in the mid-1990s, that still have remaining expected useful life.

In this context, the QCA does not consider that its approach to valuing the West Moreton network would have an impact on Queensland Rail's future investment decisions.

Consistency and expectations

Queensland Rail's consultant PwC also suggested that Professor Menezes' approach to regulatory certainty and expectations was inconsistent between the West Moreton network asset valuation and the adjustment amount. PwC said:

> *In the context of assessing a change in asset valuation approach for Queensland Rail, Professor Menezes is dismissive of Queensland Rail's expectations, yet for access seekers he accepts unequivocally the same premise for access seekers in the context of a tariff adjustment.*[630]

We disagree with this premise. As explained in the discussion of the adjustment amount later in this chapter, Queensland Rail engaged in conduct that gives rise to an expectation that it would apply an adjustment charge provision to recoup or refund any difference between interim tariffs and those approved in a new undertaking (see Section 8.18 of this Decision).

In contrast, the West Moreton network regulatory asset base valuation was never settled and, in proposing its tariff in the 2013 DAU, Queensland Rail should have expected that the QCA would carefully review that valuation, particularly given Queensland Rail's proposed near-doubling of the maintenance costs.

For any adjustment amount, a key factor is promoting future efficient use and investment in the network and dependent markets by preserving regulatory certainty that will arise from giving effect to the expectation that an adjustment amount would be included in the approved access undertaking.

This is not analogous to the QCA's treatment of existing assets which takes into account the extent to which the assets continue to have remaining expected useful life. The assets being considered here are sunk and any valuation as at 1 July 2013 of these assets that is appropriate having regard to the approval criteria in section 138(2) should not have a forward investment impact, in a regulatory regime where efficient future investment is added to the RAB and recovered through approved access charges.

We have not signalled our 'willingness to reopen settled matters such as the asset valuation', as Queensland Rail claims.[631] Rather, we have determined an efficient asset value through the regulatory process, that is appropriate to approve having regard to the approval criteria in the QCA Act (s. 138(2)). Now that the RAB as at 1 July 2013 is settled, along with the other aspects

[630] Queensland Rail, sub. 26, Annexure 3: 10.
[631] Queensland Rail, sub. 33: 4.

of the tariff methodology, Queensland Rail, access seekers and access holders will benefit from the regulatory certainty that this creates (see Section 8.17 of this Decision).

Treatment of renewal assets and 'zero value'

We consider assets that were installed as capital investments and have a remaining expected useful life should be included in Queensland Rail's regulatory asset base. This will provide Queensland Rail with an opportunity to recover its capital investment in those assets.

Our proposed valuation explicitly includes assets in which Queensland Rail has made capital investments and that have remaining expected useful lives. This includes $170.8 million for track,[632] and $6.7 million for signals and telecommunications assets—around 70 per cent of the QCA's total valuation at 1 July 2013. All of the value of these assets reflects asset renewal expenditure, since 1983 for rail, and more recently for signals and telecoms.[633]

However, where the asset was installed or replaced as a maintenance activity, its value (and the need to continue to 'maintain' it by future replacement) is accommodated by providing Queensland Rail with a substantial maintenance allowance.

If Queensland Rail wishes to capitalise some of its maintenance activities that are more capital in nature, then there may be a case to do so.[634] But it would not then be appropriate to also include costs for those activities in the annual maintenance allowance used in the building blocks for the tariff. This applies to a range of assets, including ballast and timber sleepers.

Queensland Rail said in its December 2015 submission that it had been denied an opportunity to know which assets assessed in our asset valuation had been renewed or replaced.[635] We have addressed this by providing Queensland Rail and other stakeholders with our West Moreton and Metropolitan network tariff model, that shows how all the assets disclosed by Queensland Rail and its predecessors were treated in the QCA's valuation.

It is misleading to suggest that we have 'zero-valued' assets as stated by Queensland Rail.[636] The value of assets that, in the QCA's view, have no remaining expected useful lives, such as tunnels, cuttings and embankments, has been incorporated in the value given to the network as a whole. Assets such as sleepers, that have previously been installed or replaced as maintenance activities (the cost of such maintenance being recovered as part of Queensland Rail's tariff) have continued to be treated as maintenance activities. This is discussed further below.

Queensland Rail said in its March 2016 submission that the Draft Decision tariff model failed to include 'numerous post-1995 assets' and a 'significant one in four steel for wood sleeper replacement program' that was undertaken before 1995.[637] Our consultant B&H has reviewed its asset valuation assessment in light of the new information provided by Queensland Rail. We have published B&H's report on the valuation and other matters with this Decision.[638] The B&H assessment and our consideration of the appropriate response to Queensland Rail's submission is discussed in more detail below, in the 'QCA Approach' section.

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[632] The 'track' category includes rails, sleepers, ballast and other related assets, as Queensland Rail does not separately record its spending on these items after 2007. The valuation for rails in place before 2007 is $87.6 million.
[633] See B&H 2015: 48-56.
[634] See Section 8.11 of this Decision.
[635] Queensland Rail, sub. 26: 27.
[636] Queensland Rail, sub. 26: 27.
[637] Queensland Rail, sub. 33: 27.
[638] B&H 2016, Part 2.

Service potential

Conceptually all assets, viewed in isolation, can contribute to the overall service potential of the network. But that is not the determining factor of whether a stand-alone value should be given to the asset for the purposes of a valuation in a regulatory context. The regulatory context does not exactly mimic the outcomes of a competitive market—for example, regulation allows a return on and of the value of sunk investments. It follows that a valuation in a regulatory framework occurs in the context of achieving the objectives of the regulatory regime, having regard to the particular circumstances of the assets in question, and need not follow a particular theoretical construct.

Assets with remaining service potential, but expired expected useful lives, include essentially perpetual assets such as tunnels, cuttings and embankments.

Tunnels, cuttings and embankments

The rail infrastructure on the West Moreton network includes tunnels, cuttings and embankments whose characteristics, and therefore service potential, do not change materially over time.[639]

We have had regard to the remaining service potential of these essentially perpetual assets in arriving at a value for the West Moreton network. The service potential and value of the tunnels, cuttings and embankments is reflected in the value we have given to the network as a whole.

In simple terms, our approach compares the actual lives of Queensland Rail's assets against their expected useful lives. To do otherwise for tunnels, cuttings and embankments would overcompensate Queensland Rail and might provide it with a return in perpetuity.

We consider our approach is consistent with the regulatory treatment by the QCA and other regulators of assets once they have been accepted in the RAB. If we accept an asset in a RAB, the regulated entity earns a return of capital allowance each year (reflecting a loss in economic value). After the invested capital is fully returned, the asset remains in the RAB, but its value is recognised only in the value of the network as a whole. The asset is not re-valued for regulatory purposes, even if it continues to have service potential. To do otherwise would be to provide a regulated entity with windfall gains.

Queensland Rail said little about service potential in its submissions on our October 2015 Draft Decision, except to argue in a report from PwC that 'a regulator ought to ... consider the service potential of the existing assets, not the historic basis on which the relevant assets were developed'.[640]

We again note that the assets the service potential of which is essentially perpetual—the tunnels, cuttings and embankments—have a standard and configuration that would not be built for a modern equivalent asset.[641] However, we note as an aside that, while we have not applied

[639] The tunnels, cuttings and embankments differ from assets such as bridges and culverts that, while long-lived, do eventually have to be replaced. Cuttings and embankments are similar to tunnels as they receive only incidental maintenance. In this assessment cuttings and embankments are captured within the 'earthworks' asset category. Nevertheless, there are aspects of 'earthworks' that are dissimilar to tunnels, as earthworks receive some maintenance (about 7 per cent of the proposed maintenance budget for vegetation control, drain cleaning and minor earthworks maintenance) and some capital expenditure (about 12 per cent of the proposed capital expenditure budget for formation strengthening works).

[640] Queensland Rail, sub. 26, Annexure 3: 6.

[641] See QCA 2015: 176.

a DORC valuation, if we were doing so the value of an obsolete asset (i.e. an asset that uses a technology or configuration that is not the modern engineering equivalent) would be zero.

This confirms our view that, while we have had regard to the service potential of the tunnels, cuttings and embankments, it is appropriate to reflect their value in the value we have given to the network as a whole. They have service potential only because of the ancillary infrastructure that operates.

Assets replaced through maintenance

We acknowledge that the situation for shorter-lived assets, such as wooden sleepers and ballast, is different. We are aware that they are still in service and have remaining expected useful lives. However, it is clear that this is because they have been installed or replaced through maintenance costs that have formed (and will, on the QCA's approach, continue to form) a component of the revenue that Queensland Rail has been authorised to derive from the service. Queensland Rail has provided information about past maintenance spending on the West Moreton network over the last 20 years. Over the same period, Queensland Rail has received coal tariff revenue, a large part of which has gone towards that maintenance. Queensland Rail has also proposed significant spending on maintaining these assets in its 2013 and 2015 DAU submissions.

Given these assets have been replaced through maintenance—and generally multiple times—we have continued a high maintenance allowance required to keep those assets in service.

To include these kinds of assets in the asset base, while continuing to allow Queensland Rail to recover the cost of replacing these assets as maintenance costs, would result in Queensland Rail receiving a windfall by, in effect, receiving a return of its investment in those assets twice.

Treating the replacement of those assets as maintenance costs rather than including them as part of the asset base does not impose any material disadvantage on Queensland Rail because Queensland Rail receives a return of those assets by way of the maintenance cost allowance. There would generally be limited scope for Queensland Rail to generate a return on those assets because Queensland Rail's maintenance cost will be recovered at more or less the same rate that it is incurred.

The QCA accepts there may be some time difference between incurring the maintenance cost and recovering it, but that difference could apply both ways. That is, at times Queensland Rail may recover its maintenance cost before it is incurred; and at other times Queensland Rail may incur its maintenance cost before it is recovered. However, over the regulatory period, the QCA considers that these timing differences are broadly likely to cancel each other out, so that the overall effect will be that Queensland Rail recovers its maintenance cost at or about the time it is incurred.

Therefore, Queensland Rail does not face a material disadvantage from recovering the cost in the maintenance allowance rather than having the cost included in the asset base to receive a return on and of capital. Moreover, Queensland Rail receives a cashflow benefit from this treatment.

Mindset and evidence

We do not consider that it is necessary to establish the mindset of investors in 1867, in order to draw the reasonable conclusion that providing a return on their tunnels, cuttings and embankments in 2015 would result in windfall gains.

The tunnels, cuttings and embankments have now been there for almost 150 years. We have not seen accounting records to show that they have or have not been fully recovered, and

consider it unlikely that such records exist. However, as Professor Menezes says in his July 2015 report, 'it is neither possible or necessary to consider the mindset of the investor at the time of the investment'.[642]

The assessment of windfall gains and the adverse effects on allocative efficiency of Queensland Rail's proposed asset valuation is based on economic logic, rather than relying on knowing exactly what investors expected at the time the infrastructure was built. Professor Menezes' analysis shows that a return on assets that have exceeded their expected useful lives yields windfall gains and this increases the risk that allocative efficiency may be affected.[643] Professor King emphasises this point, saying that, while including or not including a windfall gain in the opening asset base will not affect future investment by a regulated firm, that does not mean the decision is neutral.

> *Raising the asset base by including a windfall gain, under building block regulation, will in general lead to higher prices for access seekers and will lead to a lower level of allocative efficiency.*[644]

We note that the 'expected useful life' of an asset does not depend on any particular person's expectation but rather is an economic concept that postulates a hypothetical investor making an investment decision based on the period of time over which such asset would deliver a return—that period being referred to as the 'expected useful life'.

Queensland Rail has, in its December 2015 submission, again argued that, because evidence of investors' intentions in the distant past is not available, it is impossible to form a view that the current owner will make a 'windfall gain'.[645] Queensland Rail's adviser PwC said:

> *In our view, the current owner of an asset cannot and should not be held responsible for the perceived expectations of some earlier entity that made the initial investment decision.*[646]

As Professor Menezes has advised, the exact expectation, and even nature, of the original investor is not relevant to forming a view that a 150-year-old asset is beyond any life over which an investment might be recovered. He said:

> *for windfall gains to exist it is not necessary that the entity making the original investment had a commercial motivation and that it expected to recover the full costs of the investment, including the return on capital, during the expected useful life of the asset. ... That is, regardless of whether the entity making the investment over a century ago expected to recover the cost of the investment over the life of the asset, it would not have expected to earn any revenue past its expected useful life of the asset.*[647]

We consider that it is reasonable for Queensland Rail to receive a return on unrecovered investments. However, we consider that it is correct to reflect the value of assets whose expected useful life has expired in the value of the network as a whole.

Queensland Rail proposal not approved

The pricing principle in section 168A(a) of the QCA Act is that the price of access to a service should generate expected revenue that is at least enough to meet the efficient costs of providing access to the service and a return on investment commensurate with the regulatory and commercial risks involved.

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[642] Menezes, F 2015b: 13.
[643] Menezes, F 2015b: 10–11.
[644] King, S 2016: 5.
[645] Queensland Rail, sub. 26, Annexure 3: 4–6.
[646] Queensland Rail, sub. 26, Annexure 3: 5.
[647] Menezes, F 2016: 7.

However, Queensland Rail's proposed valuation would lead to a price that generates returns that exceed this amount. Whilst such an outcome is not precluded by section 168A(a) alone, it is relevant to other paragraphs in section 138(2). As Professor Menezes says:

> *[T]he key issue is to ensure that the asset value does not result in access prices that embody monopoly rent.*
>
> *… a DORC approach that places a positive value on longstanding assets with expired expected useful lives yields a higher return than could have been anticipated by an investor undertaking the initial investment decision. This increases the risk that access prices are sufficiently high to distort competition in relevant markets and impact adversely on investment in coal exploration and production.*
>
> *Moreover, allowing QR to earn a return on assets with an expired expected useful life would yield windfall gains.*[648]

An access price calculated on the valuation proposed by Queensland Rail does not promote the economically efficient investment, operation and use of the infrastructure that provides below-rail services on the West Moreton network and therefore has the potential to adversely affect competition in upstream and downstream markets.

Such a price, encompassing windfall gains and monopoly rents, would distort competition in relevant markets and impact adversely on investment in coal exploration and production as it would be materially higher than the efficient price (ss. 138(2)(a) and (d) and 69E).

Further, it is in the interest of access seekers and holders to pay a return on and of an asset value that does not provide windfall returns (s. 138(2)(e) and (h)). Avoiding windfall gains and monopoly rents is a matter to which we have regard in considering the West Moreton network tariff, including the RAB valuation for the purposes of setting that tariff (s. 138(2)(h)). In Professor Menezes' view:

> *[W]indfall gains from regulation can be generated by allowing a regulated firm to recover costs associated with assets that, despite having an expired expected useful life, are still functioning.*[649]

In particular, it is not in the interest of access seekers, access holders, or their customers, to pay a return based on the value of a modern equivalent asset, when they are also paying for forecast levels of maintenance and replacement capital expenditure forecast that reflect a network that is not modern equivalent standard or condition.

It would also be against the public interest to allow windfall gains as that would have potential to reduce competition and discourage investment in downstream markets such as coal mining and coal tenements, reducing economic growth in Queensland. An expectation that the regulatory regime would allow windfall gains would cause investors to favour projects in jurisdictions where this was not the case, and reduce the chance they would invest their capital in Queensland (s. 138(2)(d)).

Indeed, an excessive price that reduced the incentive for investment in dependent markets that rely on access to Queensland Rail's below rail services will increase the risk to Queensland Rail that the assets in which it has invested to provide the service will be stranded (s. 138(2)(b)).

Therefore, having regard to all the approval criteria in the QCA Act (s. 138(2)), we do not consider it is appropriate to approve the 2015 DAU which contains the asset valuation proposed by Queensland Rail.

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[648] Menezes, F, 2015b: 33–34.
[649] Menezes, F, 2015b: 31.

QCA required valuation

Our analysis has been informed by the future maintenance and capital expenditure requirement. The QCA has proposed a maintenance allowance and capital expenditure our consultant considers necessary for the aging network to remain operating (see Sections 8.11 and 8.15 of this chapter).

The economic value of a railway network will reflect factors including the expected cost of maintaining and replacing parts of the network to make it fit for purpose and keep it that way. Queensland Rail's proposed near-doubling of its maintenance spending on the West Moreton network in the forthcoming regulatory period, compared with the 2009–13 spending, has been a material matter in our consideration of the 2015 DAU. The ongoing high capital spending, without any increase in capacity, is also relevant to the value of the network that is being replaced through this investment.

New Hope, Yancoal and Aurizon have again pointed to the relationship between asset value and ongoing costs in their December 2015 and March 2016 submissions.[650] New Hope said that:

> *it is self-evident that the value of an asset is influenced by its condition, and that high ongoing maintenance and replacement expenditure is clearly indicative of the age and technical obsolescence of the relevant infrastructure and its unsuitability for its current use.[651].*

Coal trains are able to use the West Moreton network only because of the high maintenance spend. The QCA has recognised the critical importance of the very high maintenance costs to the viability of the network by including substantial compensation for these costs in the reference tariff.[652] Aurizon said:

> *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 consistent with the assumed infrastructure standards; or*
>
> *(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 blocks estimates due to their closer proximity to Queensland Rail's actual costs.[653]*

We broadly agree with Aurizon's assessment. The imbalance between the maintenance and capital costs[654] and the network valuation might be addressed by reducing those ongoing costs to be consistent with the standard of the network implied by Queensland Rail's proposed value. But in this case, we consider the high maintenance and capital costs are necessary to keep the network operating.[655]

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[650] New Hope, sub. 22: 13–14; sub. 32: 21–22; Yancoal, sub. 27: 2; sub. 35: 5; Aurizon, sub. 29: 4–5.

[651] New Hope, sub. 22: 14.

[652] The combined maintenance and forecast capital costs we are minded to accept are about 91 per cent of Queensland Rail's proposed amount (see Sections 8.11 and 8.15 of this Decision).

[653] Aurizon, sub. 29: 4–5.

[654] Queensland Rail's forecast capital expenditure in the 2015 DAU of $141.9 million is about the same level as its proposed maintenance costs of $143.0 million (see Sections 8.15 and 8.11 of this Decision).

[655] We note that B&H has assessed that the efficient maintenance costs for a 'mature' modern equivalent railway facing the same 'severe topography' as the West Moreton network would be approximately $30,000 per kilometre per year. See B&H 2015: 28.

If the maintenance spending were to be reduced, trains would no longer be able to use the West Moreton network and therefore the assets could not be used. The value of the network is therefore dependent upon the high maintenance costs. Without such high levels of maintenance, Queensland Rail could not generate revenue from the network.

Some of the assets that are particularly maintenance-intensive are wooden sleepers and ballast, each of which require regular replacement.[656] The cost of replacing those assets has previously been allowed as a maintenance cost rather than as part of the asset base, and the QCA has continued that approach in this Decision.

Other assets require only incidental further work once they have been built. Key among these on the West Moreton network are the tunnels, cuttings and embankments, all of which were completed by the time rail services to Toowoomba began in 1867. The tunnels, cuttings and embankments are essentially perpetual, and do not depend on significant maintenance to remain in service. Indeed, they are now akin to a natural feature of the landscape and will most likely have the same remaining service potential in 100 years as they have now, with no further capital expenditure and subject to them continuing to form part of a viable rail network.

Tunnels, cuttings and embankments depend on the other assets that are integral to a rail network, such as rail and sleepers, to have any value at all. Without tracks going through them and trains carrying goods or passengers on those tracks, the tunnels, cuttings and embankments of and by themselves have no value. The question for an economic regulator (using a building block approach to setting a tariff) revolves around the value of the allowance that should be given in the tariff for investment in tunnels, cuttings and embankments.

The tunnels, cuttings and embankments on the West Moreton network were built almost 150 years ago and the accounting records to enable a DAC valuation are not available. We have had to form a judgment about the valuation of the tunnels, cuttings and embankments having regard to how long ago they were built, the fact that they have exceeded their expected useful lives and the interests of stakeholders including Queensland Rail. In these circumstances, the tunnels, cuttings and embankments are reflected in the value of the network as a whole.

We have therefore developed a RAB valuation that recognises the investments Queensland Rail has made in its network, both before and after coal services began in the mid-1990s. Similar to a DAC approach, we have assessed the value based on actual costs reported by Queensland Rail where possible. In other cases, our valuation approach uses aspects of a DORC methodology, particularly for older assets such as steel rails, that still have remaining expected useful life, but for which actual costs are not available. Accordingly, our valuation approach:

(a) gives separate value to assets such as rail, concrete sleepers and concrete bridges that have been replaced as capital items and have not reached the end of their expected useful lives;

(b) takes account of and gives value to assets such as wooden sleepers, fences, ballast and wooden bridges through the allowed maintenance expenditure; and

(c) gives value to tunnels, cuttings and embankments through the value given to the network as a whole.

This approach provides a valuation that is appropriate having regard to all the criteria in section 138(2).

[656] B&H 2015: 23–25 for sleepers and 20 for ballast.

In forming our view for this Decision, we have had regard to all the submissions and comments from Queensland Rail and other stakeholders, including those provided in December 2015 and March 2016 after our October 2015 Draft Decision.

Among these, we have considered Queensland Rail's March 2016 submission on renewal assets that Queensland Rail suggests the QCA failed to include in its Draft Decision valuation.[657]

The QCA has, during the course of its detailed assessment of the asset base proposals in Queensland Rail's June 2013 DAU and 2015 DAU, considered the information provided in material accompanying the DAUs. We also asked Queensland Rail (through requests during the assessment of both DAUs) to provide further information on the capital expenditure that Queensland Rail claimed for inclusion in the opening asset valuation.

In general, the material considered by the QCA, including Queensland Rail's information provided in its initial submissions and responses to information requests, was detailed in respect of the years before 2007, but less detailed in respect of the period after 2007, in that the post-2007 capital projects were described in terms of categories of assets, rather than specific assets.[658] The QCA, in its Draft Decision valuation, largely adopted Queensland Rail's figures for capital expenditure incurred after 1995 (save in respect of assets with expired expected useful lives and assets which are recovered by way of maintenance costs as discussed above).[659]

Following the issue of the Draft Decision, Queensland Rail argued that there were a number of assets which should have been included in the opening asset base.[660] However, these were not specifically identified in its earlier submissions and responses to information requests.

We engaged our rail technical consultant B&H to advise us to the extent possible, based on the evidence provided and other relevant information that was available, whether those assets had been included in our Draft Decision valuation.[661]

In particular, Queensland Rail referred to a program of steel re-sleepering from before 1995, but provided no further evidence as to the timing, scope, standard or cost of the work, beyond saying the re-sleepering had taken place before 1995.[662]

B&H considered that the pre-1995 steel sleepers cited by Queensland Rail were 'maintenance and opex funded'.[663] The QCA notes that Queensland Rail will receive and has received an allowance that provides for such maintenance and operating costs.

Queensland Rail also submitted to the QCA a list of assorted assets from after 1995, including fences, telephone equipment, three concrete culverts, a steel culvert, six axle counters and a concrete bridge, that it said we had failed to include in our Draft Decision valuation.[664] Queensland Rail did not provide any further evidence in its March 2016 submission that would enable the QCA to assess whether or not these specific assets were included in aggregate

[657] Queensland Rail, sub. 33: 27; sub. 33, Att. 4.
[658] This detailed information on the pre-2007 assets was from an asset register provided to the QCA as part of QR Network's western system tariff proposal in 2008.
[659] B&H was able to use the information from the 2008 asset register to identify specific assets from before 1995, that Queensland Rail did not identify in its submissions, but which we included in our valuation.
[660] Queensland Rail, sub. 33: 27.
[661] For further details, please see B&H 2016, Part 2.
[662] Queensland Rail, sub. 33: 27.
[663] B&H 2016, Part 2: 11–12.
[664] Queensland Rail, sub. 33, Att. 4.

capital spending information it had already submitted (and which we had largely adopted in the Draft Decision valuation).

B&H assessed in some detail the post-1995 assets listed by Queensland Rail—this assessment is set out in Table 2 in Part 2 of B&H's Supplementary Report, with specific responses for all the assets cited by Queensland Rail in Attachment 4 to its March 2016 submission.[665]

B&H found that, on the balance of probability, all assets cited in Queensland Rail's Attachment 4 except one had been included in the QCA's opening asset valuation.[666] B&H was unable to undertake a further assessment because Queensland Rail's earlier information was aggregated into categories whereas its subsequent information provided in March 2016 was about specific assets (and Queensland Rail had not confirmed whether these particular assets were or were not contained in the earlier, less-specific information it provided). Queensland Rail has provided no explanation for why it failed to identify the value of these assets in its earlier submissions and responses to information requests.

In the circumstances, the QCA is satisfied that it has made a proper allowance and in particular is not satisfied that it has not allowed a value for those assets specified in Attachment 4 to Queensland Rail's March 2016 submission.

The one exception is a 'concrete rail bridge' listed by Queensland Rail as being installed in April 2011. B&H determined that the bridge was installed as part of repairs to the track east of Toowoomba after major flooding in 2011, and provided an initial estimate that the bridge had a value of about $1 million (in $2013).[667]

In relation to the concrete bridge installed in 2011, the QCA accepts that if the bridge was not part of the earlier information that Queensland Rail provided, it is entitled to an allowance for this asset. However, at this stage, Queensland Rail has not provided sufficient information for the QCA to properly assess the value of the bridge.

The QCA accepts that one option is for us to simply accept a value for the concrete bridge based on the limited information provided to us. However, we consider that a better option is for Queensland Rail to make a submission under the capital expenditure approval process in Schedule E of the undertaking, once approved, for the bridge to be included in the regulatory asset base.

This submission would need to give sufficient information for the QCA to fully assess the value of the asset, and to determine whether it was appropriate to include in the asset base. Relevantly, the capital expenditure process provides that, if the QCA finds that the scope, standard and cost of the capital project is prudent, the asset will be accepted into the regulatory asset base.

Accordingly, our proposed value for the West Moreton common network between Rosewood and Columboola, at 1 July 2013, is $254.5 million.

Decision

The review of the RAB valuation in light of the ongoing high maintenance and capital spending has been an important element of this regulatory process and the QCA has been alert to and had regard to the interests of Queensland Rail that arise from the review and resulting asset valuation (s. 138(2)(b)). In particular, the QCA is satisfied its required valuation will allow a

[665] B&H 2016, Part 2: 13–17.
[666] B&H 2016, Part 2: 13–17.
[667] B&H 2016, Part 2: 11.

return on investment that is commensurate with the regulatory and commercial risks of providing access for West Moreton network coal services (s. 168A(a)). However, the QCA is not satisfied that the review has given rise to regulatory uncertainty for Queensland Rail that arises for consideration.

To allow a return on investment by which access holders and end users were paying for both high maintenance spending and for assets that were renewed through that maintenance spending, or paying for assets that had reached the end of their effective useful lives, would overcompensate Queensland Rail for the regulatory and commercial risks of providing access. This would not promote economically efficient investment in the West Moreton network or competition in relevant markets, including those for above-rail haulage, coal production and coal tenements (ss. 138(2)(a) and 69E). Such a return will increase the risk to Queensland Rail that the assets in which it has invested to provide the service will be stranded (s. 138(2)(b)).

Taking account of and giving value to assets (that have been funded through maintenance allowances) by the future maintenance allowances, and reflecting the value for tunnels, cuttings and embankments in the value given to the network as a whole will provide incentives for Queensland Rail to efficiently invest in its network and promote competition in relevant markets, including those mentioned above. The required valuation is in the public interest as it will not discourage investment in relevant markets which would reduce economic growth in Queensland (s. 138(2)(a) and (d)).

The required valuation is in the interests of access seekers and holders in paying a return on and of an efficient investment value that is commensurate with Queensland Rail's regulatory and commercial risks of providing access (s. 138(2)(e) and (h)).

We have also had regard to the effect of excluding existing assets for pricing purposes. The QCA's view is that its approach, in valuing the network as a whole, does not exclude existing assets for pricing purposes, which have been taken into account in the way discussed above. However, even if the proper reading of the words 'the effect of excluding existing assets for pricing purposes' in section 138(2)(f) would mean that the approach we have taken does involve excluding existing assets for pricing purposes, that is a matter to which we have had regard, and having done so, we would not come to a different decision.

Avoiding windfall gains and monopoly rents, as the valuation does, is a matter the QCA considers relevant in considering the regulatory asset base valuation (s. 138(2)(h)). On this basis and having regard to the criteria in section 138(2), the QCA's Decision is that it is not appropriate to approve the 2015 DAU proposed by Queensland Rail and the undertaking should be amended to apply a regulatory asset base value of $254.5 million for the West Moreton common network between Columboola and Rosewood, at 1 July 2013.[668]

Summary 8.11

The 2015 DAU is to provide for an opening asset value of $254.5 million for the West Moreton common network between Columboola and Rosewood, as at 1 July 2013.

[668] This figure is rolled forward to derive the opening asset value for the tariff period beginning 1 July 2016 (see Section 8.17 of this Draft Decision).

8.14 Past capital expenditure

Queensland Rail's 2015 DAU proposed opening asset value at 1 July 2015 included claims for:

- historical capital expenditure incurred during 2007–08 to 2012–13 (historical capital expenditure); and
- capital expenditure incurred during 2013–14 and 2014–15 (pre-2015 DAU capital expenditure).

Historical capital expenditure

In the 2015 DAU, Queensland Rail included a new claim for capital expenditure it incurred during 2007–08 to 2012–13 on the West Moreton network. Queensland Rail said the underlying capital projects were triggered by freight (i.e. non-coal) services, but were on the common network, and referred to it as transport service contract (TSC) capital. Queensland Rail said the government funded the return on, and of, the TSC capital. Queensland Rail's rolled forward value of TSC capital at 1 July 2013 was $17.9 million.[669]

Our 2015 Draft Decision said that it was reasonable to consider investments on the shared network that benefitted all traffics as a common network capital expenditure. However, our Draft Decision also stated that investors need only receive a return on, and of, their investments once to avoid windfall gains. Since Queensland Rail was receiving a return on, and of, the TSC capital from the government, we did not consider the TSC capital for the purposes of deriving the reference tariff for coal-carrying train services in the West Moreton network.[670]

Stakeholders' submissions

Queensland Rail rejected our treatment of the TSC capital.[671] Aurizon suggested exercising due diligence when considering capital expenditure as common network costs.[672]

QCA analysis and Decision

Our decision is to consider the TSC capital in the West Moreton common network regulatory asset base, as nearly all of the TSC capital benefits all traffics.

However, our Decision is not to include the returns on, and of, the TSC capital for the purposes of deriving the coal reference tariffs. This is because Queensland Rail is receiving a return on, and of, the TSC capital from the government and including the TSC capital returns in the building block revenue requirements for recovery from coal services will amount to double recovery by Queensland Rail of those investment costs. We do not consider it appropriate for Queensland Rail to receive more than once a return on, and of, its investments.

Our assessment and treatment of TSC capital

Queensland Rail said that the 2015 Draft Decision treatment of not considering the TSC capital in the West Moreton common network asset base meant that common network investments

[669] Queensland Rail, sub. 2: 35, 49; 2015g: 2.
[670] QCA 2015: 181–182.
[671] Queensland Rail, sub. 26: 34–39. In a letter of 29 April 2016, Queensland Rail stated it was concerned that aspects of the TSC arrangement had been treated incorrectly in our 2015 Draft Decision and informed that it will provide a further submission to the QCA 'as soon as possible'. However, on 16 May 2016, Queensland Rail advised that it was not putting in a further submission. It is unknown what aspects of our Draft Decision did Queensland Rail have concerns with. In any event, in its December 2015 submission, Queensland Rail raised concerns on the TSC capital matter and we have considered them in making this Decision.
[672] Aurizon, sub. 20: 25.

triggered by non-coal users were allocated solely to those users. Queensland Rail argued this approach was inconsistent with the QCA's earlier view of allocating all common network investments between coal and non-coal users, regardless of who underwrote the investment. Queensland Rail said that the Draft Decision approach would prevent it from fully recovering the costs of its investments.[673]

We have considered Queensland Rail's 2015 DAU and reviewed our 2015 Draft Decision treatment of the TSC capital in light of Queensland Rail's and other stakeholders' comments. There are two issues:

- Is TSC capital expenditure a common network expenditure?
- How to treat government support for TSC capital?

We reiterate our earlier view that incremental investment on the network shared by different traffics could benefit all traffics. For example, a project to improve the track standard will result in increased reliability and lower maintenance requirement and will benefit all traffics. Therefore, it is reasonable to consider such investment as a common network capital expenditure and to allocate it amongst the different classes of users.[674] We have also considered Aurizon's comments that not all investments on the West Moreton network may benefit coal and non-coal services.[675]

Given these considerations, to the extent the TSC capital is on the shared network and benefits all traffics it should be considered in the West Moreton common network RAB.

We engaged B&H to independently assess Queensland Rail's TSC capital expenditure claim. B&H considered that nearly all of the TSC capital was on the shared network and benefitted all traffics.[676] We are satisfied with B&H's assessment and we have considered the TSC capital in the West Moreton common network RAB.[677] Furthermore, we have allocated a share of the TSC capital to coal services for the purposes of determining coal reference tariffs in this Decision (see Summary 8.2 for our consideration of coal allocation of fixed common network costs).

We also reiterate our earlier view that investors need only receive a return on, and of, their investments once to avoid windfall gains.[678] Queensland Rail is receiving a return on, and of, the TSC capital from the government, and it should not seek to also receive the TSC capital returns from access holders/seekers. On that basis and for the purposes of determining coal reference tariffs in this Decision, if returns related to the part of the TSC capital allocated to coal services were included in the building blocks revenue requirements for recovery from coal traffics, it will amount to double recovery of those investment costs. A double recovery will not promote efficient investments in the network, will not be in the public interest and the interests of access seekers and access holders, and it is not appropriate having regard to the assessment criteria in section 138(2) of the QCA Act.

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[673] Queensland Rail, sub. 26: 34–38.
[674] QCA 2015: 181–182.
[675] Aurizon, sub. 20: 25. Aurizon stated: 'For example, tunnel deepening may not provide any direct benefit to coal carrying train services and is therefore not a common cost.'
[676] B&H identified that around 99 per cent of the TSC capital was on the common network (B&H 2016, Part 1: 9–13).
[677] The rolled forward value of the TSC capital at 1 July 2013 is $18.4 million. This is more than Queensland Rail's July 2013 value of $17.9 million because we have considered higher asset lives for certain asset classes (see Section 8.16 of this Decision).
[678] QCA 2015: 182.

Our assessment shows that the regulatory returns related to the TSC capital, based on regulatory WACC and regulatory asset lives, are less than the returns Queensland Rail receives from the government. Therefore, for the purposes of determining coal reference tariffs, we have deducted from coal revenue requirements, government-funded returns related to the part of the TSC capital allocated to coal services, subject to a cap of the regulatory returns, as any additional return Queensland Rail receives is a matter for Queensland Rail.

Our Decision prevents Queensland Rail from double recovering the efficient investment costs related to the TSC capital allocated to coal services, and is appropriate having regard to section 138(2) of the QCA Act.

Pre-2015 DAU capital expenditure

In the 2015 DAU, Queensland Rail included a claim of $39.3 million for capital expenditure carried out in the West Moreton network during 2013–14 and 2014–15.[679]

Our 2015 Draft Decision proposed to accept as prudent $37.7 million of that capital expenditure, having regard to our consultant's (B&H) advice.[680]

New Hope supported our 2015 Draft Decision about Queensland Rail's claim for past capital expenditure.[681]

Since stakeholders did not raise concerns regarding our Draft Decision about the pre-2015 DAU capital expenditure, we accept as prudent $37.7 million of the pre-2015 DAU capital expenditure. We have allocated a share of this capital expenditure to coal services for the purposes of deriving the West Moreton coal reference tariff in this Decision (see Summary 8.2 for our consideration of coal allocation of fixed common network costs).

Summary 8.12

For the treatment of past capital expenditure, 2015 DAU is to provide that:

(a) the regulatory return on, and of, the TSC capital allocated to coal services be deducted from the capital charges for the coal regulatory asset base, for the purposes of deriving the reference tariff.

(b) $37.7 million of the capital expenditure incurred during 2013–14 and 2014–15 is considered in the West Moreton common network regulatory asset base.

8.15 Forecast capital expenditure

In the 2015 DAU, Queensland Rail proposed a capital indicator process and made a provision for $141.9 million in forecast capital expenditure for the five-year period July 2015 to June 2020, for reflecting in its proposed ceiling price.[682]

Our 2015 Draft Decision proposed forecast capital expenditure of $144.2 million, which was greater than Queensland Rail's proposal due to some maintenance activities being treated as

[679] Queensland Rail, sub. 2: 36. The amount reported here includes interest during construction.
[680] QCA 2015: 182–184. The amount reported here includes interest during construction.
[681] New Hope, sub. 22: 16.
[682] Queensland Rail's proposed prudency assessment process—where prudency of capital expenditure is assessed for scope, standard and costs for the expenditure to be included in the RAB—is considered separately in Section 8.9 of this Decision.

capital works that outweighed our proposed lower expenditure for some aspects of the capital program (for example, slope stabilisation works on the Toowoomba range).

Stakeholders' submissions

Queensland Rail had significant concerns with aspects of B&H's assessment of forecast capital expenditure and provided new information in support of its 2015 DAU proposal.[683]

Miners supported B&H's assessment of Queensland Rail's forecast capital expenditure and said they relied on the QCA to assess the prudency of actual capital expenditure.[684]

QCA analysis and Decision

Our Decision accepts forecast capital expenditure of $137.9 million for the five-year period July 2015 to June 2020 for the purposes of the capital indicator, which is 97 per cent of Queensland Rail's proposal of $141.9 million.

We will assess the planned capital works in detail through the prudency assessment process in the approved undertaking. A key aspect of that assessment will be to determine whether Queensland Rail explored the feasibility of alternative solutions.

Approach to assessing forecast capital expenditure

We engaged B&H to review its previous assessment of forecast capital expenditure in light of stakeholders' comments, including new information provided by Queensland Rail in its post-Draft Decision submission.

B&H retained its previous assessment relating to aspects of forecast capital expenditure on which Queensland Rail raised concerns. For example, B&H did not accept:

- Queensland Rail's claim of a higher expenditure for:
  - slope stabilisation works on the Toowoomba range due to past works and considering that Queensland Rail was yet to commence the proposed work that was subject to further analysis by Queensland Rail; and
  - level crossing reconditioning program due to lack of information about the proposed scope and considering that a substantial expenditure was planned for a related activity (level crossing compliance).[685]
- Queensland Rail's argument that ballast undercutting should not be capitalised, as B&H considered that the scope proposed by Queensland Rail was actually a reconstruction of track, which was a capital activity.

However, as noted in the discussion on maintenance costs, B&H considered treating rail renewal as a maintenance activity rather than as a capital item to be appropriate, given the smaller scope and lower cost submitted by Queensland Rail in its December 2015 submission.

Ultimately, B&H's revised assessment resulted in a total forecast capital expenditure of $137.9 million for the five-year period July 2015 to June 2020.[686]

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[683] Queensland Rail, sub. 26: 47 and Annexure 2.
[684] New Hope, sub. 22: 16 and sub. 32: 24; Yancoal, sub. 27: 2 and sub. 35: 4–5.
[685] B&H 2016, Part 1: 6–8.
[686] This is equivalent to the B&H recommended total forecast capital expenditure of $124.4 million (June 2015$), which excluded capitalised interest and inflation adjustment.

QCA Decision

We accept that Queensland Rail needs to make capital improvements to its ageing railway to maintain the integrity of its network. We are satisfied that B&H's assessed $137.9 million is a reasonable estimate of Queensland Rail's future capital program for the five-year period from July 2015 to June 2020.

We consider a capital indicator that reflects a reasonable assessment of the planned capital expenditure is in the interests of all parties. It would promote efficient investment in the network and prevent tariffs being mis-specified due to inappropriate projections of capital works. Therefore, we accept the $137.9 million capital indicator, having regard to the assessment criteria in section 138(2) of the QCA Act.

However, we also note B&H's observation that Queensland Rail has proposed capital expenditure without rigorously evaluating alternative solutions. Given this, while we accept $137.9 million for the purposes of the capital indicator, we will subsequently assess the capital works in detail through the prudency assessment process in the undertaking. A key aspect of that assessment will be to determine whether Queensland Rail has appropriately explored the feasibility of alternative solutions.

As considered in Section 8.3.2 of this Decision, we treat the entire planned capital expenditure as common network capital expenditure as it is on the shared network and would benefit all traffics. Therefore, as per Summary 8.2 (Section 8.3.3 of this Decision), we have allocated about 71 per cent of the forecast capital expenditure to coal train services, reflecting the ratio of 80/113 paths[687], and used the resultant $97.3 million for the purposes of deriving the West Moreton coal reference tariff.[688]

As considered in Section 8.3.3 of this Decision, our approach to allocating costs to coal traffics is appropriate, having regard to the assessment criteria in section 138(2) the QCA Act.

2032 embargo on coal trains

Our 2015 Draft Decision noted a statement in Queensland Rail's May 2015 submission which indicated that coal trains will not continue through the Metropolitan network beyond 2032. Our Draft Decision observed that Queensland Rail's capital and maintenance programs did not recognise this 2032 embargo on coal trains and noted that 'our preliminary view, subject to stakeholders' further comments, is to assess Queensland Rail's proposed capital program on the basis that coal transport will continue beyond 2032'.[689]

In its post-Draft Decision submission, Queensland Rail said that there was no 2032 embargo on coal trains and that its management of the West Moreton network and Metropolitan network was not based on a '2032 embargo on coal trains'.[690]

New Hope said it was prudent for the QCA to assess Queensland Rail's capital program on the basis of operations continuing beyond 2032. However, New Hope suggested reviewing it in the next undertaking assessment in the event that the 2032 embargo remained in place.[691]

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[687] As considered in Section 8.3.3 (Change in circumstances) the fixed cost allocator for 2015–16 is 69.5 per cent.

[688] This compares to the $133.0 million Queensland Rail considered for deriving the ceiling price for West Moreton coal services in the 2015 DAU.

[689] QCA 2015: 186–187.

[690] Queensland Rail, sub. 33: 38.

[691] New Hope, sub. 31: 17–18.

We note that the 2032 end date for coal trains is an extension of the previous 2024 end date and that Queensland Rail's capital and maintenance programs are not affected by this end date. We also note that both Queensland Rail and coal miners do not consider it as a constraint and it has not affected their planned operations at this stage. Taking all this into account, we consider this matter is best left for consideration in the next undertaking period when there is likely to be greater clarity on whether the embargo will remain in place.

8.16 Capital charges for the coal RAB

One of the pricing principles is that the price of access to a service should generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved (s. 168A(a)).

The QCA and other regulators seek to achieve this by applying the financial capital maintenance (FCM) principle (also known as the NPV=0 principle). This principle means that investors in regulated monopoly infrastructure have the opportunity to receive returns on, and of, their capital investment and have an incentive to make economically efficient investments in the future. FCM achieves this by requiring that the present value of the expected future cash flows, including returns on and of capital, equals the amount invested to provide the regulated service.[692]

Following the setting of the RAB, we are able to determine the efficient capital charges to be included within approved maximum allowable revenue limit. This involves components for:

- a return on capital—based on a WACC applied to a RAB; and
- a return of capital—based on a suitable depreciation method.

Return on capital

Identifying an appropriate rate of return is important to setting ceiling prices for access charges for coal-carrying train services that operate on the West Moreton network.

As discussed in Section 3.7 of this Decision, Queensland Rail used an indicative WACC of 6.93 per cent in developing its proposed ceiling price.[693]

In this Decision, we have applied two different WACCs.

For assessing the 2013–16 tariff, we have used the WACC of 6.93 per cent that was proposed by Queensland Rail in its 2013 and 2015 DAUs, and was used to assess prices in the QCA's 2014 and 2015 Draft Decisions. This was based on time-variant WACC parameters assessed over the 20 business days immediately before 1 July 2013.[694] Queensland Rail said risk-free rates were higher in previous periods.[695] This matter is discussed in Section 3.7 of this Decision. The tariff relevant to the 2013–2016 period is discussed in greater detail in Part C of this chapter.

For the purpose of Queensland Rail's proposed rate of return for coal reference tariffs from 1 July 2016, we have used a WACC of 5.73 per cent per annum, based on time-variant WACC parameters assessed over the 20 business days beginning 12 March 2016. This is outlined in more detail in Section 3.7 of this Decision.

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[692] For a more detailed discussion of FCM and the NPV=0 principle, see QCA, 2014a.
[693] Queensland Rail, sub. 2: 39–41.
[694] QCA, 2014d:142–143.
[695] Queensland Rail, sub. 26: 30.

Return of capital

We endorse Queensland Rail's proposed approach of using straight-line depreciation based on asset lives that reflect the physical lives of the assets.

Given the age profile and estimated lives of the West Moreton network below-rail infrastructure, we have formed the view that asset lives should be measured in terms of their physical lives. This is capped at 100 years, which is the Australian standard design life for bridges,[696] and the expected useful life for essentially perpetual assets such as tunnels, cuttings and embankments.

We also consider that straight-line depreciation is a reasonable approximation of the actual time profile for the asset valuation of the West Moreton network's infrastructure.

We note New Hope's suggestion that if a 'tariff arising from a pure building blocks methodology is not appropriate', one way of addressing this would be to apply an alternative depreciation profile.[697] However, we do not find this is necessary as the building block tariff set out below is appropriate having regard to the approval criteria in section 138(2) of the QCA Act.

Accordingly, we have decided to approve asset lives for the purposes of calculating straight-line depreciation charges as outlined in Table 20 below.

Table 20 Approved asset lives[698]

Asset class	*Asset life (years)*
Track	35
Roads	38
Fences	20
Signals	20
Bridges	100
Tunnels	100
Culverts	100
Earthworks	100
Land acquisition costs	50
Telecommunications	20
Other	20

QCA-approved capital charges

Based on our decisions above, we approve capital charges to be included within the maximum allowable revenues used to derive the ceiling price for coal-carrying train services as outlined in Table 21 below.

[696] B&H 2014: 77.
[697] New Hope, sub. 22: 17.
[698] These asset lives apply to capex since 2007. The asset lives that apply to assets before 2007 are the value-weighted remaining lives based on B&H's asset value assessment (B&H 2015: 49).

Table 21 Capital charges[699]

$m	*2016/17*	*2017/18*	*2018/19*	*2019/20*
Capital charges	$14.2	$15.6	$17.0	$18.2

For tax depreciation, we used Queensland Rail's estimates and calculation method with two exceptions, where data was insufficient.[700]

Summary 8.13

The 2015 DAU is to reflect the West Moreton network capital charges as per Table 21 above and include a WACC, for assessing the 2013-2016 tariff, of 6.93%; and, for the purpose of Queensland Rail's proposed rate of return for coal reference tariffs from 1 July 2016, include a WACC of 5.73%.

See definition of 'WACC' in Appendix F.

8.17 QCA's required reference tariffs

Queensland Rail's 2015 DAU proposed a ceiling price of $34.92/'000 gtk and a reference tariff of $19.41/'000 gtk as at 1 July 2015.

For the reasons set out above, having regard to the approval criteria in section 138(2) of the QCA Act, we do not consider it appropriate to approve either the ceiling price or reference tariff proposed by Queensland Rail.

We have instead derived a reference tariff at a ceiling price we have assessed based on inputs for the four years beginning 1 July 2016. In applying the mechanisms discussed above in Sections 8.3 to 8.6 of this Decision to the volumes, building blocks and capital charges discussed above in Sections 8.10 to 8.16, we have considered a number of related issues, including:

- the tariff period;
- the roll-forward of the asset base; and
- corrections and changes to the tariff model

These matters are explained in turn below, before we:

- summarise the way the West Moreton reference tariff is derived;
- assess whether the tariff complies with the pricing limits we require in the undertaking; and
- set out why our required prices are appropriate with regard to section 138(2).

Tariff period

Queensland Rail's 2015 DAU proposed a tariff for the five years beginning 1 July 2015, and a ceiling price that it based on building blocks forecasts for those years. Our October 2015 Draft Decision also proposed a tariff starting on 1 July 2015 (for indicative purposes).

[699] These capital charges were calculated as the sum of return on capital (based on the 1 July 2016 WACC) and return of capital, less inflationary gain based on the coal-allocated regulatory asset base roll forward, and less the capital charge based on the coal-allocated share of TSC capital (Section 8.14 of this Decision).

[700] The exceptions were the tax depreciation for the Western System Asset Replacement (WSAR) project and the TSC capital.

However, in this Decision on the 2015 DAU, we have derived a tariff over the four years beginning 1 July 2016. For the purposes of the adjustment amount mechanism discussed below, we have also derived a tariff for the three years beginning 1 July 2013 that, for the 2015–16 financial year, uses building blocks inputs based on our assessment of forecasts for that year from the 2015 DAU—this is discussed in more detail in Section 8.20 below.

This approach is appropriate for a number of reasons, including:

(a) The approval date for the new undertaking is most likely to be during the 2016–2017 financial year, which aligns with a tariff derived starting at the beginning of that period.

(b) The WACC for the 2015 DAU was set based on time-variant parameters assessed over the 20 business days beginning 12 March 2016. We consider it appropriate to use that WACC for the forward-looking period—that is, the period starting 1 July 2016. In this regard, there is also a WACC that, based on Queensland Rail's conduct, was expected to be used for the period beginning 1 July 2013, that we have applied for that earlier period (see Sections 3.7, 8.18 and 8.20 of this Decision).

(c) The period over which the adjustment charge process applies is expected to be mostly covered by the tariff relating to the 2013–2016 period.

We consider that a tariff derived over the period starting 1 July 2016 is likely to advance the legitimate business interests of Queensland Rail as it aligns with the period over which the WACC has been set and provides a transparent and readily understood approach for calculating the tariff (s. 138(2)(b)). For the same reasons, the 2016–20 tariff will promote the efficient investment in and use of the rail infrastructure and be in the interest of access seekers and access holders (s. 138(2)(a), (e), (h)). We therefore consider it appropriate to apply this period, having regard to all the approval criteria in section 138(2).

Asset base roll-forward

Queensland Rail's 2015 DAU proposed an asset value at 1 July 2013, then rolled it forward using forecast capital expenditure to derive an opening asset base at 1 July 2015.

We have applied the same methodology, but rolled forward the common network asset base to 1 July 2016, using:

(a) our assessed opening asset base at 1 July 2013 of $254.5 million (see Section 8.13 of this Decision);

(b) our assessed prudent capital expenditure for 2013–14 and 2014–15 of $37.7 million (see Section 8.14); and

(c) our assessed capital indicator of $26.0 million for 2015–16 (see Section 8.15)

This gives a common network opening asset value of $312.4 million at 1 July 2016.

Corrections and changes to the model

We made some changes to the tariff model used in the Draft Decision to address inconsistencies and minor errors and reflect new information that became available. These included:

(a) changing the compounding and discounting rate from the inflation rate (used by Queensland Rail in its model) to WACC for the operating expenditure and maintenance components in the building blocks calculation and the NPV formula. Using WACC reflects

the opportunity cost of capital and is consistent with the discounting of other costs in the building blocks;

(b) updating the 2014–2015 inflation rate with the actual ABS CPI data, rather than the assumed CPI of 2.5 per cent for indexing operating expenditure that is based on Queensland Rail's 2012–13 below-rail financial statements and rolling forward the asset base. This means that a consistent inflation rate is applied for both the escalation of the tariff, and the escalation of the building blocks components. The escalation by actual CPI would have been done in the post-approval tariff indexing process if the undertaking had been approved earlier;

(c) fixing a formula error in reproducing the 1995-2007 historical developer contribution and AFD-funded capital expenditure data—this had a non-material effect on the 1995–2007 historical capital expenditure value;

(d) addressing an inconsistency in the data source when splitting the B&H pre-2007 RAB values into pre-1995 assets and 1995–2007 capital expenditure—this had a non-material effect on the coal-allocated values of pre-1995 and 1995–2007 assets; and

(e) addressing an inconsistency with the 2015 DAU in the 2007–08 capital expenditure roll forward (we used 11 months for 2007–08 in our Draft Decision, and are now using 12 months, which is the same as the 2015 DAU)—this had a non-material effect on the capital expenditure values.

Tariff summary

In assessing the West Moreton tariff, we have applied:

(a) an allocation to coal traffics of:

  (i) 70.8 per cent for fixed costs including post-1995 assets, forecast capital expenditure and fixed maintenance and operating costs (see Section 8.3.3 of this Decision);

  (ii) 58.4 per cent for pre-1995 assets (Section 8.4.1); and

  (iii) about 98 per cent for variable maintenance and operating costs (Section 8.3);[701]

(b) forecast weekly demand of 62.8 weekly train paths for coal and 3 for non-coal services (Section 8.10);

(c) maintenance costs allocated to coal of $71.0 million over the four years from 1 July 2016 to 30 June 2020;

(d) operating costs allocated to coal of $22.6 million over the four years;

(e) a capital indicator allocated to coal of $79.2 million over the four years;

(f) an opening coal asset base of $223.0 million (at 1 July 2016); and

(g) a WACC of 5.73 per cent for the period from July 2016 to June 2020.

The above mechanisms and building blocks give a tariff for the West Moreton network of $17.92/'000gtk, as at 1 July 2016, split into $3,011/train path and $8.96/'000gtk.

[701] Different allocators for variable costs were used for the Rosewood to Jondaryan and Jondaryan to Columboola sections to reflect coal's share of forecast gtk volume in each of those two sections.

The tariff for 1 July 2013 to 30 June 2016 is discussed below in Part C of this Chapter 8. As discussed in Section 8.6 above, the Metropolitan network tariff is escalated from the tariff that would have applied in the period starting 1 July 2013—it is therefore addressed in the discussion in Part C below. The CPI-escalated Metropolitan network tariff at 1 July 2016 is $16.66/'000 gtk, split into $1,149/train path and $8.33/'000gtk.

All the tariffs are set out in Appendix A of this Decision, which also provides further information on aspects of the building block model.

Compliance with pricing limits

We have assessed the West Moreton network tariff against the pricing limits we require in the undertaking (see Section 3.4 of this Decision). We note that New Hope has asked that we confirm that services from the Cameby Downs mine (Columboola loading loop) will be expected to pay access charges that cover at least their incremental costs.[702] We confirm that this is the case.

QCA Decision

We consider it appropriate with regard to the approval criteria in section 138(2) of the QCA Act to require a West Moreton network tariff of $17.92/'000 gtk as of 1 July 2016. Our consideration of the approval criteria includes:

(a) the object of Part 5 (s. 138(2)(a))—our Decision promotes efficient investment in, use of, and operation of, Queensland Rail's declared infrastructure, which will have the effect of promoting effective competition in upstream and downstream markets by removing regulatory uncertainty about an appropriate access price;

(b) the legitimate business interests of Queensland Rail (s. 138(2)(b), (c))—Queensland Rail continues to recover coal allocated efficient costs from forecast coal services, including returns reflecting the option value of coal paths not forecast to be contracted by coal traffics during the 2015 DAU period;

(c) the public interest (s. 138(2)(d))—our Decision promotes the future development of mines and the above-rail market by signalling to customers that they will not have to pay for assets that have reached the end of their expected useful lives, or pay access charges that include the costs for capacity they are unable to contract;

(d) the interests of access seekers and users of the West Moreton network (s. 138(2)(e), (h))—they are not required to pay reference tariffs that include costs reflecting capacity they are unable to contract;

(e) the effect of excluding assets for pricing purposes (s. 138(2)(f))—we have not excluded assets for pricing purposes. We have reflected the value of assets that have value only because of maintenance in the maintenance allowance and we have reflected the value for tunnels, cuttings and embankments in the value given to the network as a whole;

(f) the pricing principles (ss. 138(2)(g) and 168A))—although our Decision does not generate expected revenue from coal train services that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved (having regard to the adjustment discussed below), that is an appropriate outcome having regard to all of the relevant considerations; and

[702] New Hope, sub. 22: 19; see also Section 8.5.4 above.

(g) other relevant matters (s. 138(2)(h))—we are preserving regulatory certainty for stakeholders by requiring an adjustment for previous revenue over-recovery by Queensland Rail, consistent with the expectations generated by Queensland Rail's previous statements. We have also had regard to the avoidance of monopoly profits and windfall gains, and to the interests of access holders.

Summary 8.14

The 2016–2020 reference tariffs in the 2015 DAU are to provide that:

(a) West Moreton network tariff components are consistent with our reference tariff of $17.92/'000gtk, as at 1 July 2016; and

(b) Metropolitan network tariff components are consistent with our reference tariff of $16.66/'000 gtk, as at 1 July 2016

The other components of the tariffs are specified in Appendix A of this Decision.

See Schedule D, clause 3.1(e) in Appendix F.

PART C—TARIFF ADJUSTMENT

We have considered the appropriate approach to addressing the expectations of stakeholders about an adjustment to reflect the difference between the access charges that Queensland Rail has in fact received since 1 July 2013 and the access charges that it would have received if the reference tariff approved in this Decision had applied since that date.

8.18 Adjustment amount expectations

The 2008 access undertaking was extended by the QCA to 30 June 2015,[703] as an interim position and on the basis that each of the (now withdrawn) replacement DAUs proposed by Queensland Rail provided for the new tariffs approved by the QCA to apply from 1 July 2013. In addition, the now withdrawn replacement DAUs included an adjustment charge provision which provided, in effect, for recovery or refund (as applicable) of the difference in access charges paid by access holders since 1 July 2013 and the access charges that would have been paid if calculated in accordance with the new reference tariff approved by the QCA ('adjustment amount'). The adjustment charge provision required Queensland Rail to recover or reimburse the adjustment amount by making adjustments to future access charges to be paid by access holders.[704]

In contrast to its previous DAUs, Queensland Rail's 2015 DAU proposes to apply the new tariff approved by the QCA from the date of approval of the new undertaking, without the kind of adjustment referred to above.

The QCA has determined that the access charges that have been received by Queensland Rail since 1 July 2013 significantly exceed the access charges that it would have received if calculated on the basis of the reference tariff now proposed to be approved. If the new access undertaking (which contains the QCA's views on the appropriate cost build up for setting regulated tariffs) did not contain an adjustment mechanism, the QCA's indicative estimate is that Queensland Rail has received approximately $32 million more than it would have received if an adjustment were applied.[705]

In this section, the QCA considers the impact of the change in Queensland Rail's approach, stakeholders' submissions with respect to that issue and whether, in these circumstances and having regard to the criteria in section 138(2), it is appropriate to approve the 2015 DAU. In doing so, the QCA has reviewed its Draft Decision position on this matter in light of stakeholder comments and further information provided by Queensland Rail.[706]

Background

An adjustment amount has been received by Queensland Rail and its predecessors in the past through approved access undertakings through the operation of an Adjustment Charge provision. This provision operated to reflect the difference between access charges paid by reference to interim (extended) and approved tariffs (although Queensland Rail says it did not

[703] This was given effect to by a series of extensions approved by the QCA.
[704] See for example Schedule A to the February 2013 DAU.
[705] Our estimate with an indicative ±10% sensitivity range.
[706] Queensland Rail has submitted further information to the QCA following the issuing of a s. 185 notice under the QCA Act.

retain the benefit of the adjustment amount). Queensland Rail says it has never paid an adjustment amount in the past.[707]

Nevertheless, this method of addressing delays in finalising tariffs in an approved replacement undertaking has been used both when the adjustments were in rail companies' favour and when they favoured access holders. These adjustments were applied in:

- 2006, to refund to customers the difference between access charges paid from July 2005 to June 2006 and the access charges that would have been paid pursuant to the reference tariff approved for that period by the QCA in QR Network's 2006 undertaking; and
- 2010, to recoup from customers the difference between access charges paid from July 2009 to June 2010 and the access charges that would have been paid pursuant to the reference tariff approved for that period by the QCA in June 2010 amendments to QR Network's 2008 undertaking. The adjustment was applied both by QR Network for tariffs in the central Queensland coal network and Queensland Rail for the West Moreton network coal tariffs.

Queensland Rail proposed an adjustment amount (to operate as though the new reference tariff applied from 1 July 2013) in all of its (now withdrawn) voluntary DAUs to replace the 2008 undertaking—each of Queensland Rail's March 2012, February 2013 and June 2013 DAUs provided for such an adjustment.

These adjustment amounts in the voluntary DAUs were further confirmed by Queensland Rail's letters accompanying its May 2013, November 2013 and May 2014 extension DAAUs, each of which said it intended to apply its tariffs from 1 July 2013 through adjustment charge provisions in its replacement DAU. Aurizon has noted that in its 2014 Annual Report Queensland Rail said that its approved reference tariffs would be backdated to 1 July 2013.[708]

In October 2014, the QCA released its Draft Decision on the June 2013 DAU. On 12 December 2014, Queensland Rail withdrew the June 2013 DAU.

The 2008 access undertaking expired on 30 June 2015.

Queensland Rail's 2015 DAU proposal

Queensland Rail submitted its 2015 DAU on 5 May 2015. Queensland Rail does not propose to apply an adjustment charge provision in the 2015 DAU in relation to the difference in access charges it has received since 1 July 2013 and the access charges it would have received applying the reference tariff that would have applied from that date. In other words, Queensland Rail does not propose an adjustment amount to address any previous over or under recovery of access charges.

Stakeholders' comments on the 2015 DAU prior to the Draft Decision

On 15 May 2015, QCA staff published a staff paper inviting stakeholders to provide further information in response to a set of questions relating to Queensland Rail's proposal not to apply the tariff approved by the QCA with effect from 1 July 2013 through adjustment charge provisions in its replacement DAU.

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[707] Queensland Rail, sub. 26: 13–14.

[708] Aurizon, sub. 20: 11; Aurizon, sub. 29: 6. See page 32 of the Queensland Rail 2014 Annual Report at https://www.queenslandrail.com.au/about%20us/Documents/QueenslandRail_AnnualFinancialReport_2013-14_FINAL.pdf.

Five submissions were received on the 2015 DAU prior to the Draft Decision.[709]

In addition to raising procedural concerns (which the QCA addressed in the Draft Decision), Queensland Rail said that the QCA could not require an adjustment amount pursuant to the Act. Queensland Rail provided an opinion from Corrs Chambers Westgarth dated 29 May 2015. In that opinion, it is stated that the QCA cannot, as a matter of law, compel Queensland Rail to apply a retrospective reference tariff for a number of reasons, including the Transfer Notice issued under section 9(1)(j) of the Infrastructure Investment (Asset Restructuring and Disposal Act 2009 (Qld)).

In contrast, stakeholders said an adjustment amount was:

- not inconsistent with the pricing principles (s. 168A) in the QCA Act; and
- one of a range of factors that were relevant in the context of the QCA's approval criteria in section 138(2).

New Hope, Yancoal and QRC (on behalf of its Members) said they had expected that an adjustment amount would be included in the approved access undertaking and indicated that this expectation arose from the conduct of Queensland Rail.[710] Stakeholders referred to Queensland Rail's extension DAAUs in May 2013, November 2013 and May 2014 (which retained adjustment charge provisions) and accompanying letters. The QRC said its Members had advised that their expectations had been formed on the basis of repeated assurances from Queensland Rail's senior executives during meetings held throughout the development of Queensland Rail's DAUs. New Hope quoted extracts of correspondence from Queensland Rail indicating that the tariffs would apply from 1 July 2013.[711] Aurizon, New Hope and QRC said adjustments were consistent with past practice in previous regulatory periods, with New Hope referring to the adjustments being applied in 2006 and 2010.

New Hope said adoption of Queensland Rail's proposal would be a departure from regulatory precedent and demonstrate that a regulated entity can manipulate the timing of an undertaking process for financial gain.[712] New Hope also submitted that if the QCA considered that a lower tariff than Queensland Rail was currently charging should apply, a failure to apply the reference tariff from 1 July 2013 would result in a windfall gain to Queensland Rail, being a return in excess of that which the QCA assesses to be commensurate with the regulatory and commercial risks involved.[713] Yancoal also referred to a windfall gain arising from a monopoly service provider delaying the finalisation of its undertaking.

Stakeholders said that the impact of Queensland Rail's proposal was a lack of regulatory certainty, in Yancoal's case likely to lead to its shareholders reassessing the risks associated with investing in Queensland and being a part of the West Moreton network, and an increase in sovereign risk. Yancoal noted its view that this cannot be in the public interest. Yancoal said that should the proposal be adopted, its Cameby Downs mine would be in serious jeopardy.

The QRC said that, in the context of access holders being in the process of weighing up major investment decisions in capacity expansions, uncertainty and associated contingent costs would need to be factored into the decision making of those companies as a direct result of Queensland Rail's conduct. New Hope noted that regulatory certainty is in the public interest

[709] Queensland Rail, sub. 4; Aurizon, sub. 6; New Hope, subs. 8–12; QRC, sub. 14; Yancoal, sub. 16.
[710] New Hope sub. 12: 4; Yancoal sub. 16: 5; QRC sub. 14:2.
[711] New Hope, sub. 12: 4.
[712] New Hope, sub. 12: 6.
[713] New Hope, sub 12. 8.

and that increased regulatory uncertainty is likely to lead to existing or potential coal miners reassessing the risks associated with new investment in the West Moreton network and a reduction in potential competition for rail haulage services with material flow on impacts.

Aurizon too said that it expected an adjustment, based on the representations given by Queensland Rail.[714]

The consistent theme of the stakeholder submissions was that stakeholders expected an adjustment amount and if an access undertaking was now approved without the inclusion of such an adjustment amount, there would be a detrimental impact on regulatory certainty and consequential reassessment of regulatory risk in the future, with adverse investment impacts. For instance, stakeholders said:

> *[t]hese factors will have a significant detrimental effect on regulatory certainty and the resulting increase in sovereign risk may be sufficient to reassess the risks of business relating to the QR network and conversely the attractiveness of opportunities outside the QR network*[715]
>
> *[t]here is a lack of regulatory certainty and a significant increase in sovereign risk in Queensland. It is also worth noting that the change in QR's position from its previous representation has caused Yancoal to be sceptical of many aspects of QR's Undertaking*[716]
>
> *[c]learly all current users of the West Moreton system have now been put on notice and Queensland Rail's written commitments may be reversed at any time. Similarly, all future and prospective users of the system will now have to factor in an escalated risk premium into their calculations to reflect the apparently ephemeral nature of the commitments from Queensland Rail.*[717]

QCA's Draft Decision

The QCA's Draft Decision was to not approve the DAU and to ask Queensland Rail to amend the DAU to (amongst other things) provide for an adjustment amount for West Moreton network (i.e. west of Rosewood).

Stakeholders' comments after the Draft Decision

Queensland Rail continues to maintain that the QCA cannot require an adjustment amount pursuant to the Act, including asserting that it is retrospective and does not comply with the pricing principles.

Queensland Rail said:

- the adjustment amount would mean that the QCA would set a price that does not comply with the principle in section 168A(a);[718] and
- the retroactive effect of the proposed tariff cannot be avoided by stating the reference tariff will only apply from the date of the approval of the 2015 DAU as one must look at the substance, not the form, of the QCA's proposal to assess its true effect.[719]

In contrast, stakeholders said an adjustment amount is:

- not retrospective; and

[714] Aurizon, sub. 6: 8–9.
[715] New Hope, sub. 12: 6.
[716] Yancoal, sub. 16: 5.
[717] QRC, sub. 14: 3.
[718] Queensland Rail, sub. 26: 12–13.
[719] Queensland Rail, sub. 26: 16

- consistent with the proper application of the QCA Act as it is one of a range of factors that is relevant in the context of the QCA's approval criteria in section 138(2).

New Hope, Yancoal and Aurizon continued their submissions that a failure to include an adjustment amount would lead to increased regulatory risk and uncertainty.[720]

New Hope, Yancoal and QRC all said this would lead to a reassessment of regulatory risk in the future, both in the West Moreton network and Queensland in general. For instance, stakeholders said:

> *[I]f an adjustment amount is not ultimately provided for that will be such a substantial and unwarranted change to the regulatory framework (and Yancoal's expectation of how it would operate based on both the provisions of the current undertaking and QR's previous representations) that the resulting regulatory uncertainty will necessarily be taken into account when Yancoal and its shareholders are considering future investment in Cameby Downs (in comparison to other mines within the Yancoal portfolio for which this issue does not exist)*[721]
>
> *[T]he material variation from applied regulatory precedent without adequate and reasonable substantiation of a material change in circumstances is likely to have negative implications for complimentary investment by rail operators and end customers in the future*[722]
>
> *The fact that QR has attempted to do this has increased NHC's assessment of the risks of investing in this region ... NHC's assessment of investment opportunities in this region, including on the New Acland extension project (on which a decision has to be made over the coming year) would then be assessed on a basis akin to having a high sovereign risk rating.*[723]

In contrast, Queensland Rail said that an adjustment amount would create regulatory uncertainty because:

> *[i]t shows that the QCA may change material aspects of its regulatory approach from access undertaking to access undertaking affecting the ability of Queensland Rail and other stakeholders to invest and operate; and there is no certainty in the currently regulatory process as to what the price will ultimately be*[724]

Moreover, Queensland Rail submits:

> *stakeholders would have been aware that a voluntary draft access undertaking can be withdrawn at any time and, therefore, would have had the knowledge and understanding that any provisions in it could be changed and therefore would not rely on them in making investment decisions; similarly stakeholders would have been aware that the QCA may also refuse to approve a voluntary draft access undertaking with the result that none of the proposed provisions have any regulatory effect.*[725]

Second Request for Comments

On 19 January 2016, QCA staff published a staff paper requesting that stakeholders make further comment in response to the submissions made.[726]

[720] Aurizon, sub. 20: 11, New Hope, sub. 21: 5, 20-21, Yancoal, sub. 27: 1.
[721] Yancoal, sub. 27: 1
[722] Aurizon, sub. 20: 11
[723] New Hope, sub no. 21: 5
[724] Queensland Rail, sub. 26: 14.
[725] Queensland Rail, sub. 26: 14.
[726] QCA 2016e.

Stakeholders' comments after second Request for Comments

Queensland Rail retained its view that there is no legal, commercial or regulatory basis for the adjustment amount[727] and said, among other things:

- Queensland Rail has never in the past received any benefit from any adjustment amount as those amounts were paid to Aurizon Network;
- The adjustment amount was only one element of an overall suite of methodologies, assumptions and forecasts used to determine reference tariffs; and
- Stakeholders would have been aware that a voluntary DAU could have been withdrawn at any time and therefore would not rely on them in making investment decisions. The 2013 DAU was only a draft document and subject to change or even withdrawal.[728]

New Hope retained its view that the adjustment amount was appropriate and reiterated that the approval of the 2015 DAU without an adjustment amount would undermine confidence in the regulatory regime and have negative impacts on investment. Among other things, New Hope said:

- While it is true that stakeholders would have been aware that a voluntary DAU could be withdrawn at any time, stakeholders were not aware that Queensland Rail would renege on its commitments;
- Queensland Rail's position that it was willing to provide an adjustment amount as a package of measures meant that Queensland Rail 'is opposed to an adjustment amount because it is seeking to 'offset' what it considers is a worsening of its position in other areas. That in itself should be enough to demonstrate the inappropriateness of QR's position';
- Any future mining investment on the West Moreton network would need to be considered in the context that it is reliant on a monopoly service provider that is willing to extract monopoly rents; and
- Evidence that the disincentive is real will exist only after investment decisions have been taken.[729]

New Hope also submitted legal advice from Brian O'Donnell QC which said that the adjustment amount is not retrospective. Mr O'Donnell's advice states that, among other things.

> *an approved access undertaking cannot commence to operate prior to the time of its approval. But once approved, the terms of the access undertaking can regulate matters between the access provider and the user by reference to events that occurred prior to the time of the approval.*[730]

Like New Hope, QRC and Yancoal reiterated their earlier views that Queensland Rail reneging on its commitments to provide an adjustment amount has undermined investment.[731]

Aurizon too reiterated its earlier views on the need for an adjustment amount and said, among other things:

> *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*

[727] Queensland Rail, sub: 33: 27.
[728] Queensland Rail, sub: 33: 28–29.
[729] New Hope, sub: 31: 8-9.
[730] New Hope, sub: 32: Schedule 1: 3.
[731] QRC, sub: 34: 2-3; Yancoal sub: 35: 2.

> *those amounts. The horizontal separation of Queensland Rail from the Central Queensland Coal Network (CQCN) has not resulted in a material change in circumstances …* [732]

QCA analysis and Decision

We have considered Queensland Rail's 2015 DAU and stakeholder submissions in accordance with our obligations in the QCA Act.

Based on the considerations set out in this chapter and having regard to the relevant factors in section 138(2) of the QCA Act, our Decision is that:

- it is not appropriate to approve the 2015 DAU; and
- it is appropriate to amend the 2015 DAU to include an adjustment amount provision which provides for the amount that Queensland Rail receives after commencement of the undertaking to be adjusted by reference to the difference between access charges in fact paid between 1 July 2013 and the date when the adjustment amount is calculated, and the access charges that would have been paid for that period if calculated on the basis of the reference tariff that would have applied in that period (i.e. that amount being the adjustment amount).

Adjustment amount is not beyond power

The QCA considers the pricing principles, including section 168A(a), to be fundamental considerations, but that does not mean they have primacy over other considerations and it does not mean that it is necessary for them to be 'complied with'. It is open to the QCA to consider that a DAU which provides for a price that allows a service provider to recover at least the efficient costs of providing access to the service and a relevant return on investment, is, including by reference to other factors such as the object of Part 5 of the QCA Act (s.138(2)(a)), the interests of access seekers and holders (s. 138(2)(e) and (h)) and the public interest (s. 138(2)(d)), not one which is appropriate to approve.

This is discussed generally in Chapter 10 and further in relation to the adjustment amount below.

The QCA does not accept Queensland Rail's position that an adjustment amount is retrospective. The QCA accepts stakeholder views that the QCA's reference tariff is prospective and will come into effect from the date the access undertaking is approved. The QCA is of the view that an adjustment amount is to be paid by Queensland Rail after the 2015 DAU is approved and merely takes matters that have occurred in the past as the basis for calculating that amount. The fact that such a clause would operate by reference to things that have happened in the past, does not make it retrospective.

The core of Queensland Rail's argument is that the QCA has proposed an adjustment amount:

> *in a way that retroactively affects Queensland Rail's access price revenue earned in a previous regulatory period, where that revenue was earned in a manner that was consistent with reference tariffs previously approved by the QCA.*[733]

It makes similar arguments in addressing the proposition that Queensland Rail will receive a windfall gain from its change in position by referring to Queensland Rail being entitled to set access charges based on QCA approved reference tariffs under the 2008 access undertaking.[734]

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[732] Aurizon, sub: 29: 4.
[733] Queensland Rail sub. 26: 5 (fourth dot point) and as elaborated at 16.

Reference tariffs for the period from 1 July 2013 to 30 June 2015 have arisen from extensions to the 2008 access undertaking granted by the QCA. The reference tariffs for those two years were not approved by the QCA following thorough regulatory consideration, but were CPI-escalated tariffs approved on the expectation, arising from the conduct of Queensland Rail, that new tariffs approved by the QCA following an investigation under the QCA Act would operate as though they applied from 1 July 2013. Since 1 July 2015 there have been no QCA-approved reference tariffs under the 2008 access undertaking.

Queensland Rail argues that the 'clear and undeniable effect of the QCA's proposal is to retroactively alter and set aside Queensland Rail's accrued rights for the provision of the declared service to users'.[735] However, this is not correct. Queensland Rail has charged its customers under their access agreements and the QCA's decision has no impact on those contractual matters in the past. The QCA is concerned with future considerations, including promoting future efficient use and investment in the network and dependent markets by preserving regulatory certainty that will arise from giving effect to the expectation of access holders and access seekers that an adjustment amount would be included in the approved access undertaking.

Transfer Notice

Queensland Rail says the 2008 access undertaking continues to apply given the operation of the Transfer Notice and the Transfer Notice specifically refers to the reference tariffs under the 2008 access undertaking continuing to apply. Queensland Rail said it is lawfully entitled to be paid, and is obliged to set, access charges based on this access undertaking, until a replacement access undertaking is approved by the QCA. Queensland Rail submits the QCA cannot as a matter of law override, or retroactively alter, the requirements of the Transfer Notice.[736]

The QCA is not satisfied that the Transfer Notice validly indefinitely extends the term of the 2008 access undertaking. In addition, for the reasons outlined above, the QCA does not accept that an adjustment amount is retrospective.

Relevant considerations under section 138(2)

The QCA may approve Queensland Rail's 2015 DAU, only if it considers it appropriate to do so having regard to each of the factors in section 138(2) of the QCA Act.

The factors in section 138(2) which the QCA considers are of particular significance to the consideration of the issues addressed in this section of this chapter are:

- the object of Part 5 of the Act, to promote the economically efficient operation of, use of and investment in, significant infrastructure by which services are provided, with the effect of promoting effective competition in upstream and downstream markets (ss. 138((2)(a) and 69E);
- the legitimate business interests of Queensland Rail (s. 138(2)(b));
- the public interest, including through:
  - regulatory certainty for long-lived infrastructure assets; and

[734] Queensland Rail sub. 26: 17.
[735] Queensland Rail sub. 26: 16.
[736] Queensland Rail, sub. 26: 17.

  - preventing a regulated entity from benefiting from delays in the regulatory process to which it has contributed (s. 138(2)(d));
- the interests of persons who may seek access to the service, namely access seekers and holders who have expected, based on Queensland Rail's representations and actions, that there would be an adjustment amount in the new access undertaking (s. 138(2)(e));
- the pricing principles in section 168A (s. 138(2)(g));
- any other issues we consider relevant (s. 138(2)(h)). The QCA considers that other relevant matters here include:
  - Queensland Rail's previously stated intention to include an adjustment amount;
  - the expectation of stakeholders of the inclusion of an adjustment amount;
  - the disappointed expectations of stakeholders if an adjustment amount is not included in the approved undertaking; and
  - the impact of the change in Queensland Rail's position with respect to the inclusion of an adjustment amount in its 2015 DAU.

As in practice the owner and operator of the service are the same, the considerations in section 138(2)(c) are considered within section 138(2)(b). The QCA has also had regard to section 138(2)(f), but notes that the adjustment amount does not exclude assets for regulatory pricing purposes.

The object of Part 5

As noted above, stakeholders' submissions are that, based on Queensland Rail's previously stated commitment, they expected Queensland Rail to include an adjustment amount which had the effect of reconciling access charges paid since 1 July 2013 and that if a new DAU was approved without such a mechanism, regulatory certainty would be adversely impacted with the result that stakeholders would reassess the regulatory risk attaching to future investments.

The QCA commissioned Professor Flavio Menezes as an independent economic consultant to explore the likely impacts of the absence of an adjustment amount in the next access undertaking in circumstances where Queensland Rail had previously stated its intention to include such an amount. His view is that access seeker investment decisions can be adversely affected by regulatory risk. In particular, Professor Menezes said:

> *There are at least two ways in which QR's proposal may increase regulatory uncertainty. First, it may create a perception amongst access seekers that the regulatory process favours QR through a 'heads I win, tails you lose' situation. That is, access seekers have no certainty that QR will apply these arrangements symmetrically. Indeed, QR's proposal reflects an increased likelihood that the new tariff will be lower than the existing, interim tariff, and that the proposal would not have been put forward if tariffs were likely to increase instead.*
>
> *Second, deviating from the expectations of including an adjustment [amount] to refund or recoup differences in the tariffs, in a way that benefits QR, can also increase the perceived risk associated with the overall regulatory framework.*[737]

Professor Menezes' report is available on the QCA's website.

Following the release of the Draft Decision, Queensland Rail engaged PWC to review Professor Menezes' conclusions.

[737] Menezes, F 2015c: 2.

PWC had, among other things, concerns with Professor Menezes' 'conceptual model', including the distinction between 'interim' and 'final' tariffs.[738] Professor Menezes did not accept these concerns and said his model was developed to:

> *examine, conceptually, what would happen to the incentives for investment faced by access seekers resulting from…. the difference between the temporary (or interim) tariff and the final tariff … [not being] recovered from or refunded to access seekers.*[739]

PWC also said that Professor Menezes presented no evidence to suggest that access seekers have had investment proposals delayed or cancelled or that access seekers made investments with the expectation of a tariff adjustment.

Again, Professor Menezes did not accept these concerns. He said:

> *[t]he economic analysis of the impact of QR's proposal is necessarily prospective in nature … The mechanisms … include the creation of asymmetric risk—the perception that the regulatory process favours QR—and a perception of an unstable regulatory process. Both mechanisms may adversely impact future investment. This analysis is indeed theoretical in nature. It was aimed at identifying what the impact of the proposal will have on future investment based on what economic theory would predict.*[740]

PWC briefly also raised several other issues, which Professor Menezes has also addressed.

After Professor Menezes was appointed to the QCA Board on 8 April 2016, the QCA commissioned Professor Stephen King to undertake an independent peer review of Professor Menezes' analysis and conclusions. Professor King said Professor Menezes' approach in his 2015 report on the impact of the absence of an adjustment amount is 'both economically rigorous and balanced'.[741]

Professor King said:

> *[T]he concern highlighted by Professor Menezes is that the failure to provide a symmetric approach to tariff adjustment in the current regulatory period will create a 'concern' by investors that such a failure will also occur in future regulatory periods. It is this risk of 'regulatory opportunism' that will lead to the distortion to investment and the dynamic inefficiency. Professor Menezes correctly concludes that the economic impact of QR not making an adjustment for tariff over-recovery, in a situation where access seekers expected such an adjustment, is a potential adverse impact on future investment … I agree with both his analysis and his conclusion.*[742]

Both Professor Menezes' subsequent report and Professor King's independent peer review report are available on the QCA's website.

The QCA has reviewed PWC's report and ultimately prefers the views expressed in Professor Menezes' reports relating to economic uncertainty and the adjustment amount (as affirmed by Professor King).

Regulatory certainty for rail access is an important underpinning of investments made in long-lived infrastructure investments and expenditure on exploration activities. Indeed, uncertainty about pricing can result in a lessening of competition for upstream coal tenements (limited exploration and mine development expenditure) and inefficient use of Queensland Rail's West

[738] Queensland Rail, sub. 26, Annexure 3 (Response to Professor Menezes' reports, PWC)
[739] Menezes, F 2016b: 15.
[740] Menezes, F 2016b: 15.
[741] King, S 2016: 8.
[742] King, S,2016: 8–9.

Moreton network rail infrastructure (by discouraging new entrants from taking any spare rail capacity). Regulatory certainty is consistent with the object of Part 5 of the QCA Act.

Specifically, if customers cannot rely on regulatory arrangements to provide certainty, they will be less willing to make future investments in long-lived sunk investments or undertake exploration activities to develop prospective tenements Both of these have implications for economic efficiency. In this regard, New Hope has previously noted the value it places on regulatory certainty:

> *[I]t is essential to establish a transparent and repeatable methodology for determining reference tariffs for the Western System. We believe this will enable greater predictability of tariffs, and hence improving understanding and management of the associated cost risk.*[743]

Darryl Biggar has explained this issue as follows:

> *[U[]sers of a monopoly service must typically take some irreversible action which increases the value of the monopoly service — such as the decision of a large gas consumer to locate close to a gas-transmission pipeline, or the decision of a factory to install electrical wiring on its premises. The value of such investments is contingent on continuing to receive access to the monopoly service at reasonable prices and quality. Such an investment is therefore at risk of expropriation through an increase in the price or a decrease in the quality of the monopoly service. The fear of such expropriation has a chilling effect on such investment, reducing overall economic welfare.*[744]

Queensland Rail does not accept that its 2015 DAU creates any pricing uncertainty.[745] However, the QCA disagrees. For example, New Hope says:

> *NHC considers that the approval of a DAU without appropriate Adjustment Amounts would demonstrate that QR is able to manipulate the regulatory regime to extract from its customers excessive charges to which QR has no rightful claim. The fact that QR has attempted to do this has increased NHC's assessment of the risks of investing in this region. A demonstration that the regulatory arrangements can be effective in preventing such a misuse of QR's position would go some way towards restoring confidence, while a failure of regulation in this case would extinguish any confidence in the regulatory regime and would extinguish regulatory certainty.*[746]

Queensland Rail considers that the QCA's draft decision to impose an adjustment amount creates regulatory uncertainty and refers to the QCA's Draft Decision as a 'marked change in regulatory approach to the setting of reference tariffs'.[747] However, the inclusion in the 2015 access undertaking of an adjustment amount mechanism is consistent with outcomes in 2006 and 2010, which provided for an adjustment amount to address any over or under recovery of revenues. The QCA's approach promotes regulatory certainty by giving effect to the expectation of access holders and access seekers that the approved undertaking would provide for an adjustment amount consistent with Queensland Rail's representations.

Investment impacts

Regulatory certainty about Queensland Rail's actions is particularly important given market conditions and planned investments.

For example, New Hope said it:

> *[h]as choices about where its money is invested ... It is critical that a properly calculated adjustment charge be applied in order to avoid creating a strong disincentive to further*

[743] New Hope 2013: 10.
[744] Biggar, D, 2010.
[745] Queensland Rail, sub. 26: 15.
[746] New Hope Coal, sub. 21: 5.
[747] Queensland Rail, sub. 26: 15.

> *investment in the West Moreton system. Evidence of this disincentive is likely to be available only after investment decisions have been taken and investment has been lost. However, we submit that the disincentive effective is self-evident, while the counterfactual (that NHC will be no less willing to invest in a mine which depends on a monopoly service provider which can misuse the regulatory regime to extract material excess charges) is clearly implausible.*[748]

Also, Yancoal indicated that it has plans to expand its Cameby Downs mine from 1.4 million to 4 million tonnes per annum[749], but indicated that increasing regulatory uncertainty was causing its shareholders to reassess the risks of investing in Queensland. As extracted above, Yancoal noted:

> *if an adjustment amount is not ultimately provided for that will be such a substantial and unwarranted change to the regulatory framework (and Yancoal's expectation of how it would operate based on both the provisions of the current undertaking and QR's previous representations) that the resulting regulatory uncertainty will necessarily be taken into account when Yancoal and its shareholders are considering further investment in Cameby Downs (in comparison to other mines within the Yancoal portfolio for which this issue does not exist).*[750]

The QCA notes that such regulatory certainty (or uncertainty) may also impact on other pending future investments.

For example, New Hope is proposing to spend $896 million on its New Acland Stage 3 development, which is expected to extend the life of the mine from 2017 to 2029. New Hope said:

> *The revised Project will directly support approximately $6.6 billion in economic output from construction/capital and operational expenditure, while indirect and induced output will contribute a further $12 billion for a total output impact of almost $19 billion.*[751]

Likewise, the QCA's Draft Decision noted that Sekitan Resources has made a conditional offer to acquire the Wilkie Creek mine from Peabody for US$75 million in cash and assumed liabilities[752] with plans to resume production in 2016.[753]

Consistent with Professor Menezes' report, it is reasonable to expect that such investments could be affected by regulatory uncertainty.

Relevantly, such investment is directly relevant to section 138(2)(a) as it relates to the efficient operation of, and use of investment in the West Moreton network, which has faced substantial declines in utilisation. A lack of future investment by miners means increasingly inefficient utilisation of Queensland Rail's infrastructure as substantial spare capacity will remain, which then impacts on the viability of the remaining mines—that is, potentially creating a 'death spiral'.

This chapter further discusses the impact of reduced volumes on the proposed tariff for the West Moreton network as part of proposing a tariff methodology.

Legitimate business interests of Queensland Rail

Section 138(2)(b) of the QCA Act relates to the legitimate business interests of the owner or operator of the service.

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[748] New Hope, sub. 21: 5–6.
[749] Yancoal sub. 16: 4.
[750] Yancoal, sub. 27: 1.
[751] http://www.newhopegroup.com.au/files/files/NHG0040_ExecSummary_NAP_EIS_WebRes_Ex.pdf.
[752] http://www.peabodyenergy.com/investor-news-release-details.aspx?nr=893.
[753] http://www.internationalcoalnews.com/storyview.asp?storyID=826952237.

The legitimate business interests of Queensland Rail include its commercial interest in recovering its costs of providing the service and earning a return on investment.

Queensland Rail had previously submitted the March 2012, February and June 2013 DAUs as well as successive extension DAAUs on the basis that there would be an adjustment amount for access charges back to 1 July 2013. Queensland Rail said that it 'has been prepared to offer retrospective application of tariffs as is evident from its 2012 DAU'.[754]

However, in the context of the release of the QCA's October 2014 Draft Decision, Queensland Rail said that an adjustment amount was not in its legitimate business interest. Queensland Rail said its:

> *position only changed following the QCA's foreshadowed significant change to the long-standing regulatory approach to asset valuation and after the material, negative impact of that change on Queensland Rail's legitimate business interests became evident.*[755]

Queensland Rail repeats:

> *The QCA's claim that stakeholders relied on Queensland Rail's proposals to backdate tariffs ... completely discounts the legitimate business interests for Queensland Rail to not backdate the reference tariffs—namely the fundamental change by the QCA to its longstanding regulatory precedent for the method of determining the RAB value and the dramatic effect that change in methodology had on the proposed tariff*[756]

Our October 2015 Draft Decision position was that we did not accept that the approach to asset valuation in our 2014 Draft Decision was an appropriate basis for Queensland Rail to change its approach to the adjustment amount.

The QCA does not agree that there is any longstanding regulatory precedent for the method of determining Queensland Rail's asset value for the West Moreton network. The asset valuation has been unresolved since access regulation for Queensland's rail networks began in the 1990s. This is discussed in Section 8.13 of this Decision. That section also explains why the QCA considers that the asset valuation approach adopted in this Decision is appropriate having regard to the matters in section 138(2). At the time of Queensland Rail's conduct that gave rise to the expectation that an adjustment amount would be included in the approved access undertaking, Queensland Rail was on notice that the method of determining the asset value was unresolved and was to be the subject of investigation in considering any DAU. However, Queensland Rail did not, at any time, qualify its commitment to an adjustment amount by reference to it achieving its preferred asset valuation.

The QCA accepts that an adjustment amount may not be in Queensland Rail's legitimate business interests. This is perhaps most clearly so where it involves Queensland Rail paying an adjustment amount. On the other hand, at times where the application of the adjustment would mean that Queensland Rail receives an adjustment amount, inclusion of the adjustment amount would be expected to be in Queensland Rail's legitimate business interests.

In any event, Queensland Rail's legitimate business interests must be assessed against the background of its earlier stated commitments to include an adjustment amount and the other matters relevant under section 138(2). Queensland Rail's submission to not backdate the reference tariffs (or rather to not include an adjustment amount) in its legitimate business interests is to be considered with those other relevant matters, including the regulatory

[754] Queensland Rail, sub. 4: 3.
[755] Queensland Rail, sub. 4: 3.
[756] Queensland Rail, sub. 26: 14.

uncertainty and investment impact considerations raised by access holders and access seekers. This is discussed further below.

The QCA also notes that Queensland Rail had itself previously proposed the imposition of what it now describes as a 'retrospective tariff'. For instance, Queensland Rail's March 2012, February 2013 and June 2013 DAUs specified that:

> *after new Reference Tariffs are approved by the QCA ... this Undertaking will apply as though it were amended to replace the Reference Tariffs with those new Reference Tariffs with effect on and from 1 July 2013*[757]

The fact that Queensland Rail has previously voluntarily proposed such provisions shows that they are capable of being in Queensland Rail's legitimate business interests.

Public interest

While the term 'public interest' is not defined in the QCA Act, the QCA has previously considered the following as matters relevant to a consideration of public interest.[758] The application of the QCA's consideration of the public interest in discussed further in Chapter 10.

Efficient allocation of resources

The public interest in an efficient allocation of resources is best served by the QCA approving an access undertaking that facilitates the delivery of below-rail services at efficient prices and establishes a stable, certain regulatory framework. An important objective is a regulatory framework that provides confidence that in turn underpins investment.

A key issue in relation to Queensland Rail's declared service has been to develop access charges to reflect the efficient costs of delivering below-rail services, with parties acknowledging the importance of regulatory certainty. In this way, rail operators and end users are able to have confidence that access charges promote an efficient allocation of resources which is closely aligned to the public interest in promoting competition (in the above-rail market).

Given competitiveness relates to the ability of a firm to sell its products in a market, arrangements that provide certainty for access charges are consistent with an efficient allocation of resources.

Competitive conditions for Queensland business through regulatory certainty

An approved access undertaking that delivers regulatory certainty will promote stimulus of the Queensland economy and local employment which is an important public interest consideration. The QCA acknowledges that it is not necessary for the access undertaking to achieve economic and employment stimulus.[759] Rather, the QCA considers that the promotion of economic and employment stimulus is a relevant aspect of the public interest.

Given that a number of consumers of rail services (i.e. coal miners in this case that engage rail operators to transport coal) are selling their products in international markets or face intense competition in their domestic markets, the ability of such consumers to pass on rail transport costs is likely to be constrained (that is, they are price takers). In the absence of certainty, this could undermine the competitiveness for rail operators (both current and future) accessing

[757] Queensland Rail's March 2012, February 2013 and June 2013 DAUs, cl. 3.4.2(b)(iii)(C). See also Attachment 1 of the QCA's Final Decision on Queensland Rail's April Extension DAAU.
[758] QCA 2000b: 44–45.
[759] Queensland Rail, sub. 26: 18.

Queensland Rail's declared services and consumers of above-rail services provided by those rail operators.

Consequently, to improve the conditions for the competitiveness of rail operators and their customers the QCA believes that regulatory certainty, which is necessary to facilitate efficient resource allocation, is particularly relevant. Queensland Rail's submission on this point misunderstands the Draft Decision: the QCA did not (and does not now) say it is 'up to the 2015 DAU to make upstream or downstream businesses competitive'[760] but rather the impact of regulatory certainty on the competitive conditions for such businesses is a relevant public interest matter.

This issue is discussed further in Section 8.2.1 of this Decision.

Regional economic development

Proposed development of new, or replacement, coal mines may be at risk if there is material pricing uncertainty for rail access. Queensland Rail submits the 2015 DAU would provide pricing certainty.[761] That is not true as Queensland Rail's proposal provides scope for it to increase tariffs in the future up to its proposed ceiling price. Moreover, as discussed extensively in this section the QCA is concerned to have pricing certainty without regulatory uncertainty. To the extent that regulatory uncertainty occurs, there can be flow-on effects in terms of regional economic development.

Relevantly, New Hope, Yancoal and QRC noted potential impacts of Queensland Rail's position on investment as a relevant matter.

For example, New Hope has indicated its proposed New Acland project:

> *will support construction jobs of up to 260 and approximately 435 operational jobs at peak, and attract construction costs of around $896 million.*[762]

Likewise, the QRC said:

> *QR's actions … highlighted by QR reneging on its commitment to provide an adjustment amount for tariffs … have undermined investment confidence, and seriously impacted on the attractiveness of investment in this region.*[763]

The QCA also refers to the submissions made in response to the Draft Decision on investment impacts of regulatory uncertainty as discussed above.

Having regard to the above discussion, the QCA considers that it is in the public interest for there to be regulatory certainty with regard to the inclusion of an adjustment amount in circumstances where Queensland Rail previously stated its commitment to an adjustment amount. It is also in the public interest for there to be efficient investment in the infrastructure, which stakeholders have said may be affected as a result of lack of confidence in the regulatory process. This would also lead to a lessening of competition which is not in the public interest.

The effect of Queensland Rail's change in position is that it will have received, in a sense, a windfall gain to the extent that the access charges it has collected between 1 July 2013 the date when the adjustment amount is calculated exceed the access charges that would have been received in that period if calculated in accordance with the reference tariff that would have

[760] Queensland Rail, sub. 26: 18.
[761] Queensland Rail, sub. 26: 18.
[762] www.newhopegroup.com.au/files/files/NHG0040_ExecSummary_NAP_EIS_WebRes_Ex.pdf.
[763] QRC, sub. 34: 2.

applied in that period. A regulated entity benefiting from delays in the regulatory process to which it has contributed is an outcome that is not in the public interest. As Aurizon submits:

> *Aurizon Operations does not support the prospect of an Access Provider obtaining a financial benefit funded by Access Holders which arises principally from the Access Provider's own conduct.*[764]

Interest of access seekers and access holders

An adjustment amount is clearly in the interests of access seekers and access holders. This is also clear from the submissions made by stakeholders summarised above.

Pricing principles

When considering a DAU, one of the factors that we must have regard to is the pricing principles in section 168A. Relevantly, the pricing principle in section 168A(a) states that the price of access to a service should generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved.

However, the pricing principles are only one of a number of factors to which we must have regard pursuant to section 138(2). Whether a DAU allows recovery of at least enough to meet efficient costs and a relevant return is of course relevant and fundamental to our assessment of the 2015 DAU. But we are not required to consider it appropriate to approve a DAU because the price contained in it will generate revenue that is at least enough to meet the efficient costs of the service and a relevant return. Nor are we precluded from considering it appropriate to approve a DAU that contains a price that is not expected to generate revenue that is at least enough to meet the efficient costs of the service and a relevant return, where other relevant factors in section 138(2) lead to such a conclusion.

The consideration of the pricing principles is discussed generally in Chapter 10.

We acknowledge that the adjustment amount mechanism will mean that the price of access (as adjusted) will not generate expected revenue in the operative period of the undertaking that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved for that period. Nonetheless, we consider, for all the reasons given in this chapter, that the adjustment amount mechanism is appropriate (and that an undertaking without such a mechanism is not appropriate to approve).

Other relevant issues

The QCA considers the following issues to be relevant to its consideration of whether it is appropriate to approve the 2015 DAU.

The recovery of efficient costs plus a return over the longer term

Infrastructure assets are generally long-lived assets which exist beyond the term of a regulatory undertaking. Therefore, while the QCA and other regulators approve undertakings for a fixed regulatory period, the span of regulatory assets across undertakings is taken into account.

Consistent with this, the QCA presently imposes, and in the past has imposed, a revenue cap model on regulated entities. Under this model, a revenue under- or over-recovery in one year is offset by corresponding revenue under- or over-recovery in a subsequent year, and that

[764] Aurizon, sub. 20: 11.

subsequent year may be in the next regulatory period.[765] This reflects the regulatory reality that a regulated entity may under- or over-recover regulatory revenues in a given year or regulatory period and this can be addressed by way of an adjustment mechanism.

This position was reflected by New Hope:

> *[There is a] common regulatory practice of applying many different types of 'carry-over' mechanisms from one regulatory period to another. For example, in addition to the backdating of tariffs through adjustment charges, other provisions approved by Australian economic regulators have included capital carry-over accounts, efficiency/incentive arrangements, 'unders and overs' under a revenue cap and price paths.*[766]

Queensland Rail submits that the QCA's consideration of this point is irrelevant because the 2015 DAU regulatory model is a price cap, not a revenue cap, and that adjustments to revenue from one year to the next are not a feature of a price cap model.[767] However, the point being made is that, in whatever way the approach is described in terms of models, sections 138(2) and 168A require QCA to have regard to the price for the service by reference to the expected revenue that will be generated, and there is of course a possibility that the revenue actually generated by a given price will be greater or less than the revenue expected to be generated. The adjustment amount is a mechanism for addressing that possibility.

The QCA accepts that Queensland Rail's previously stated commitment to include an adjustment amount in its replacement access undertaking generated an expectation that such commitment would be met. The QCA has approved seven extensions to the existing undertaking on the basis of Queensland Rail's inclusion of an adjustment charge provision in its previous DAUs, up to the submission of the 2015 DAU. The QCA considers that the circumstances of its various approvals, past practice and submissions from stakeholders as to their expectations, establish the basis of the QCA's approvals. The absence of an express condition to that effect[768] does not materially alter the expectations generated by Queensland Rail's conduct. Further information on this is provided in the QCA's June 2015 decision, which refused to approve Queensland Rail's April 2015 extension DAAU (Appendix H of this Decision).

It is unlikely that stakeholders would have supported the previous extensions of the 2008 access undertaking if they had not been on the basis that an adjustment amount would be applied so that neither Queensland Rail nor access holders were advantaged or disadvantaged.[769] Indeed, following Queensland Rail's submission of the 2015 DAU, New Hope, who would be directly affected by the absence of any adjustment amount in the 2015 access undertaking, supported the rejection of the DAAU as submitted to the QCA.[770]

The impact of Queensland Rail's change in approach, in circumstances where stakeholders, based on Queensland Rail's previously stated commitment, expected an adjustment amount is

[765] For example, an 'unders and overs' process for the Central Queensland Coal Network was still included in the revenue cap mechanism in the 2008 undertaking (Schedule F, Part B, Section 3—although those clauses did not apply to Queensland Rail as they were an artefact of when the 2008 undertaking applied to QR Network). The same process has applied for Aurizon Network in the 2010 undertaking (also Schedule F, Part B, Section 3). Similar 'unders and overs' provisions were applied to the revenue caps for Queensland's electricity network businesses when they were regulated by the QCA.

[766] New Hope, sub. 12: 8.

[767] Queensland Rail, sub. 26: 13.

[768] Queensland Rail sub. 26: 14.

[769] New Hope April 2015 extension DAAU submission: 5, Aurizon, sub. 20: 12.

[770] New Hope April 2015 extension DAAU submission.

explored above under the 'object criterion' (s. 138(2)(a)) and is also a relevant consideration pursuant to section 138(2)(h).

The integrity of the regulatory framework

The long-lived nature of infrastructure assets means that it is important that there is an effective and credible adjustment mechanism to deal with the under- or over-recovery of access charges both during and across regulatory periods. Its absence creates a 'heads I win, tails you lose' position for regulated entities. If a regulated entity thinks it will benefit from an adjustment amount, it will likely include it in its DAU. If it does not, it may choose to withdraw the offer of an adjustment amount or opt not to make the offer in the first place.

Such a mechanism is also necessary to avoid the potential for regulatory gaming. In this regard, stakeholders said:

> *[i]t is highly inequitable in the circumstances for QR to retain the overpayments, which have largely occurred through its own delay in submitting an appropriate replacement undertaking*[771]

> *[t]he approval of a DAU without appropriate Adjustment Amounts would demonstrate that QR is able to manipulate the regulatory regime to extract from its customers excessive charges to which QR has no rightful claim.*[772]

The QCA notes that the integrity of the regulatory framework is essential to regulatory certainty. A key aspect of promoting integrity is preventing stakeholders from benefitting from any delays to which they have contributed.

The absence of an adjustment mechanism is an incentive for a regulated entity to delay submitting a voluntary replacement DAU until close to the expiry of its existing undertaking in the knowledge that QCA's review will take months beyond the expiry of the existing undertaking to conclude (i.e. the entity could be rewarded for delaying its submission[773]).

Other matters

Other matters relevant to section 138(2)(h) include:

- Queensland Rail's previously stated commitment to include an adjustment amount
- the expectation of stakeholders of the inclusion of an adjustment amount
- the impact of the change in Queensland Rail's position with respect to the inclusion of an adjustment amount in its 2015 DAU.

As outlined in stakeholders' comments above, the QCA's position is that it accepts that stakeholders had a clear expectation of an adjustment amount. Relevantly, this was consistent with Queensland Rail's commitments. Given this, as outlined above, the QCA considers that the change in Queensland Rail's position will increase regulatory risk, impacting on forward-looking investment.

Extension of the adjustment amount to east of Rosewood

Our Draft Decision estimated an adjustment amount for the West Moreton network (i.e. west of Rosewood).

[771] Yancoal, sub. 27: 1.
[772] New Hope, sub. 21: 5.
[773] Indeed, Queensland Rail submitted its West Moreton tariff proposal in June 2013 a few days before the 30 June 2013 expiry of 2008/10 approved tariffs.

Stakeholder submissions

New Hope[774], Yancoal[775] and Aurizon[776] said that the adjustment amount should also be extended to the Metropolitan network (i.e. east of Rosewood).

In contrast, Queensland Rail opposed the adjustment amount for the east of Rosewood.[777]

QCA analysis and Decision

We accept that an adjustment amount should be extended to the Metropolitan network. This means that the adjustment amount would apply across both the West Moreton and Metropolitan networks and so cover all aspects of the below-rail service that coal services use.

To date, the tariff regimes for both networks have been inextricably linked. Indeed, as outlined in our Draft Decision, the tariffs that have applied since 2009 for the West Moreton network have been extended across the Metropolitan network (see Section 8.6 of this Decision).

Moreover, previous adjustment amounts for coal services have operated across all aspects of the below rail infrastructure (i.e. both the West Moreton and Metropolitan networks). This is what happened in 2006 and 2010. Relevantly, Queensland Rail had proposed a mechanism in its March 2012, February 2013 and June 2013 DAUs through the operation of 'Adjustment Charge' mechanisms.

For these reasons, if an adjustment amount is to apply for the West Moreton network (as we consider it should), it should also apply for the Metropolitan network.

In this regard, we note Queensland Rail's position that:

> *[its] submissions concerning the QCA's effective 'back dating' of pricing for the West Moreton Network coal traffics are equally applicable in the context of any consideration of an "Adjustment Amount" applying to the Metropolitan Network.*[778]

We accept that Queensland Rail's arguments objecting to the adjustment amount apply equally to both the West Moreton network and the Metropolitan network. As we have not accepted Queensland Rail's position for the West Moreton network, it follows that, for the same reasons, we reject its argument to not extend the adjustment amount to east of Rosewood.

Indicative adjustment amount and implementation

Section 8.20 explains the derivation of reference tariff that would have applied from 1 July 2013 to 30 June 2016.

The QCA estimates that the application of the adjustment amount will result in Queensland Rail receiving indicatively $32 million[779], or 23 per cent, less than the allowable revenue that the QCA has assessed Queensland Rail would otherwise receive from coal services for the period from 1 July 2016 to 30 June 2020. The QCA has considered the magnitude of this number in reaching its conclusion as to the appropriateness of the adjustment amount.

For the purposes of this Decision, the QCA can only provide an estimate of the potential over-recovery given:

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[774] New Hope, sub. 21: 6; New Hope, sub. 31: 11–12.
[775] Yancoal, sub. 27: 1; Yancoal, sub. 35: 2.
[776] Aurizon 29: 9.
[777] Queensland Rail, sub 33: 30–31.
[778] Queensland Rail, sub 33: 31.
[779] Our estimate with an indicative ±10% sensitivity range.

- the lag between the period when the Decision is released and when a new access undertaking is approved;
- the lag between when the access undertaking is approved and the clause applied and when the adjustment amounts are processed and paid; and
- the circumstances of individual access holders' contracts with Queensland Rail.

The final adjustment amount will be determined by reference to the operation of the Adjustment Charge mechanism in clause 7 of Schedule D. This will provide for an adjustment amount to be agreed (or determined by QCA in the event of dispute) by reference to a comparison between the amount that a particular access holder actually paid in the period from 1 July 2013 to the date of approval, and the amount that the access holder would have paid during that period if the new reference tariff had been in effect at that time.

The final adjustment amount will be determined after the approval date, according to clause 7.1 of Appendix D in Schedule F.

Consideration of factors under the QCA Act

The QCA has concluded that the adverse consequences that would arise from approving the 2015 DAU without an adjustment amount include on regulatory certainty; the future inefficient use of the West Moreton network arising from the lessening of competition in the market for upstream coal tenements; and the public interest in economic development and regulatory certainty and other matters (s. 138(2)(a), (d), (e), (h)).

The QCA considers that these considerations are outweighed by Queensland Rail's legitimate business interest in obtaining such a reference tariff (s. 138(2)(b)) and the pricing principles (s. 138(2)(g)).

On that basis, and having regard to the criteria in section 138(2), the QCA's Decision is that:

- it is not appropriate to approve the 2015 DAU proposed by Queensland Rail; and
- it is appropriate to amend the undertaking to provide for an adjustment amount.

8.19 Adjustment methodology

The QCA's Draft Decision provided for a prospective adjustment amount reflected in a reduction in the forward year tariffs for the regulatory period. For instance, the QCA's Draft Decision noted that while the indicative ceiling tariff as at 1 July 2015 would be $18.88/'000 gtk, the reference tariff would be $15.88/'000 gtk, reflecting an adjustment amount of $3.00/'000 gtk in that year. Staff subsequently published additional material that demonstrated how a prospective adjustment amount could be calculated.[780]

Stakeholders' comments

In addition to being opposed to the principle of an adjustment amount, Queensland Rail had concerns about the methodology for its calculation. Queensland Rail said:

[780] http://www.qca.org.au/getattachment/8bed340c-84c8-492f-8170-2b6ff8b9484d/QCA-Request-for-comment-on-submissions-on-QR-201.aspx; http://www.qca.org.au/getattachment/487df3b0-5358-447d-8f12-3dd41b7d746c/QCA-–-Addendum-to-request-for-comment-on-submissio.aspx.

- The proposed adjustment methodology was unclear, lacked transparency and was incapable of objective assessment;[781]
- The QCA's methodologies should follow applicable regulatory precedents;
- The QCA should use comprehensive and detailed data;
- It was not possible to test the quantum of the proposed adjustment;[782]
- The proposed calculation was a mix of actual, forecast, current and past data, meaning it did not represent any reliable estimate of over-recovery; and
- The way the adjustment amount was proposed to be calculated fundamentally altered the risk allocation that otherwise would have applied, were access charges reset on 1 July 2013.[783]

Aurizon supported the principle of an adjustment amount but said, among other things, the QCA's Draft Decision approach:

- involved the transfer between current and previous access holders in a way that was disproportionate to the individual parties' respective contributions to any determined adjustment amounts;
- was inefficient as it established a reference tariff which was not reflective of forward-looking efficient costs and might create perverse incentives; and
- did not adequately account for take or pay or relinquishment fees during the adjustment period[784]

New Hope and Yancoal supported the Draft Decision's methodology for calculating an adjustment amount.[785]

QCA analysis and Decision

The QCA has reconsidered the approach set out in the Draft Decision as to the methodology for implementing an adjustment amount.

The QCA accepts many of the concerns of both Queensland Rail and stakeholders, including that the Draft Decision approach does not follow regulatory precedents, is not capable of objective assessment, and does not adequately account for take-or-pay or relinquishment fees.

The QCA accepts that its Draft Decision approach was an untested methodology for applying an adjustment amount and one which did not adequately consider the specific circumstances relating to Queensland Rail's overpayments with respect of each access holder agreement.

The QCA has therefore adopted an adjustment amount provision to address any difference in revenue over the relevant period. Relevantly, a similar mechanism was proposed by Queensland Rail in its:

- June 2013 DAU—Schedule A, clause 6.1; and
- May 2015 DAU—Schedule D, clause 7.1.

[781] Queensland Rail sub. 26: 19.
[782] Queensland Rail sub. 26: 19.
[783] Queensland Rail, sub. 33: 29, 30.
[784] Aurizon sub 20: 9, 13; Aurizon, sub. 29: 8, 9.
[785] New Hope, sub. 21: 5–6; New Hope sub. 31: 11; Yancoal, sub. 35: 2.

In both cases, the DAUs provided for the possibility that a reference tariff would be applicable by reference to a date prior to the approval.

The QCA now requires that the 2015 DAU be amended to include an adjustment amount mechanism that:

- provides for Queensland Rail to calculate the aggregate of the monthly differences, due to each relevant access holder for the period between 1 July 2013 and the approval date of the DAU, between the access charges paid by that access holder from 1 July 2013 to the approval date and the access charges that would have been payable had the reference tariff been $15.66/'000 gtk during that period (see Section 8.20 of this Decision);
- allows each relevant access holder to negotiate the payment of a lump sum of the aggregate adjustment amount; or, failing agreement, for the ongoing access charges of that access holder to be adjusted to account for the overpayment;
- provides for the calculation of interest on the adjustment amount at the rate of the bank bill swap rate which would have applied during the overpayment period, consistent with the expectations generated by Queensland Rail;[786] and
- provides for any disputes in relation to the adjustment amount to be determined by the QCA.

Summary 8.15

The 2015 DAU must include a new clause 7 in Schedule D which provides for an adjustment for any over- or under-recovery of access charges by Queensland Rail during the adjustment period (namely from 1 July 2013 to the approval date of the Undertaking).

See Schedule D, clause 7 and definition of 'adjustment train services' and 'notional reference tariff' in Appendix F.

8.20 Tariff for 2013–14 to 2015–16

The operation of the adjustment charge provision requires an understanding of what reference tariffs would have applied for the period between 1 July 2013 and the approval date of the DAU. As discussed in Section 8.17 of this Decision, we have split the derivation of the tariffs beginning 1 July 2016 from the tariff for the preceding three years. Accordingly, this section discusses the derivation of the reference tariffs that would have applied from 1 July 2013 to 30 June 2016.

Three-year reference tariff for adjustment amount

The allowable revenue for the tariff that would have applied in relation to the period from 1 July 2013 to 30 June 2016 was determined based on building block data from two sources: the 2013 DAU assessed in our 2014 Draft Decision, and the 2015 DAU assessed in this Decision.

[786] Clause 7.1 of Schedule D of the QCA's mark-ups (Appendix F of this Decision) largely reflects clause 2.3 of Schedule F of the 2008 access undertaking that previously applied to Queensland Rail. Clause 2.3 provides for interest to be paid on any over- or under-recovery of revenues that must be repaid by Queensland Rail or access holders. The 2013 DAU (cl. 6.1(b)) also reflected clause 2.3 of the Schedule F in the 2008 undertaking and provided for interest to be paid on any over- or under-recovery of access charges.

Queensland Rail provided forecasts for the 2015–16 data in both the 2013 DAU and the 2015 DAU. The 2013 DAU forecasts were assessed in our 2014 Draft Decision and have now been assessed in this Decision, at the same time as we consider the 2015 DAU. However, the 2015–16 forecasts between the two DAUs are materially different—for example, the proposed volume is significantly lower in the 2015 DAU.

For the purposes of deriving the tariff that would have applied in relation to the period from 1 July 2013 to 30 June 2016 in this Decision, we have used the 2015–16 data based on our assessment of the 2015 DAU, as it reflects different market environment prevailing in 2015–16 as compared to that which prevailed when Queensland Rail submitted the 2013 DAU.[787] If we had approved a tariff based on our 2014 Draft Decision, it would have continued to apply (with usual indexing) in 2015–16. However, it would have been open for Queensland Rail to seek to vary that tariff on account of a material change in circumstances. We note that both the 2013 DAU and the 2015 DAU included provisions that allowed Queensland Rail to seek to vary 'a reference tariff if Queensland Rail considers that the variation will promote efficient investment in the coal transport supply chain in the West Moreton System or Metropolitan Region' or seek to vary a reference tariff if a review event that encompasses a material change in circumstances has occurred.[788]

The existence of those provisions would have created an expectation that Queensland Rail may have sought to vary the approved reference tariff due to, for example, a material drop in expected demand for the service. Therefore, our use of the 2015–16 data based on our assessment of the 2015 DAU would be appropriate having regard to any expectation those reference tariff variation provisions would have created. We consider our approach would advance Queensland Rail's legitimate business interests (s. 138(2)(b)), as tariffs would reflect lower forecast volumes for 2015–16. Our approach also advances the interests of access holders and access seekers in not paying fixed common network costs for 2015–16 beyond what they could have contracted, given the existence of significant spare capacity in 2015–16.

Hence, the building blocks data for the financial year 2015–16 are those assessed in this Decision based on our assessment of the 2015 DAU proposal. For financial years 2013–14 and 2014–15 we have adopted the building blocks data assessed in our 2014 Draft Decision.[789] However, there are the following exceptions:

- Capital expenditure for 2013–14 and 2014–15—we considered actual capital expenditure that Queensland Rail submitted in the 2015 DAU and we assessed as part of this Decision (see Section 8.14 of this Decision). Our assessment of the 2013 DAU was based on forecast capital expenditure. However, using actual capital expenditure instead of forecast capital expenditure would not be contrary to any expectations held by parties. This is because the capital indicator process in the 2013 DAU and the 2015 DAU included provisions to assess the prudency of Queensland Rail's capital expenditure where a difference in actual and forecast expenditure is reflected in the tariffs for a subsequent undertaking period. Our derivation of the July 2013 tariff accounts for that difference rather than carrying it over to the derivation of the July 2016 tariff.
- Inflation for 2013–14 and 2014–15—we used actual ABS CPI data rather than the assumed CPI of 2.5 per cent for indexing and rolling forward the asset base and the tariff. This means that a consistent inflation rate is applied for both the escalation of the tariff and the

[787] See Sections 8.10 to 8.15 in Part B of Chapter 8.
[788] 2013 DAU (cl. 5.1(a), Schedule A) and 2015 DAU (cl. 6.1(a), Schedule D).
[789] QCA, October 2014: 121–126.

escalation of the building blocks components. The escalation by actual CPI would have been done in the post–approval tariff indexing process if the undertaking had been approved earlier.

- Opening asset base at 1 July 2013—since the West Moreton network opening asset base is a contentious matter and had not been settled in the past, we have considered the asset base as assessed in this Decision, which includes our assessment and treatment of Queensland Rail's TSC capital that was not included in our 2014 Draft Decision assessment (see Section 8.13 of this Decision).
- Asset base coal allocator—the asset base coal allocator for financial years 2013–14 and 2014–15 reflects our assessment that the West Moreton network capacity is 113 paths, after deducting the 17 per cent reduction in West Moreton capacity arising from Metropolitan Network operations (see Section 8.4 and discussion about change in circumstances in Section 8.3.3 of this Decision).

Maintenance costs and volumes

During our assessment of the 2015 DAU, Queensland Rail submitted actual maintenance cost and coal volumes data for the financial years 2013–14 and 2014–15.

Queensland Rail's actual maintenance costs for those two years at $39.0 million are less than the $40.2 million our 2014 Draft Decision had assessed was efficient.[790] Queensland Rail operates under a price cap regime, which incentivises it to achieve efficiencies. Therefore, it is appropriate that Queensland Rail retains those cost savings, as this is consistent with the expectations of a price cap regime. Accordingly, we have retained using forecast maintenance cost from our 2014 Draft Decision.

A price cap regime exposes Queensland Rail to volume risk, but a take or pay regime helps limit the associated volume risk. Also, Queensland Rail's revenue could increase if actual volumes are higher than the forecast used to set reference tariff (see Section 8.5 of this Decision). The actual coal railings during 2013–14 and 2014–15 were less than forecast, but Queensland Rail's revenue risk in those years was limited by the take-or-pay revenue and relinquishment fees Queensland Rail collected. Therefore, we consider it is appropriate to retain our use of forecast volumes rather than actual railings for deriving the reference tariff, since any risk (or reward) arising from a difference between actual and forecast volume is consistent with the expectations created by a price cap regime. This is consistent with our treatment of Queensland Rail's expectation of retaining any maintenance cost savings.

Moreover, Queensland Rail's expectation of a drop in coal railings is reflected in the volume forecast used for 2015–16, which would protect Queensland Rail's exposure to any further volume risk and would advance its legitimate business interest (s. 138(2)(b)).

The data sources used for the building block parameters to derive the tariffs for 2013–14 to 2015–16 are summarised in Table 22 and the corresponding building blocks data are provided in Appendix A to this Decision.

[790] Queensland Rail, sub. 2: 43.

Table 22 Data sources for 2013–14 to 2015–16 tariffs

Building block parameter	*2013–14*	*2014–15*	*2015–16*
Opening asset base	This Decision		
Capital expenditure	Actual expenditure as per this Decision		Capital indicator as per this Decision
Asset base coal allocator	Reflects our capacity estimate in this Decision		This Decision
CPI	Actual		Assumption 2.50%
Asset lives	2014 Draft Decision and this Decision unchanged		
WACC[791]	2014 Draft Decision and this Decision unchanged		
Maintenance and allocation	2014 Draft Decision		This Decision
Operating cost and allocation	2014 Draft Decision		This Decision
Forecast volume	2014 Draft Decision		This Decision

Over-recovery during 2013–14 to 2015–16

The resulting reference tariffs for the financial years 2013–14 to 2015–16 are summarised in Table 23, which shows that the reference tariffs that would have applied in those years are lower than the tariffs charged by Queensland Rail.

Table 23 QCA assessed 2013–14 to 2015–16 reference tariffs compared with the actual tariffs charged by Queensland Rail

All tariffs in $/'000 gtk, nominal	*2013-14*	*2014-15*	*2015-16*
Tariff QR charged	$18.56	$19.14	$19.41
QCA reference tariff	$15.66	$16.15	$16.38
Difference (tariff charged - reference tariff)	$2.90	$2.99	$3.03

Metropolitan tariff

As per our Summary 8.6 (see Section 8.6 of this Decision), we require Queensland Rail to apply the West Moreton network tariff so that it is paid by West Moreton coal services as they traverse the Metropolitan network. Therefore, the tariffs summarised in Table 23 also apply to coal services using the Metropolitan network, and will continue to be escalated for the remainder of the term of the undertaking once approved.

Our Summary 8.6 also requires that a separate Metropolitan incremental capacity charge is calculated to recover coal-specific investment on the Metropolitan network in relation to the period after 1 July 2013. Since Queensland Rail has not claimed any incremental capital expenditure in the Metropolitan network since July 2013, the Metropolitan incremental capacity charge for the purposes of this Decision is zero.

[791] Queensland Rail said risk-free rates were higher in previous periods (see Queensland Rail, sub. 16: 30). This matter is discussed in Section 3.7 of this Decision.

Summary 8.16

The 2015 DAU must provide that the West Moreton network and Metropolitan network reference tariff components that should have applied for the period 2013–14 to 2015–16 are consistent with our reference tariffs of: $15.66/'000 gtk as at 1 July 2013, $16.15/'000 gtk as at 1 July 2014 and $16.38/'000 gtk as at 1 July 2015 (the other components of the tariffs are specified in Appendix A of this Decision).

See definition of 'notional reference tariff' and Schedule D, clause 3.2 in Appendix F.

9 INVESTMENT PLANNING AND COORDINATION FRAMEWORK

An effective investment, planning and coordination framework should provide clarity and certainty on the rights and obligations of all contracting parties in the negotiation process when a network extension is required to accommodate an access application and Queensland Rail is not willing to fund the network extension. The framework must balance the legitimate business interests of Queensland Rail with those of access seekers and any third parties involved in funding the network extension.

The QCA retains the views expressed in its Draft Decision on Queensland Rail's 2015 SAA, except where they have been amended by this Decision. Key areas where the Decision differs from the Draft Decision include:

- *Schedule I (Extension Access Principles) and clause 1.4 (Extensions Capacity Investment Framework) have been amended to remove minor inconsistencies in the drafting and provide more clarity.*
- *Funding agreements terms can now be varied depending on the stage of the extension study process being funded.*
- *Hybrid funding options are possible if Queensland Rail and the access funder consider this a preferred alternative.*
- *The requirement for Queensland Rail to produce a standard user funding agreement has been removed.*
- *The master planning process has been revised and Queensland Rail will be funded for the incremental costs of these studies.*

Introduction

An investment framework in an approved access undertaking seeks to provide a high degree of certainty for all access seekers if they:

- commence negotiations with Queensland Rail for access to the declared network
- are advised that:
  - a network extension is required to provide the access sought
  - Queensland Rail is not willing to fund the work required for a network extension
- commence negotiations with Queensland Rail to fund the work required for a network extension
- indicate a willingness to fund the work required for an extension in the absence of Queensland Rail electing to do so.

Key issues are summarised in Table 24 below. Matters that require a more detailed explanation are discussed in Sections 9.1 and 9.2.

Table 24: Summary of the key positions and Decisions—investment planning and coordination

Summary of the 2015 Draft Decision	*Queensland Rail's position*	*Other stakeholders' position*	*QCA Decision*
1. Network extensions			
Included a range of specific amendments to the network extension provisions that were intended to make it more transparent and accountable and to provide a more appropriate allocation of risks.	Disagreed and said that the proposed amendments are unwarranted and/or beyond powers and fail to adequately take into account Queensland Rail's legitimate business interests.	Glencore, Yancoal and New Hope supported the Draft Decision and have detailed how it could be expanded and strengthened.	See Section 9.1 below.
2. Funding agreements			
Extension funding provisions should provide more detail on funding agreement provisions. Funding and access principles that will underpin negotiations of funding agreements should be identified.	Disagreed and said the proposed amendments impose funding agreement terms which may not be relevant to all stages of the extension.	New Hope said the funding agreement provisions should be amended to require Queensland Rail to offer access facilitation deeds for smaller projects. The proposed amendments impose funding agreement terms which may not be relevant to all stages of the extension	See Section 9.2 below.
3. Network extension process			
Network planning provisions should include a regulatory process to develop a master plan for each of its major rail corridors during the term of the 2015 DAU.	Disagreed; the requirement to produce master plans for the various systems is beyond powers.	Glencore and New Hope supported the Draft Decision.	See Section 9.3 below.

9.1 Network extension and funding agreements

Consistent with section 137 of the QCA Act, we consider the 2015 DAU should outline the general funding principles that will apply to access seekers who agree to fund a network extension to accommodate their access application. In applying our assessment approach, we have considered whether there is sufficient detail of the funding principles and the form of contract that will underpin the negotiation of funding agreements between Queensland Rail and a relevant access seeker.

Consistent with section 137 of the QCA Act, we consider the 2015 DAU should also provide details on how an access seeker can obtain access to the declared service when a network extension project is required to accommodate the access rights nominated in its access application. Our assessment approach considers whether the proposed 2015 DAU provides for an extension project to be developed from identification through to operation in accordance with the object of the QCA Act—that is, to promote the economically efficient operation of, use of and investment in Queensland Rail's declared network.

Queensland Rail set out its proposed investment framework, funding principles and the process for the negotiations of access rights with an access seeker under clause 1.4 of the 2015 DAU.

Our Draft Decision proposed to reject those provisions on the basis that they resulted in significant asymmetries in the network extension process with respect to the following:

- lack of clarity on the negotiation process that contracting parties should follow to give effect to the access and project agreements required for a project to reach financial close and deliver access services consistent with ss. 69E and 138(2) of the QCA Act
- absence of mechanisms to achieve accountability, transparency and timeliness of Queensland Rail's decision-making process, including, for example:
  - unclear boundaries and conditions of what is being negotiated at each stage of the extension project
  - lack of objective and independently verifiable approval criteria
- unbalanced allocation of project risks, liabilities and indemnities due to Queensland Rail assigning all risks and liabilities for an extension project to the access seeker without sufficient consideration as to whether they can best be mitigated by the access seeker or Queensland Rail
- absence of any obligation on Queensland Rail to provide information and assistance to the access seeker to facilitate study of the extension project
- absence of any obligation on Queensland Rail to assist, study, construct and commission the extension project
- absence of a standard funding agreement to form the basis of negotiations between Queensland Rail and an access seeker
- dispute resolution provisions that would be ineffective if the access seeker's access rights are either time-constrained or aligned to a larger investment in the business operations of an access seeker.

Stakeholders' submissions

Queensland Rail did not support our Draft Decision on the basis that arrangements were unwarranted[792], would give rise to significant cost with no benefit[793], were beyond power[794], were too rigid[795], and traded off the protection of Queensland Rail's legitimate business interests against other interests, without taking full regard for Queensland Rail's business interests.

Yancoal[796], Glencore[797] and New Hope[798] supported the QCA's Draft Decision. However, Yancoal and Glencore both stated that some of the proposed amendments gave Queensland Rail too much discretion and should be made mandatory. New Hope suggested that the drafting should be amended to make it mandatory that Queensland Rail offer an access facilitation deed (AFD) arrangement for projects under $25 million.

QCA analysis and Decision

We have generally adopted our Draft Decision position on network extensions and funding agreements, save in the respects outlined below.

Key matters raised by stakeholders are addressed below on a case-by-case basis and Appendix D summarises the proposed amendments to the investment framework.

Requirement for an investment framework

As noted in the Draft Decision, an efficient, transparent and accountable investment framework is a critical component of the 2015 DAU.

In its 2015 DAU, Queensland Rail 'proposed to include a more detailed investment framework than currently applies to it but which was still relatively light-handed'.[799] Our Draft Decision outlined a number of proposed amendments to this framework and the inclusion of a new schedule to provide more clarity and certainty over the process by which an extension could be negotiated.

Our position is the 2015 DAU should be amended. This is because Queensland Rail's proposed investment framework provided insufficient clarity and certainty on the rights and obligations of all contracting parties in the negotiation (refer to section 9.2 of our Draft Decision).

The Draft Decision summarised a range of responses from stakeholders[800] that supported the requirement for the framework and noted deficiencies with Queensland Rail's proposal. The responses to the Draft Decision supported the QCA's proposed amendments.[801]

Queensland Rail's statement that the QCA's proposed investment framework arrangements are unwarranted on the basis that there are currently no extensions proposed is unjustified and short-sighted. On the contrary, the development of an efficient, transparent and accountable

[792] Queensland Rail, sub. 26: 73.
[793] Queensland Rail, sub. 26: 69.
[794] Queensland Rail, sub. 26: 74, 75,77.
[795] Queensland Rail, sub. 26: 76.
[796] Yancoal, sub. 27: 4.
[797] Glencore, sub. 25: 5.
[798] New Hope, sub 23: 21–24.
[799] Queensland Rail, sub. 26: 68.
[800] Asciano, sub. 5; Aurizon sub. 6; Glencore, sub. 7; New Hope, sub. 3; Glencore, sub. 7.
[801] New Hope, sub. 23; Glencore, sub. 25; Yancoal, sub. 27.

investment framework is perhaps now even more important in order to maximise the chance that any projects which are proposed go ahead.

Protection of Queensland Rail's legitimate business interests

The Draft Decision proposed amendments to Queensland Rail's proposed investment framework provisions to remove a number of specific references to Queensland Rail's legitimate business interests in its 2015 DAU.[802] In its response to the Draft Decision, Queensland Rail stated that the removal of these references 'may require Queensland Rail to act in a way that results in its legitimate business interests not being protected'[803] and/or may result in Queensland Rail's legitimate business interests not being protected.[804]

We do not accept that a specific provision for the protection of Queensland Rail's legitimate business interests is appropriate as it purports to override other considerations in 138(2). We note we are required to 'have regard to' Queensland Rail's legitimate business interests as part of considering whether to approve or refuse to approve Queensland Rail's 2015 DAU. We are also required to consider, amongst other things, the public interest (s. 138(2)(d)), access seekers (s. 138(2)(e)) and any other issues we consider relevant (s. 138(2)(h)) (see Chapter 10).

Queensland Rail also stated that its legitimate business interests in relation to extensions are significantly wider than portrayed by the QCA.[805] It makes this point with reference to the specific considerations noted in Table 9.2 of the Draft Decision.

We note Table 9.2 provided a summary of key considerations associated with the consideration of section 138(2)((b), (d), (e) and (h) in our Draft Decision. It was not intended to be an exhaustive statement of what is relevant, and for clarity, we have not sought to narrowly define Queensland Rail's legitimate business interests. We accept that Queensland Rail's interests are as stated by it. Moreover, other factors have been considered in the context of Queensland Rail's legitimate business interests, including those summarised in section 10.3.2 of the Draft Decision:

- the commercial interest in recovering efficient costs in providing the relevant service and in earning normal commercial returns
- a balanced risk position in the allocation of contractual risks and liabilities as between Queensland Rail and access holders
- appropriate incentives to maintain, improve and invest in the efficient provision of the facility
- incentives to improve commercial returns, where these returns are generated from, for example, innovative investments or cost-cutting measures
- operational processes and procedures within the undertaking.

Access holders' interests

Queensland Rail said 'the assessment criteria relied on by the QCA in relation to the approval or rejection of the extension provisions do not reflect those in the QCA Act'.[806] Specifically, the QCA Act does not require the QCA to ensure the interests of access holders are 'protected'.[807]

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[802] For example, cls. 1.4.1(c)(iii), 1.4.2(c)(iii)(F), 1.4.3(b)(iii).
[803] Queensland Rail, sub. 26: 75.
[804] Queensland Rail, sub. 26: 78.
[805] Queensland Rail, sub. 26: 71.

Section 138(2)(e) requires the QCA to have regard to the interests of persons who may seek access to the service, including whether adequate provision has been made for compensation if the rights of users of the services are adversely affected. We consider that the rights of existing access holders are relevant under section 138(2)(h), to the extent they are not also access seekers under section 138(2)(e).[808] In any event, we have not approached our consideration of the 2015 DAU on the basis that it must ensure the interests of access holders are 'protected'. Those interests are simply something to which we have regard in assessing the 2015 DAU. Further information on this issue is provided in Chapter 10.

Table 9.2 in the Draft Decision provided more detail on our preliminary view about how section 138(2) matters should be addressed in order for the investment framework to be appropriate. It should not be read as if all the potential considerations noted in the second column of the table were strictly applied to the drafting of one or more specific clauses. In this context, the rights of access holders are clearly relevant to the assessment of the appropriateness of the investment framework.

Allocation of additional capacity

Queensland Rail said that the requirement in Schedule I that additional capacity created by an extension be pro-rated between funders relative to their funding share is 'neither practical nor efficient'. They made this point on the basis that an extension may potentially provide more additional capacity than is required by funders, or because Queensland Rail may require part of that additional capacity for activities such as operational activities.[809]

We do not accept that the proposed allocation of additional capacity created by an extension is impractical. We consider that additional capacity means 'the additional capability of the network to accommodate train services that would result from an extension'.[810] Any calculation of the ability of the network to cater for train services would include an assessment of Queensland Rail's requirements for operational activities and preclude the contracting of capacity for these paths.

We have, however, amended Schedule I to clarify that any paths created over and above those required by the user funders will be available for contracting paths as per the terms of the undertaking, rather than be automatically allocated to the user funders.

The obligation for Queensland Rail to pay for any part of a user funded extension

Queensland Rail made a number of general and specific comments[811], which argued that elements of the Draft Decision were outside power as they imposed an obligation that Queensland Rail bears some of the costs of an extension. Specifically, Queensland Rail argued that the right of the user funder to fund only those costs which can be reasonably shown to be efficient or prudent implies that Queensland Rail must risk bearing those costs which are not prudently incurred.

We accept that it is not appropriate to limit the obligation of a user funder to only those costs which can be reasonably shown to be efficient or prudent. Consistent with section 119(5)(c) (in the different but relevant context of access determinations) the costs of extending a facility, in

[806] Queensland Rail, sub. 26: 72.
[807] Queensland Rail, sub. 26: 72.
[808] QCA 2015: 257.
[809] Queensland Rail, sub. 26: 80.
[810] QCA 2015: 59.
[811] Queensland Rail, sub. 26: 73, 74, 78.

circumstances where we are not approving Queensland Rail's 2015 DAU under section 136(4) or 142(2) of the QCA Act, should not be required to be paid by Queensland Rail.

Imposition of an obligation to extend

Queensland Rail stated that the effect of the QCA's proposed amendments is to oblige it to extend the network 'when it would otherwise have good legal and commercial reasons for not doing so'[812], and that this obligation is beyond power.[813]

The extension conditions provide that Queensland Rail is not obliged to proceed with a proposed extension stage where that stage of an extension does not meet certain criteria. These criteria include matters which, if not satisfied, would mean Queensland Rail would have good legal and commercial reasons for not agreeing to the relevant stage. These include, for example, if the proposed extension is not technically feasible or adversely impacts on existing access rights.

The proposed amendments provide certainty that when an extension stage is proposed and meets these hurdles, each stage will be progressed. Amendments have been made to clause 1.4.1(b) to clarify that this is the case.

Requirement to maintain an extension

Queensland Rail said that the QCA was seeking to impose an obligation to maintain an extension and that this was beyond power because the proposed definition of maintenance work in the SAA included replacement costs and was in direct conflict with section 119 of the QCA Act.[814]

The definition of maintenance costs in the SAA has been amended to exclude replacement costs.

Access facilitation deeds

New Hope[815] has suggested a range of amendments to cl. 1.4, which would have the effect of obliging Queensland Rail to enter into AFD arrangements for extensions which have a project cost of under $25 million.

We have not adopted this suggestion. The AFD process outlined by New Hope obliges Queensland Rail to provide up to $25 million of funding on terms consistent with previous agreements that it has made (adjusted for changes to the cost of debt). New Hope proposed that any other variations to these terms should be subject to dispute. However, New Hope provided no details of those agreements. Given this, we cannot be confident that, simply because terms specified in a proposal were agreed to in the past, they will be agreed to in the future. In any event, we can see no reason why such an agreement could not be negotiated between a potential access funder and Queensland Rail without any amendments to clause 1.4.

Standard funding arrangements

New Hope has suggested a range of amendments to clause 2.9.4, which would have the effect of:

- requiring Queensland Rail to submit and obtain approval for a standard study funding agreement

[812] Queensland Rail, sub. 26: 74, 75.
[813] Queensland Rail, sub. 26: 74, 77.
[814] Queensland Rail, sub. 26: 71.
[815] New Hope, sub. 23: 23.

- providing QCA with the power to require Queensland Rail to produce a standard funding agreement for the construction and operation phase.

Queensland Rail, on the other hand, rejected the proposed amendments and said that the amendments to clause 2.9.4(b)–(d) were outside of power because 'a standard funding agreement cannot be "tacked-on" after the approval of the access undertaking by the QCA'.[816]

We note that the Aurizon standard user funding agreement negotiations have occurred in the context of a very different network, where capacity is fully contracted and there is demand for further capacity. This is not the case for Queensland Rail's network, where there is substantial spare capacity. Given this, we have removed the standard user funding agreement provisions from the 2015 DAU and suggest that Queensland Rail reviews the outcome of the Aurizon process with a view to potentially using it as a basis for similar provisions to be included in its next undertaking. In the meantime, the amended investment framework provides access seekers with guidance on the terms and conditions and coverage expected in a funding agreement for an extension.

Building Queensland Act

Queensland Rail has noted that the recently passed *Building Queensland Act 2015* (the Building Queensland Act) applies to Queensland Rail as a 'government agency' and that the effect of this Act had not been taken into account in the drafting of clause 1.4.

The effect of the Building Queensland Act is to pass over the responsibility for preparing business cases for projects which have a total value over $100 million from the government agency to Building Queensland.[817] The Act also states that Building Queensland is to lead the procurement or delivery of such an infrastructure project if directed to do so by the Minister.

We do not accept the drafting of clause 1.4 should be adjusted substantially for the effect of the Building Queensland Act. While the effect of the Act may alter the decision-making process within Queensland Rail, Queensland Rail will remain the railway manager and operator and the contracting entity that will be dealt with by the access seeker. It would, however, be expected that the impact of Building Queensland on the decision-making process would be taken into account in any assessment of reasonableness particularly if the organisation had impacted on the timeliness of decisions. However, we have added a new clause 1.4.8 which details how Queensland Rail and the access funder should respond to Building Queensland's involvement (or potential involvement) in an expansion.

Negotiation triggers and hybrid funding

Queensland Rail[818], New Hope[819] and Glencore[820] said that the proposed drafting of clauses 1.4 and 2.7, and Schedule I could be interpreted as implying that if Queensland Rail notified that it was not willing to fund a stage of an expansion, a funding agreement for all stages of the extension process would have to be negotiated. Queensland Rail[821] also said that hybrid funding options (where Queensland Rail funded part of an extension) should be permitted.

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[816] Queensland Rail, sub. 26: 81.
[817] An advisory body that has been set up to assess and manage the Queensland Government's investment in major projects. See (http://buildingqueensland.qld.gov.au/) for more detail.
[818] Queensland Rail, sub. 26: 81.
[819] New Hope, sub. 23: 23–23.
[820] Glencore, sub. 25: 5.
[821] Queensland Rail, sub. 26: 82.

While we are of the view that the proposed drafting made it clear that separate funding agreements could be negotiated for each stage of the extension (e.g. cl. 1.4.2(a), final paragraph), we have further amended a number of clauses (e.g. cls. 1.4.1(a)(iii), 1.4.3(a), 2.7.2(b)(iii)) to make it clearer that this is the case.

Similarly, we have amended clause 1.4.1(c)(i)(B) to make it clear that a hybrid option would be consistent with the undertaking.

Schedule I

Queensland Rail said that Schedule I (the extension access principles) is not appropriate and needs to be completely revised by the QCA on the basis that it, amongst other things, is internally inconsistent and inconsistent with Part 1 to 7 of the DAU, promotes inappropriate contracting, imposes obligations which are not appropriate under the undertaking and is jumbled with respect to the operation of funding agreements.[822] New Hope supported the inclusion of Schedule I but said that the principles were loose and high-level and that many of the clauses were drafted to apply to funding commissioning and construction, and do not apply well to the funding of studies.[823]

We disagree with Queensland Rail that Schedule I is not appropriate and is inconsistent with Parts 1 to 7 of the DAU; as detailed in our Draft Decision, we consider it to be important to the establishment of a workable network extension process. Relevantly, it has been difficult to address many of Queensland Rail's concerns specifically, given it did not specify its criticisms of Schedule I by reference to particular provisions of the schedule. Instead it chose to list a set of potential issues under a generic introduction that stated that they were relevant to 'various provisions under Schedule I'.[824]

That said, following the above concerns of Queensland Rail and New Hope, we have amended Schedule I to more clearly allow for its application to the study phases of an extension. This should improve clarity with respect to the rights and responsibilities of the Queensland Rail and the access funder, and remove some errors and inconsistencies. The revised Schedule I has nine separate clauses/sections, instead of 10, as before.

Dispute resolution process

Queensland Rail said that the dispute resolution process specified in cl. 1.4.2(f) (which allowed an access funder to refer a dispute directly to the QCA if Queensland Rail unnecessarily delayed the provision of assistance),was beyond powers because it 'purports to give someone who is not an access seeker a right to have the QCA arbitrate disputes involving Queensland Rail'.[825] It also said that the clause was inconsistent with clause 6.1 (which does not refer disputes automatically to the QCA) and unnecessary (because clause 1.4.7 deals with disputes in relation to extensions).

We assume that Queensland Rail is referring to the inclusion of an access seeker's nominee in the proposed definition of access funder when it makes reference to 'someone who is not an access seeker'. We note that we have deleted this reference from the definition on the basis that we do not consider that the additional complexity in the drafting of the expansion framework is justified.

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[822] Queensland Rail, sub. 26: 79–81.
[823] New Hope, sub. 23: 23.
[824] Queensland Rail, sub. 26: 79.
[825] Queensland Rail, sub. 26: 78.

We disagree with Queensland Rail's comment that the direct referral of disputes to the QCA is unnecessary. Timeliness is likely to be a critical component of negotiation of an extension for an access seeker. While rail access may only be a relatively small component of total investment required to enable an expansion in production, funding for the other elements are often dependent on the ability of the producer to show that they have an effective means of transporting their product to market. The dispute resolution mechanism that is mapped out in clause 6.1 can take up to 25 business days before it is escalated to the QCA for resolution. If there were a number of disputes negotiating a single stage extension, this could place undue pressure on the access seeker to agree to terms which they may otherwise consider unfavourable.

We also disagree with Queensland Rail's comment that the direct referral of disputes is inconsistent with clause 6.1. The provision that access seekers and Queensland Rail can agree to use a different dispute resolution process or timetable is included in clause 6.1.1; furthermore, we note that Queensland Rail has included clause 1.4.7(f) in its 2015 DAU, which allows the access seeker to refer a matter directly to the QCA under clause 6.1.4. However, to clarify the operation of dispute process in the context of clause 1.4, we have now amended clause 1.4.7 to specify that if no access funding agreement has been executed, the parties can escalate directly to the QCA. If a funding agreement has been executed, the dispute is dealt with through the parties' agreed dispute resolution provisions in the funding agreement. We have also amended clause 6.1.4 to clarify that disputes that are referred directly to the QCA do not have to have satisfied the earlier process steps before the QCA can determine the dispute.

In addition, we have made a number of amendments to clause 1.4 and Schedule I to improve the clarity and consistency of their operation. These amendments are summarised in Appendix D.

Summary 9.1

The 2015 DAU must provide as follows:

- **(a) A transparent and accountable network extension process should be provided to underpin the negotiation of each stage of an extension project concurrently with an access agreement, including clarifying the threshold criteria which an extension must meet and outlining rights and responsibilities of the parties in relation to the separate stages of an extension.**
- **(b) Sufficient detail should be included, with clear reasoning, on the scope of an extension project.**
- **(c) Objective and reason-based assessment criteria to underpin the decision-making process of an extension project should be provided.**
- **(d) All necessary project information and project assistance reasonably required by an access seeker to develop an efficient scope, standard and cost of an extension should be provided.**
- **(e) A balanced allocation of the rights and responsibilities between Queensland Rail and an access seeker should be provided.**
- **(f) Standard principles to apply to all extensions should be included.**
- **(g) More detail should be provided on the funding agreement provisions reasonably required to satisfy the access rights sought by an access seeker.**
- **(h) The funding and access principles that will underpin the negotiation of a funding agreement should be identified.**
- **(i) A more streamlined dispute mechanism process should be provided for extension related disputes.**
- **(j) The parties' rights and obligations in relation to the Building Queensland Act should be clarified.**

See clauses 1.4, 2.7, 2.9.2(q), 2.9.5(b), 7.1 and Schedule I in Appendix F.

9.2 Network planning provisions

Consistent with section 137 of the QCA Act, we consider the 2015 DAU should outline the network planning processes that apply to key corridors on Queensland Rail's network. In applying our assessment approach, we have considered whether there is sufficient detail on the planning processes applied by Queensland Rail to show that it is efficiently operating, using and investing in its network.

The Draft Decision proposed that Queensland Rail be required to amend its network planning provisions to include a regulatory process for developing a master plan for each of its major rail corridors during the term of the 2015 DAU.

Stakeholders' submissions

Queensland Rail argued that system planning is not part of the regulated service and is not covered by the QCA Act (and so the amendments proposed in the Draft Decision were beyond

power). Queensland Rail also made the comment that the costs of developing the master plans were unfunded.[826]

New Hope supported the requirement for Queensland Rail to develop regional network master plans and establish regional network capacity groups, noting that 'NHC has experienced significant frustration at the lack of any clear process for planning for growth and assessing various capital investment and expansion options'.[827] Glencore noted its support for an obligation to develop a new Mount Isa line master plan, as additional transparency should assist future access negotiations.[828] Asciano also supported the proposed amendments but said that the planning groups should also include operators (where those operators are neither access seekers or access holders).[829]

QCA analysis and Decision

The QCA considers Queensland Rail should amend its network planning provisions to include a regulatory process to develop a master plan for each of its major rail corridors during the term of the 2015 DAU in accordance with clause 1.5.[830]

We do not accept Queensland Rail's position that system planning is beyond power. Section 137(2) states that an access undertaking for a service may include details of information to be given to access seekers; information to be given to the QCA or 'another person' and timeframes for giving information in the conduct of negotiations about access to the service.

We are of the view that the 2015 DAU:

- does not provide sufficient transparency or accountability on Queensland Rail's compliance with the object of the Act (s. 138(2)(a)); and
- is not appropriate when having regard to the public interest and the interests of access seekers and access holders because it does not provide for access holders, access seekers, end customers and rail operators to receive sufficient information on Queensland Rail's management and operation of the network (s. 138(2)(d), (e) and (h)).

Queensland Rail has argued that the object of Part 5 of the Act (as detailed in s. 69E) is only intended to promote the relevant matters, not achieve or ensure them.[831] We do not suggest that an access undertaking will only be appropriate to approve if it 'ensures' a particular matter referred to in section 138(2). The matters in section 138(2) are simply matters to which we must have regard in considering a draft undertaking. We note that the proposed master plans will improve the information available to decision-makers and therefore promote the economically efficient operation of, use of and investment in the Queensland Rail network.

Our Decision is therefore to require Queensland Rail to amend its network planning provisions to include a regulatory process to develop a master plan for each of its major rail corridors during the term of the 2015 DAU.

The contents of the master plans should be based on the information requirements set out in section 101(2). The provision of a master planning document that transparently sets out Queensland Rail's current and expected cost of service provision including capital, operating

[826] Queensland Rail, sub. 26: 84–85.
[827] New Hope, sub. 23: 24.
[828] Glencore, sub. 25: 1.
[829] Asciano, sub. 28: 14.
[830] Master planning and extension coordination.
[831] Queensland Rail, sub. 26: 83.

and maintenance costs (s. 101(2)(b)), approach to developing prices (s. 101(2)(a)) and estimating capacity (s. 101(2)(d)) would go a long way to addressing a number of the key issues raised by stakeholders.

Our position is not unusual—both the 2010 DBCT[832] and the 2010 QR Network[833] access undertakings include provisions requiring the access provider to undertake master planning activities.

However, we agree that the costs of these studies should be funded by access holders and access seekers to the extent that any existing allowance for system planning is insufficient to cover the costs. If Queensland Rail can show that the costs of developing the required master plans are not covered by their existing operating cost allowance and that the proposed costs are reasonable, Queensland Rail should be able to request that those parties who want to participate in the planning process fund the process up-front. This will also assist in making sure that stakeholders are invested in the process and their interest is genuine. If stakeholders decide that they are not interested in system planning, then they are not obliged to fund a planning group.

We also agree with Asciano that operators should be invited to join the proposed regional network capacity groups in those situations where they are neither access seekers or access holders.

Our Decision:

- aligns with Queensland Rail's obligation to manage its network consistent with the object of the QCA Act (s. 138(2)(a)); and
- is appropriate having regard to the public interest, the interests of persons seeking access (s. 138(2)(d), (e)), and Queensland Rail's legitimate business interests (s. 138(2)(b)).

Summary 9.2

In respect of network planning provisions, the 2015 DAU must include a regulatory process to develop a master plan for each of Queensland Rail's major rail corridors during the term of the 2015 DAU if funded by participants.

See clause 1.5 in Appendix F.

[832] DBCT 2010.
[833] QR Network, 2010 Access Undertaking, Part 11: Coordination and Planning.

10 LEGAL OVERVIEW

This chapter sets out how we have applied our legislated obligations in making our 2015 Decision.

10.1 Part 5 of the QCA Act

Part 5 of the QCA Act establishes a third party access regime to provide a legislated right for third parties to acquire services provided using significant infrastructure that is owned by a monopoly service provider. When the Bill to establish the QCA Act was introduced, the accompanying Explanatory Notes said:

> *The underlying rationale of creating third party access rights to significant infrastructure is to ensure that competitive forces are not unduly stifled in industries which rely upon a natural monopoly at some stage in the production process, especially where ownership or control of significant infrastructure is vertically integrated with upstream or downstream operations*
>
> *A key aspect of the market system is that an infrastructure owner is entitled to choose with whom it will deal. The threat of competitors providing substitutes constrains a seller's ability to charge excessive prices or otherwise restrict supply. However, in cases where these substitutes do not exist, a seller possesses significant market power. A seller may exercise its market power to increase its profit by restricting output because doing so enables the seller to increase its price.*
>
> *In cases of natural monopoly, one facility meets all of a market's demand more efficiently than a number of smaller and more specialised facilities. Accordingly, it is not socially desirable that the infrastructure comprising a natural monopoly be duplicated. At the same time, the absence of competition enables a natural monopoly infrastructure owner to extract excessive profits through exercising market power.*
>
> *This is especially the case where the business which operates the natural monopoly also has a commercial interest in upstream or downstream markets (for example a rail operator who also owns the track). Such a business may discriminate against its upstream or downstream competitors by offering access on more favourable terms and conditions than is offered to competitors. In this way, an owner of a natural monopoly is able to stifle competition in upstream or downstream markets.*
>
> *The purpose of third party access is therefore to provide a legislated right to use another person's infrastructure. This should prevent owners of natural monopolies charging excessive prices. It should also encourage the entry of new firms into the potentially competitive upstream and downstream markets which rely on a natural monopoly infrastructure in the production process, and thereby enable greater competition in those markets. This in turn would promote more efficient production and lower prices to consumers.*[834]

10.2 Assessment approach

Queensland Rail lodged the 2015 DAU for our consideration and approval under sections 137 and 138 of the QCA Act. The 2015 DAU was lodged in response to our initial undertaking notice issued under section 133 of the QCA Act.

Section 134 of the QCA Act requires us to consider the 2015 DAU given in response to the section 133 notice and either approve or refuse to approve it.

[834] Explanatory Notes to the *Queensland Competition Authority Bill 1997*, pp. 3–4.

We acknowledge that we are not permitted to refuse to approve the 2015 DAU simply because we consider a minor and inconsequential amendment should be made to the 2015 DAU.[835]

This Decision to refuse to approve the 2015 DAU comprises an attachment to a secondary undertaking notice under section 134(2) of the QCA Act, requiring Queensland Rail to give us an amended copy of the DAU within 60 days. The secondary undertaking notice and its attachments (including this Decision) sets out the reasons for the refusal and the amendments to the DAU that the QCA considers appropriate under section 134(2)(a) of the QCA Act.

If Queensland Rail complies with the secondary undertaking notice, we may approve the amended 2015 DAU.[836] If Queensland Rail does not comply with secondary undertaking notice, we may prepare and approve an amended 2015 DAU to apply to Queensland Rail in relation to the provision of the declared service.[837]

We acknowledge the 2015 DAU is the culmination of a four-year regulatory process that has involved Queensland Rail submitting and then withdrawing three versions of a DAU. We also note that, in considering this Decision, we have reviewed the 2015 DAU with 'a fresh set of eyes' and assessed it on its merits applying the legislative criteria. In forming the positions expressed in this Decision, we had regard to, among other things:

- each part of the 2015 DAU;
- all of the 2015 DAU submissions provided by Queensland Rail and stakeholders;
- relevant sections of our 2014 Draft Decision that were referenced by Queensland Rail and stakeholders in their submissions;
- information provided by Queensland Rail in accordance with section 185 notices issued by the QCA; and
- information provided by Queensland Rail and stakeholders through a further round of submissions once submissions on the 2015 Draft Decision were received.

The remainder of this chapter sets out some comments on particular issues relating to the criteria listed in section 138(2) of the QCA Act that are relevant to the 2015 DAU when coming to our Decision outlined in the preceding chapters.

10.3 Section 138(2) of the QCA Act

Section 138(2) of the QCA Act states that we may approve the 2015 DAU only if we consider it appropriate to do so having regard to each of the matters set out in section 138(2) of the QCA Act (see Box 3).

[835] Sections 138(5) and (6) of the QCA Act.
[836] Section 134(3) of the QCA Act.
[837] Section 135 of the QCA Act.

Box 3: Section 138(2) of the QCA Act

Section 138(2) of the QCA Act provides:

> *The Authority may approve a draft access undertaking only if it considers it appropriate to do so having regard to each of the following —*
>
> *(a) the object of this part;*
>
> *(b) the legitimate business interests of the owner or operator of the service;*
>
> *(c) if the owner and operator of the service are different entities—the legitimate business interests of the operator of the service are protected;*
>
> *(d) the public interest, including the public interest in having competition in markets (whether or not in Australia);*
>
> *(e) the interests of persons who may seek access to the service, including whether adequate provision has been made for compensation if the rights of users of the service are adversely affected;*
>
> *(f) the effect of excluding existing assets for pricing purposes;*
>
> *(g) the pricing principles mentioned in section 168A;*
>
> *(h) any other issues the Authority considers relevant.*

The 'object of this part' as referred to in section 138(2)(a) is set out in section 69E:

> *The object of this part is to promote the economically efficient operation of, use of and investment in, significant infrastructure by which services are provided, with the effect of promoting effective competition in upstream and downstream markets.*

The pricing principles set out under section 168A are:

> *The pricing principles in relation to the price of access to a service are that the price should —*
>
> *(a) generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved; and*
>
> *(b) allow for multi-part pricing and price discrimination when it aids efficiency; and*
>
> *(c) not allow a related access provider to set terms and conditions that discriminate in favour of the downstream operations of the access provider or a related body corporate of the access provider, except to the extent the cost of providing access to other operators is higher; and*
>
> *(d) provide incentives to reduce costs or otherwise improve productivity.*

'Appropriate'

The QCA Act requires us to determine whether it is 'appropriate' to approve a DAU having regard to the relevant matters listed in section 138(2). The term ‘appropriate’ in the QCA Act is one of wide import.

Queensland Rail has submitted that section 138(2) does not require the QCA to consider an access undertaking to be the most appropriate undertaking in order to approve it—the access undertaking need only be considered to be appropriate having regard to all the criteria in section 138(2) of the QCA Act.[838] The QCA agrees.

[838] Queensland Rail, sub. 26: 7.

We are not assessing the 2015 DAU against an optimal or preferred standard; rather, we are considering whether the undertaking is 'appropriate' by reference to all the statutory factors.

The reason why the Draft Decision did not propose not to approve the 2015 DAU was not because we preferred a different access arrangement, which we believed would better achieve the statutory objectives. The Draft Decision proposed not to approve the 2015 DAU because QCA's draft conclusion was that it was not appropriate to do so after having regard to the statutory factors in section 138(2). Given our draft conclusion, we then set out the way in which we considered it would be appropriate to amend the undertaking (s. 136(5)(b)).

Equally, we note that in considering whether the 2015 DAU is appropriate to approve, we are not compelled to approve an undertaking that is the least onerous and restrictive, from the perspective solely of the regulated business. We are required to determine whether the 2015 DAU is 'appropriate' to approve by reference to the factors in section 138(2)—factors that have a focus which is wider than just the perspective of the regulated business.

The QCA has adopted this approach in this Decision.

'Have regard to'

In making our decision as to whether the 2015 DAU is appropriate to approve, we must have regard to the factors in section 138(2) of the QCA Act.

The phrase ‘have regard to’ has been interpreted by Australian courts as requiring the decision-maker to take into account the matters to which regard is to be had as an element in making the Decision.

In response to the Draft Decision, Queensland Rail submitted that 'by not ensuring that the price for access gives Queensland Rail revenue at least sufficient for it to recover its efficient costs and the required return, the QCA is effectively disregarding the pricing principle factor referred to in section 138(2).' The QCA rejects the statement that it has 'effectively' disregarded section 168A(a). As discussed further below, the QCA regards the pricing principles as a fundamental consideration (in the sense of being a central element in our deliberative process), but other relevant considerations may warrant a particular decision being made.

Weight

The matters listed in section 138(2), considered in light of the provisions of the DAU, may, and indeed often will, give rise to competing considerations which need to be weighed in deciding whether it is appropriate to approve the undertaking. Some of the matters to which the QCA must have regard favour different conclusions.

Some examples of possible tensions are:

- between the legitimate business interests of the owner or operator of the service (s. 138(2)(b)) on the one hand, and the interests of persons who may seek access to the service (s. 138(2)(e)) on the other hand; and
- between the effects of excluding existing assets for pricing purposes (s. 138(f)), and setting a price that generates 'expected revenue for a service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved' (s. 168A(a)).

In the absence of any statutory or contextual indication of the weight to be given to factors to which a decision-maker must have regard (as is the case in the QCA Act), it is generally for the

decision-maker to determine the appropriate weight to be given to them.[839] We consider that this approach generally applies here.

Queensland Rail submits that the QCA cannot 'trade off' the factors listed in section 138(2) but instead must give primacy to paragraphs (a) and (g) (the object of Part 5 and the pricing principles).[840] We do not agree, for the reasons given above. This issue is covered in more detail by the discussion below in the context of the pricing principles.

10.3.1 The object of Part 5

Section 138(2)(a) requires us to have regard to the object of Part 5 of the QCA Act when deciding whether it is appropriate to approve an access undertaking.

Promoting economically efficient outcomes

The object of Part 5 of the QCA Act (s. 69E) is to promote the economically efficient operation of, use of and investment in significant infrastructure by which services are provided, with the effect of promoting effective competition in upstream and downstream markets.

We consider these efficient outcomes include:

- efficient operation and use of the existing network—to promote economically efficient operation and use of existing infrastructure, we consider the 2015 DAU should, among other things, provide controls on Queensland Rail's ability to differentiate between access seekers; encourage and not discourage utilisation of the infrastructure; and enhance the transparency of regulatory processes
- efficient investment in the network—the 2015 DAU should enhance the transparency and processes associated with identifying and mitigating bottlenecks, identifying the need for network extension, and actioning those extensions. It should also provide controls and incentives to provide that future capital expenditure is prudent, including in terms of scope, standard and costs whilst offering appropriate regulatory certainty for network investment decision-making and including a return on investment commensurate with the regulatory and commercial risks involved
- encouraging and not discouraging upstream and downstream investment—including by ensuring appropriate regulatory certainty for such investment decision-making. A stable, certain regulatory framework provides confidence that in turn underpins investment in long-lived infrastructure investments and expenditure on exploration activities. Conversely, uncertainty can result in a lessening of competition for upstream coal tenements (limited exploration and mine development expenditure) and inefficient use of Queensland Rail's West Moreton network rail infrastructure (by discouraging new entrants from taking any spare rail capacity).

Competitiveness of the access price

New Hope[841] and Yancoal[842] submitted that the competitiveness of the tariff and the impact this has on the competiveness of access holders and access seekers are relevant under section 138(2)(a), (d), (e) and (h) of the QCA Act. The submissions are, however, primarily expressed in the context of paragraph (a). It is argued that the level of the tariff has an effect on the efficient

[839] *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24, 41 (Mason J).
[840] Queensland Rail, sub. 26: 9, 10.
[841] New Hope, sub. 21: 4, 5.
[842] Yancoal, sub. 27: 3, 4.

use of the Queensland Rail network, as high tariffs can lead to reduced utilisation of the network. The submissions also note that the medium-to long-term competitive position of the miners in global coal markets is a matter of the public interest (relevant under s. 138(2)(d)).

New Hope and Yancoal submitted that these considerations, along with the interests of access seekers and access holders (relevant matters under s. 138(2)(e) and (h)), should result in the price being below that which results from commonly accepted regulatory methodologies in order to make them competitive in coal markets.

The QCA accepts that the level of the tariff may have an effect on the utilisation of the network and that the competitive position of the miners in global coal markets is a matter of the public interest and a matter of interest to access holders and access seekers. However, regulatory predictability and certainty in the regulatory process and its outcomes, including the application of commonly accepted and previously applied regulatory methodologies, are also relevant matters for the QCA under section 138(2)(a), (b), (d), (e) and (h). How these considerations have been taken into account by the QCA in considering the level of the tariff is discussed in Section 8.2 of this Decision.

Our role in the application of the object of Part 5 of the QCA Act

In the Draft Decision, we stated 'our role as an access regulator includes the promotion of the efficiency objectives of Part 5 of the QCA Act and we are empowered by statute to set the appropriate arrangements that we consider necessary to achieve these objectives'.

Queensland Rail has made a number of comments on this statement and on the QCA's recitation of the language of the objects clause in the Draft Decision. Queensland Rail has concluded that this infects the whole of that Draft Decision.[843] The QCA accepts that the QCA Act does not impose an obligation on Queensland Rail 'to maintain, operate, use and, if required, extend the network' or to manage the network to any particular end.

The QCA agrees that the focus of the object of Part 5 is the promotion of the outcomes prescribed in that object, rather than their achievement by either the QCA or Queensland Rail. This is how the QCA has applied that object.

10.3.2 The legitimate business interests of Queensland Rail

Section 138(2)(b) requires us to have regard to the 'legitimate business interests' of the owner or operator of the service, in this case Queensland Rail. As the owner and operator are the same entity, the QCA's consideration of section 138(2)(b) also covers section 138(2)(c).

'Legitimate business interests' is not a defined term under the QCA Act.

We consider Queensland Rail will have a legitimate business interest across a range of areas. These include:

- the commercial interest in recovering efficient costs in providing the relevant service[844] and in earning a return on investment commensurate with the regulatory and commercial risks involved in supplying the declared service
- a balanced allocation of contractual risks and liabilities as between Queensland Rail and access holders

[843] Queensland Rail, sub. 26: 7.
[844] The 2015 DAU only seeks reference tariffs for coal services on the West Moreton and Metropolitan networks.

- appropriate incentives to maintain, improve and invest in the efficient provision of the facility to provide the declared service
- incentives to improve commercial returns, where these returns are generated from, for example, innovative investments or cost-cutting measures
- transparent and effective operational processes and procedures such as the network management principles and operating requirements manual within the undertaking
- the safe operation of the facility.

The legitimate business interest of Queensland Rail is one of the factors to which the QCA is to have regard pursuant to section 138(2).

10.3.3 The public interest

Section 138(2)(d) requires the QCA to have regard to the public interest, including the public interest in having competition in markets (whether or not in Australia).

The term 'public interest' is not defined in the QCA Act.

We also note that any assessment of the public interest will be shaped by the context of the particular assessment.

We consider it to be in the public interest for there to be an access undertaking that establishes a stable, certain regulatory framework that facilitates the delivery of below-rail services at prices that are appropriate having regard to the relevant matters referred to in the QCA Act.

In this way, rail operators and end users are able to have confidence that access charges promote an efficient allocation of resources, consistent with the public interest in having competition in the above-rail market.

Where consumers of rail services sell their products in international markets or face intense competition in their domestic markets, the ability of such consumers to pass on rail transport costs is likely to be constrained. If the costs of providing the service are not efficient, this could undermine the competitiveness of rail operators accessing Queensland Rail's declared services and consumers of above-rail services provided by those rail operators (particularly the miners in global coal markets).

In addition, we consider that an undertaking that delivers regulatory certainty provides a major stimulus to the Queensland economy and local employment which is an important public interest consideration.[845] The development of new, or replacement, upstream producers may be at risk if there is material pricing uncertainty for rail access. This can have flow-on impacts on regional economic development.

Having effective competition in upstream and downstream markets

Efficient access to the Queensland Rail network is of significance for competition in the market for freight services, including through contracting and operating requirements embodied in Queensland Rail's proposal. We consider that Queensland Rail continues to have the ability and incentive to use its market power to adversely affect competition in a number of dependent markets including:

- the market for above-rail services;

[845] QCA 2001b: 45.

- the market for certain products that are transported on Queensland Rail's network; and
- the market for resource tenements from which those products are produced.

Competition in the above mentioned markets can be affected by the operation of the contracting and operating requirements embodied in the 2015 DAU.

We therefore consider that an access undertaking should seek to:

- minimise any barriers for access to the declared service
- improve the conditions for competition in upstream and downstream markets by promoting regulatory certainty to enable confidence in decision-making.

Supply chain coordination

We consider there to be a strong alignment between effective supply chain coordination and the public interest. There is a clear link between allowing for the coal supply chain to operate in the most effective and efficient way possible and the public interest in maintaining an internationally competitive Queensland coal sector.

10.3.4 The interests of persons who may seek access

Section 138(2)(e) requires the QCA to have regard to the interests of persons who may seek access to the service, including whether adequate provision has been made for compensation if the rights of users of the services are adversely affected. We consider that the rights of existing access holders are relevant under section 138(2)(h), to the extent they are not also access seekers under section 138(2)(e).

We consider that section 138(2)(e) encompasses the interests of train operators as access seekers or potential access seekers. Indeed, we have received submissions from Aurizon and Asciano, as train operators on the Queensland Rail network, and their views are considered throughout this Decision.[846]

We consider the interests of access seekers include an effective negotiation framework; transparent and public information about access to and use of the network; adequate reporting; certain and effective transitional arrangements as one undertaking replaces another; access principles that are effective for a balanced negotiation or renewal of an access agreement; standard access agreements that represent a fair risk allocation; effective obligations to maintain the network; and a workable and effective extension and expansion framework.

Finally, in having regard to the interests of persons who may seek access, our Decision on the 2015 DAU primarily references the predominant use in each of the major systems—that is, coal in the West Moreton network, bulk freight on the Mount Isa line and containerised freight on the North Coast line. We acknowledge, however, that these are not the only commodities on each system and we have had regard to interests of other access seekers.

10.3.5 The effect of excluding existing assets for pricing purposes

Section 138(2)(f) requires the QCA to have regard to the effect of excluding existing assets for pricing purposes.

We have had regard to this criterion as part of our assessment of the revenues and tariffs appropriate for the declared service.

[846] Asciano, sub. 5; Aurizon, sub. 6.

Submissions have been made in relation to this criterion in the context of various assets discussed in Chapter 8.

As it is explained further in Chapter 8, the QCA's view is that its approach does not involve 'excluding existing assets for pricing purposes' as the relevant assets have been taken into account for pricing purposes in the way discussed in that chapter. However, even if the proper reading of the words 'the effect of excluding existing assets for pricing purposes' in section 138(2)(f) would mean that the approach we have taken does involve excluding existing assets for pricing purposes, that is a matter to which the QCA has had regard.

10.3.6 The pricing principles in section 168A

Section 138(2)(g) requires the QCA to have regard to the pricing principles in section 168A.

The pricing principles in relation to the price of access to a service are that the price should:

> *(a) generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved; and*
>
> *(b) allow for multi-part pricing and price discrimination when it aids efficiency; and*
>
> *(c) not allow a related access provider to set terms and conditions that discriminate in favour of the downstream operations of the access provider or a related body corporate of the access provider, except to the extent the cost of providing access to other operators is higher; and*
>
> *(d) provide incentives to reduce costs or otherwise improve productivity.*

Queensland Rail submits that the pricing principles have primacy over other considerations in section 138(2).

It previously said:

> *[The] reference tariff must deliver to the access provider at least its efficient costs and a return as required by section 168A(a). Anything less should not be approved and cannot be imposed.*[847]

It has maintained this position in its response to the Draft Decision:

> *In the case of the QCA Act there is an unequivocal statutory and contextual indication that the pricing principles … are to be given priority.*[848]

To support this view, Queensland Rail referred to the Explanatory Notes to the Queensland *Competition Authority Amendment Bill 2008*, and various sections of the QCA Act. It also considered that the pricing principles are in a stand-alone section and that the QCA cannot approve an access undertaking that is inconsistent with the QCA Act. Queensland Rail submitted the language of section 168A(a) does not support Queensland Rail providing the 'declared service at a loss'.

The QCA considers the submission being made by Queensland Rail is that these matters displace the general approach that it is for the QCA to determine the weight to be given to the matters required to be taken into account by section 138(2). Queensland Rail submitted that the QCA Act requires that section 168A, and section 168A(a) in particular, be given greater weight than other considerations.

[847] Queensland Rail sub. 1: 5.
[848] Queensland Rail sub. 26: 9.

The QCA does not agree. Section 138(2) is drafted as a simple list, with the language of the section imposing no requirement that any particular item be viewed necessarily more significant than the others. The QCA is not persuaded the other contextual matters in the QCA Act which Queensland Rail referred to are such as to conclude otherwise.

The QCA considers the pricing principles, including section 168A(a), to be fundamental considerations (in the sense of being a central element in the deliberative process), but that does not mean they have primacy over other considerations or that it is necessary for them to be 'complied with' in some absolute way. It is open to the QCA to consider that a DAU which provides for a price that allows a service provider to recover at least the efficient costs of providing access to the service and a relevant return on investment, is nonetheless not one which is appropriate to approve, including by reference to other factors such as the object of Part 5 of the QCA Act (s. 138(2)(a)), the interests of access seekers and holders (s. 138(2)(e), (h)) and the public interest (s. 138(2)(d)).

The pricing principles are only one of a number of factors to which we must have regard pursuant to section 138(2). Whether a DAU allows recovery of at least enough to meet efficient costs and a relevant return is of course relevant and fundamental to our assessment of the 2015 DAU. However, we are not required to consider it appropriate to approve a DAU because the price contained in it will generate revenue that is at least enough to meet the efficient costs of the service and a relevant return. Nor are we precluded from considering it appropriate to approve a DAU that contains a price that is not expected to generate revenue that is at least enough to meet the efficient costs of the service and a relevant return, where other relevant factors in section 138(2) lead to a conclusion that it is appropriate to approve the DAU.

Queensland Rail also takes issue with the QCA saying that '[a]lthough section 168A(a) states that prices should generate revenue to at least meet the efficient costs of providing access, it is also true that prices above the efficient cost would not be in the interests of access seekers and holders, nor in the public interest'.[849] Queensland Rail says that '[b]y giving paramount effect to the purported interests of access seekers, access holders and the public, the QCA is purporting to re-write the QCA Act and expressly stating contrary to the language of section 168A(a), that Queensland Rail should never get more than its efficient costs'.[850]

Queensland Rail's conclusion is erroneous. The QCA merely makes the point that prices above the efficient cost would not be in the interests of access seekers and holders or in the public interest. It does not say these interests necessarily prevail as a matter of statutory construction.

10.3.7 Any other matters the QCA considers are relevant

Section 138(2)(h) allows the QCA to have regard to any other issues it considers relevant.

This paragraph is expressed in broad terms. We consider the interests of access holders and end users are relevant under this paragraph. The interests of these stakeholders broadly coincide with the interests of access seekers, as all access seekers who sign contracts will become access holders. However, as discussed in various parts of Chapter 2, there are some issues of particular relevance to access holders and end users.

In addition to the above, we consider the following matters, among other things, to be relevant:

- the terms of the 2008 AU and the reasons for proposed changes to it

[849] Queensland Rail sub. 26: 10.
[850] Queensland Rail sub. 26: 10.

- the previously approved split-form access agreement in Aurizon Network's 2010 undertaking
- certainty through maintenance and operational integrity
- the extent to which commercially negotiated outcomes should be recognised under the negotiate–arbitrate principle
- the extent to which a regulated entity earns windfall gains and monopoly profits.

Role of the 2008 AU

We consider the previously approved standard access principles in the 2008 undertaking and the 2008 SAA (2008 regulatory precedents) to be relevant in our consideration of the 2015 DAU. We are of the view that the 2008 regulatory precedents have been effective in providing Queensland Rail, access seekers, access holders and end customers with:

- a considered and balanced approach to contract risk management
- a contracting framework that is well understood by all freight traffics operating on the network
- a level playing field in negotiating access rights with a monopoly service provider.

On this basis, we have considered afresh the 2008 regulatory precedents and are of the view that the balanced risk position underlying the 2008 regulatory precedents are relevant in considering the stated matters in section 138(2) of the QCA Act. In particular, we consider that the 2008 SAA provides a good example of an allocation of risks and obligations to the contracting parties best able to manage them, that facilitates access to the network and an efficient total cost of access.

Aurizon Network 2010 undertaking

We consider the previously approved split-form access agreement in Aurizon Network's 2010 undertaking (2010 regulatory precedents)[851] to also be relevant in our consideration of the 2015 DAU. We are of the view that the 2010 regulatory precedents provide Queensland Rail, access seekers, access holders and end customers with relevant guidance on a:

- considered and balanced approach to contract risk management
- contracting framework that is well understood by all freight traffics operating on the network
- level playing field in negotiating access rights with a monopoly service provider.

On this basis, we have considered afresh the split-form SAA and are of the view that the balanced risk position underlying the split-form SAA is current and relevant in considering the matters stated in section 138(2). In particular, we consider that the 2010 undertaking SAAs provide a good example of an allocation of risks and obligations to the contracting parties best able to manage them, that will facilitate access to the network and an efficient total cost of access.

Certainty through maintenance and operational integrity

Within the context of section 138(2)(h) we have also considered the role of certainty from regulatory arrangements. That is, the extent to which stability and certainty promote

[851] Stakeholders have all identified the importance of ensuring the 2015 SAA contains the contractual flexibility provided by the split-form SAA in the Aurizon Network's 2010 undertaking.

confidence in the regulatory arrangements and therefore economic efficiency by reducing uncertainty associated with long-term investment decisions.

This may be considered in the context of operational integrity of the network with regard to maintenance, as well as the performance of the network over the longer term. For example, further certainty may be provided through system master plans by providing for access rights to be renewed on expiry.

Negotiate–arbitrate model and primacy of commercial negotiations

The third party access regime in the QCA Act is underpinned by the 'negotiate–arbitrate' approach to regulation, with the regime incorporating the principle of primacy of contractual negotiations.

We consider that parties should endeavour to negotiate a mutually beneficial outcome before they resort to arbitration. When parties are unable to agree, arbitration is an appropriate means of resolving disputes. Indeed, if the dispute resolution process is not credible, the negotiation process can be unduly biased in favour of Queensland Rail by not sufficiently addressing the asymmetry in bargaining power.

An access undertaking is a means to achieve ex ante certainty by providing the terms and conditions on which Queensland Rail will provide access, to avoid developing these arrangements separately with each access seeker.

We have therefore considered how the 2015 DAU affects the role of customer engagement, the balance of negotiation strength, barriers to participation, the flow of relevant and timely information, and whether it provides for effective dispute mechanisms, accountability and transparency.

Windfall gains, monopoly profits and other matters

A return that is materially above that which is necessary for an entity to meet the efficient costs of providing access to the service, including a return on investment commensurate with the regulatory and commercial risks of providing access, may generate windfall gains and monopoly profits.

This would be inconsistent with economically efficient investment, operation and use of a regulated network and has the potential to have both upstream and downstream investment impacts.

Likewise, the QCA can take account of whether the approved tariff is consistent with the recovery of efficient costs over the long term, such a matter being relevant to the object of Part 5 of the Act (s. 138(2)(a)), the public interest including in having competition in markets (s. 138(2)(d)), and other issues the QCA considers relevant (s. 138(2)(h)).

ACRONYMS

A	
AFD	Access facilitation deed
B	
C	
clause, clauses	cl., cls.
CPI	consumer price index
D	
DAAU	Draft Amending Access Undertaking
DAC	Depreciated actual cost
DAU	Draft Access Undertaking
DORC	Depreciated optimised replacement cost
DTMR	Queensland Department of Transport and Main Roads
DTP	Daily Train Plan
E	
EIRMP	Environmental Investigation and Risk Management Report
F	
FCM	Financial Capital Maintenance
G	
gtk	Gross tonne kilometre
H	
I	
IAP	Indicative Access Proposal
IRMP	Interface Risk Management Plan
J	
K	
L	
M	
MTP	Master Train Plan
N	
NMPs	Network management principles

NPV	Net present value
O	
ORM	Operating Requirements Manual
P	
Q	
R	
RAB	Regulatory Asset Base
S	
section, sections	s., ss.
T	
TIA	Transport Infrastructure Act 1994
TSC	Transport Service Contract
TSE	Train Service Entitlement
TRSA	*Transport (Rail Safety) Act 2010*
U	
V	
W	
WACC	Weighted average cost of capital
X	
Y	
Z	

APPENDIX A: SUMMARY OF QCA REVENUE/PRICING MODEL (2016 FOR QUEENSLAND RAIL 2015 DAU)

Table 1 Summary: QCA model for coal reference tariff—West Moreton network and Metropolitan network

Coal-allocated regulatory asset base (RAB) roll-forward (Rosewood to Columboola) ($)	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
opening asset value	175,559,747	184,802,412	202,353,610	223,025,639	241,799,742	261,167,109	278,552,137
plus capex	8,807,870	16,879,521	18,084,595	20,377,204	21,285,572	19,616,005	17,895,797
less depreciation	(5,358,034)	(5,811,785)	(6,579,599)	(7,431,885)	(8,227,627)	(9,003,842)	(9,710,991)
plus inflationary gain	5,792,830	2,921,898	5,283,502	5,828,784	6,309,421	6,772,864	7,186,120
closing asset value	184,802,412	198,792,046	219,142,108	241,799,742	261,167,109	278,552,137	293,923,063

West Moreton network Coal Annual Revenue Requirement (Rosewood to Columboola)		2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Return on capital	$	12,476,072	13,396,610	14,655,127	13,355,130	14,456,248	15,517,525	16,463,833
Inflation	$	(5,792,830)	(2,921,898)	(5,283,502)	(5,828,784)	(6,309,421)	(6,772,864)	(7,186,120)
Return of capital	$	5,358,034	5,811,785	6,579,599	7,431,885	8,227,627	9,003,842	9,710,991
TSC capital charge	$	(783,757)	(1,007,627)	(902,235)	(770,693)	(778,607)	(786,436)	(794,170)
Maintenance expenditure	$	19,473,887	18,388,908	28,792,424	17,881,271	18,065,649	18,401,376	18,683,192
Operating expenditure	$	4,748,652	4,820,465	5,416,737	5,600,784	5,740,804	5,884,324	6,031,432
Working capital allowance	$	131,851	135,987	107,245	116,677	119,594	122,584	125,648
Tax allowance	$	1,286,982	1,510,637	0	0	0	0	0
Total Building Blocks ARRs	$	36,898,891	40,134,868	49,365,396	37,786,271	39,521,893	41,370,350	43,034,806
Net Present Value (NPV) of ARRs	$	$109,979,453			$140,543,333			

		2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Reference Tariff	$/'000gtk	$15.66	$16.15	$16.38	$17.92	$18.37	$18.83	$19.30
Inflation rate used in escalating tariff (only)		*n/a*	*3.14%*	*1.43%*	*n/a*	*2.50%*	*2.50%*	*2.50%*
Coal volume - West Moreton network	000 gtks	2,714,126	2,714,126	2,110,379	2,110,379	2,110,379	2,110,379	2,110,379
Smoothed Revenues (Tariff x West Moreton coal gtks, pre-tax)	$	42,501,651	43,835,036	34,570,081	37,824,386	38,769,995	39,739,245	40,732,726
NPV of smoothed revenues	$	$109,979,453			$140,543,333			

Reference tariff inputs for coal traffic using the West Moreton network	Units	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
For train originating in West Moreton network								
Coal volume - West Moreton network	000 gtks	2,714,126	2,714,126	2,110,379	2,110,379	2,110,379	2,110,379	2,110,379
Coal volume - West Moreton network	Train paths	7,700	7,700	6,280	6,280	6,280	6,280	6,280
AT1 - W (gtk tariff)	$/'000 gtk	$7.83	$8.08	$8.19	$8.96			
AT2 - W (train path tariff)	$/train path	$2,724.42	$2,809.90	$2,849.96	$3,011.50			
Inflation rate used in escalating tariff (only)		*n/a*	*3.14%*	*1.43%*	*n/a*			

Reference tariff inputs for coal traffic using the Metropolitan network	Units	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
For train originating in Metropolitan network								
AT1 - M (gtk tariff)	$/'000 gtk	$15.66	$16.15	$16.38	$16.66			
Inflation rate used in escalating tariff (only)		*n/a*	*3.14%*	*1.43%*	*1.69%*			

Reference tariff inputs for coal traffic using the Metropolitan network	Units	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
For train originating in West Moreton network								
Coal volume - Metropolitan network (West Moreton mines only)	000 gtks	1,061,984	1,061,984	866,138	866,138	866,138	866,138	866,138
Coal volume - Metropolitan network (West Moreton mines only)	Train paths	7700	7700	6280	6280	6280	6280	6280
AT1 - M (gtk tariff)	$/'000 gtk	$7.83	$8.08	$8.19	$8.33			
AT2 - M (train path tariff)	$/train path	$1,079.87	$1,113.75	$1,129.63	$1,148.69			
Inflation rate used in escalating tariff (only)		*n/a*	*3.14%*	*1.43%*	*n/a*			

Table 2 Approved ceiling revenue limit for reference train services—Total of West Moreton and Metropolitan networks

	Units	*2016-17*
Approved Ceiling Revenue Limit[a]		$53,940,246.33
Based on 2016-17 inputs:		
Reference tariff (West Moreton network)	$/'000 gtk	$17.92
Coal Volume (West Moreton network)	000 gtks	2,110,379
Reference tariff (Metropolitan network)	$/'000 gtk	$16.66
Coal volume (Metropolitan network, all mines)	000 gtks	967,494[b]

[a] *Approved Ceiling Revenue Limit = Reference tariff (West Moreton) x coal volume (West Moreton) plus Reference tariff (Metropolitan) x coal volume (Metropolitan, all mines)*

[b] *This includes gtks relating to the seven contracted paths originating in the Metropolitan network.*

APPENDIX B: COMMENTS ON 2009 DRAFT DECISION TARIFF

The stakeholder comments on the 2009–2013 western system tariff, subsequent to the detailed analysis in our December 2009 Draft Decision and the shorter discussion in our June 2010 pricing decision,[852] are quoted below. The quotes are excerpts from submissions that covered a number of other matters about the relevant draft undertakings and decisions.

QRC response to the December 2009 Draft Decision:

- *Western System tariffs – Industry will be considering this matter in detail and providing views to QR Network and the QCA during subsequent consultation processes. Industry is concerned with:*
  - *The proposed tariff structure and volume setting approach.*
  - *Assumptions used in the development of the reference tariffs.*[853]

QRC response to QR Network's 2010 DAU:

> *QRC does not consider that QR Network has demonstrated that its proposed Western System tariffs are derived based on a robust methodology, nor that the methodology is suitable for "rolling forward" to the next undertaking in order to avoid subjective judgements in regard to UT4 tariffs. QR Network and the QCA failed to establish a robust approach to determining Western System tariffs for both UT1 and UT2. This matter has therefore been before the Authority since 1999. QRC is strongly opposed to a further decision which leaves this matter unresolved.*
>
> *QRC considers that a reasonable process must be established for the assessment of Western System tariffs and that, in the absence of this process, no tariff increase should be approved. We note the apparent urgency to settle the tariffs for the Central Queensland region in the context of the privatisation of these assets and the natural focus of all parties on this part of the system. This focus appears set to prevent a proper assessment of tariffs and other issues for the Western System. We therefore suggest that existing tariffs be approved as the appropriate tariffs until a proper assessment of Western System issues and tariffs is completed at a later date.*
>
> *Given that a new undertaking will be required upon the planned transfer of the Western System assets to a new Government Owned Corporation, and that this will raise a range of issues beyond tariffs, we suggest that the interim tariffs should remain in place until replaced by a properly assessed undertaking for the new GOC.*
>
> *QRC considers that there should be no increase in Western System tariffs until the case for increases is demonstrated by a reasonable, repeatable and robust methodology.*[854]

Syntech response to QR Network's 2010 DAU:

> *In regard to the quantum of tariffs, we do not consider that QR Network has demonstrated that its proposed tariffs are derived based on a robust methodology, nor that the methodology is suitable for 'rolling forward' to the next undertaking in order to avoid subjective judgements in regard to UT4 tariffs. QR and the QCA failed to establish a robust approach to determining Western System tariffs in UT2 and it appears that this outcome is set to be repeated.*
>
> *Syntech considers that a reasonable process must be established for the assessment of Western System tariffs and that, in the absence of this process, no tariff increase should be approved. We note the apparent urgency to settle the tariffs for the Central Queensland region in the context of the privatisation of these assets and the natural focus of all parties on this part of the system.*

[852] QCA, 2009 December: 69–94; QCA, 2010 June: 87–90.
[853] QRC 2010a: 9.
[854] QRC 2010b: 10–11.

This focus appears set to prevent a proper assessment of tariffs and other issues for the Western System. We therefore suggest that existing tariffs be approved as the appropriate tariffs until a proper assessment of Western System issues and tariffs is completed at a later date. Given that a new undertaking will be required upon the planned transfer of the Western System assets to a new Government Owned Corporation, and that this will raise a range of issues beyond tariffs, we suggest that the interim tariffs should remain in place until replaced by a properly assessed undertaking for the new GOC.[855]

QRC response to June 2010 extension DAAU (with amendments to pricing):

QRC maintains that there should be no increase in Western System tariffs until the case for increases is demonstrated by a reasonable, repeatable and robust methodology. QRC restates its position that existing tariffs should be approved as the appropriate tariffs until a proper assessment of Western System issues and tariffs is completed – otherwise the incentive for these matters to be resolved appears to be lost until the commencement of the next regulatory (UT4).

QR Network has not demonstrated that its proposed Western System tariffs are based on a robust methodology, nor that the methodology is suitable for "rolling forward" to the next undertaking in order to avoid subjective judgements in regard to UT4 tariffs.

QRC maintains that a reasonable process must be established for the assessment of Western System tariffs and that, in the absence of this process, no tariff increase should be approved. While the apparent urgency to settle the tariffs for the Central Queensland region in the context of the privatisation of these assets has been the focus of the QCA and QR Network, QRC maintains its position for a proper assessment of tariffs and other issues relating to the Western System.[856]

[855] Syntech, 2010 May: 3.
[856] QRC 2010c: 9.

APPENDIX C: SAA DRAFT DECISION COMPARISON

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning*[857]	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
QCA accepted Queensland Rail's proposal to remove a separate Access Principles schedule (see Draft Decision 7.1).	The QCA, after reviewing each of the factors listed in s138(2) of the QCA Act and the stakeholder submissions, accepted QR's reasoning that, given the 2015 SAA is anticipated to apply to all traffic types, it is appropriate for the previous Access Principles to be embedded in the body of the SAA (subject to the proposed SAA's risk allocation matrix being amended (see below)).	New Hope supports Draft Decision 7.1 subject to having a robust SAA.[858] New Hope also agrees with Aurizon that QR should be required to substantiate reasons for any refusal to amend the terms of the SAA.[859] Aurizon does not support Draft Decision 7.1 and would prefer the inclusion of a list of principles for access agreements as a schedule to the undertaking to support negotiation for non-coal access agreements.[860] Aurizon also believes that the use of a SAA for all traffics, including non-Reference Tariff coal traffic, is inappropriate without additional amendments to the SAA. Yancoal supports the QCA's Draft Decision.[861] Glencore said that it is supportive of all parts of the Draft Decision (in	QR does not comment further on the deletion of the access principles.	The QCA accepts QR's proposal to not include a separate schedule of access principles. The QCA requires amendments to include an obligation on QR, in cl. 2.9.4 of the 2015 DAU and cl. 1.3 of the SAA, to provide reasons if it rejects proposals by access seekers or access holders to vary the SAA where an access seeker can demonstrate the variation will improve the productivity or efficiency of its rail operations. (for further reasoning, see Summary 7.1 & associated analysis)

[857] Note that the reasoning given in this table is a summary only. The table should be read in conjunction with the appropriate sections of the Decision, the Draft Decision and the drafting in the SAA provided by the QCA in Appendix G.
[858] New Hope, sub. 24: 3.
[859] New Hope, sub. 31: 20.
[860] Aurizon, sub. 20: 41.
[861] Yancoal, sub. 27: 4.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
		relation to the SAA) except as noted below in relation to a number of particular clauses. [862]		
The QCA did not approve QR's proposed structure. The QCA instead required QR to amend its 2015 SAA to provide for a tripartite structure which allows an end customer or an operator to be the access holder and have the necessary flexibility to manage the use of access rights and which more appropriately divides the contract responsibilities and risk amongst the parties to the SAA (see Draft Decisions 7.3 & 7.4).	In submissions on the 2015 SAA, the majority of stakeholders reiterated to the QCA the need for the 2015 SAA to provide the contractual flexibility to allow either a rail operator or a single end customer to be the access holder. The QCA, after reviewing each of the factors in s138(2) of the QCA Act, determined that a tripartite structure (an example of which was attached as an appendix to the Draft Decision) would be appropriate. The QCA also reasoned that, after having regard to each of the factors in s.138(2), that the tripartite SAA should have a more balanced division of risks, rights and responsibilities between the parties.	New Hope supports Draft Decisions 7.3 & 7.4 but proposed further amendments (see below in relation to QCA Draft Decisions regarding particular clause).[863] Aurizon does not support the QCA's proposed tripartite structure. Instead, Aurizon would prefer if an access holder could allocate access rights across multiple, separate access agreements. Aurizon has a number of concerns in relation to specific provisions for example, cls. 15, 17, 24 & 27.4, of the SAA (see below). Yancoal supports the QCA's Draft Decision but submits that there needs to be some further consequential amendments to the undertaking.[864] Asciano also has concerns about multiple operators being signatories to a single access agreement.[865]	QR does not accept the QCA's proposed tripartite structure. QR does not believe that allowing an end user to hold access rights is necessary to address the issues with the old form of operator access agreement. QR also submitted a number of concerns in relation to particular clauses (outlined below).[866]	The QCA requires QR to amend the 2015 SAA to provide an ability for either an end customer or an operator to manage and control the use of access rights. The QCA requires QR to amend the 2015 SAA to adopt a tripartite structure which more appropriately divides the contract responsibilities and risks of each party as demonstrated in Appendix G. We have removed the ability for more than one operator to be a party to a single access agreement but rather provided that, if an access holder wants to nominate multiple operators, each operator must enter into a separate, substantially identical (unless otherwise agreed) tripartite agreement. To effect these requirements, a number of consequential amendments are required to

[862] Glencore, sub. 25: 1.
[863] New Hope, sub. 24: 3 and New Hope, sub. 31: 27.
[864] Yancoal, sub. 27: 4.
[865] Asciano, sub. 28: 8.
[866] QR, sub. 26: 91–93.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning*[857]	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
				particular clauses. These are outlined below. Where these are the same or differ from the same clauses in the Draft Decision this is noted. Also, to the extent that a required amendment is the same as a Draft Decision, the applicable reasoning from the Draft Decision is incorporated and relied on in this Decision (except where varied by this Decision). (for further reasoning see Summary 7.2 & associated analysis)
The QCA required QR to amend its 2015 SAA to give effect to a more balanced risk position for all parties to the agreement (see Draft Decision 7.7).	The QCA determined that the proposed QR 2015 SAA risk allocation was too imbalanced as between QR and access seekers, access holders & operators such that it was not appropriate having regard to each of the factors stated in s138(2) of the QCA Act. The QCA identified amendments to the QR 2015 SAA which would provide a more balanced risk position and therefore would be appropriate having regard to s138(2) of the QCA Act (these amendments are outlined in greater detail below).	New Hope supports Draft Decision 7.7 but proposed amendments in addition to those required by the QCA (see below in relation to particular clauses). Aurizon did not specifically comment on the QCA's proposed risk position in the Draft Decision. However, Aurizon has recommended a number of specific changes and additional amendments (see below in relation to particular clauses). Yancoal generally supports the QCA's Draft Decision subject to some further suggested amendments (outlined below).[867]	QR submits that, despite the QCA considering the 2008 and 2010 regulatory precedents as relevant to its proposed consideration of the proposed 2015 SAA, the QCA has departed from these precedents in a number of instances in a manner which is adverse to QR's legitimate business interests without reason. More specific submissions from QR are noted below.[869]	QCA has identified multiple amendments which it requires to make the risk balance in the 2015 SAA appropriate — see Appendix G for the particular amendments and below in relation to specific clause reasoning. The QCA, in its analysis and reasoning underlying Summary 7.3, states that the previously approved regulatory precedents (2008 & 2010 SAAs and the access principles) are relevant and indicative. However, the QCA does not consider that the regulatory precedents remain appropriate for every specific clause in the 2015

[867] Yancoal, sub. 27: 4.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
		Asciano said it still has strong concerns about what it considers an unbalanced risk position.[868]		SAA. (for further reasoning see Summary 7.3 & associated analysis)
The QCA required QR to amend its 2015 SAA to include a KPI reporting regime (see Draft Decision 7.10).	The QCA considered that a KPI reporting regime is essential to deliver a balanced risk position for access seekers, access holders and end customers. A KPI reporting regime would be appropriate, having regard to each of the factors listed in s.138(2) of the QCA Act by, amongst other things, promoting the efficient operation of QR's network.	New Hope welcomes the inclusion of KPIs but proposes further amendments including financial incentives (see below in relation QCA Decisions regarding particular clauses).[870] Aurizon considers the QCA's Draft Decision to be a "step towards increased transparency". However, Aurizon states that it is uncertain how any financial incentives are to be determined and how financial incentives would work within the proposed tripartite structure.[871] Glencore generally supports the inclusion of KPIs. However, Glencore suggests that performance reporting regime should not be left for agreement between QR and the operator (see also comments below).[872] Yancoal supports the inclusion of a KPI regime subject to financial outcomes being included in the	QR states generally that it supports measures to improve transparency and reporting where such measures provide clear benefit to all parties to the agreement.[875] See more specifically comments in relation to clause 6.7 below.	The QCA, after reviewing all of the submissions, requires QR to include a mandatory reporting regime. Following the receipt of meaningful data, the QCA's 2015 SAA then provides for the parties to negotiate KPIs and incentives. The QCA has included some additional reporting criteria and removed the obligation on QR to report weekly. Further, the QCA has made the performance reporting regime subject to the dispute resolution provisions and requires QR to warrant as to the accuracy of the data it supplies (see cls. 4.6 & 23). (for further reasoning see Summary 7.4 & associated analysis)

[869] QR, sub. 26: 93-94.
[868] Asciano, sub. 28: 19.
[870] New Hope, sub. 24: 7.
[871] Aurizon, sub. 20: 44.
[872] Glencore, sub. 25: 3-4.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
		undertaking itself (see also below).[873] Asciano said that the reporting criteria should be expanded, performance level disagreement should be disputes and remedies should be included.[874]		
Amendments to clauses:[876] • 2 (Access Rights); • 3 (Operational Rights); • 4.1 (Changes to Operator Nominations); • 4.2 (Nominations with different Train Descriptions); • 4.3 (Reduction of rights resulting in an Over-Allocation); • 4.4 (Information); and • 4.5 (Participation in Disputes) (Draft Decisions 7.3 & 7.4).	Pursuant to Draft Decisions 7.3 & 7.4, the QCA identified amendments to these clauses which are required to provide for a tripartite structure which allows an end customer or an operator to be the access holder and have the flexibility to manage the utilisation of access rights.	New Hope generally supports the QCA's amendments with some minor amendments. However, New Hope has also proposed a number of more detailed amendments intended to clarify that an access holder can nominate multiple operators, ensure that access rights include train movements necessary to operate on the network and allow for varying train service descriptions over the life of the agreement (see clauses 2.1, 3.1, 3.2, 4.2 and 4.5 New Hope SAA). New Hope also made a number of specific comments in response to QR's submission on particular SAA clauses.[877] Aurizon submits that the scope of access rights granted under the	QR does not accept the QCA's proposed amendments. QR suggests that having an operator execute a copy subsequent to execution by the access holder and QR will not create a legally valid contract with the operator (cl. 2.2(b) & 4.5). QR also considers the operator nomination provisions to be vague and unclear especially in regards to QR's ability to reject a nomination (cl. 2.2(e) & 4.1). QR also considers that the amendments to cl. 4.2(a)(iii) could allow an access holder to avoid the relinquishment provisions. QR further submits that an access holder should be able to participate in disputes (cl. 4.6).[882] QR also considers New Hope's proposed amendments to be unnecessary	The QCA's amendments are largely consistent with the Draft Decision. The QCA has made amendments to these clauses to provide for a tripartite structure and allow for an access holder to have the flexibility to manage the utilisation of its access rights. In response to QR's submissions, the QCA has also made some amendments to clarify that the 2015 SAA will be legally binding on operators who execute the agreement after the original parties have executed the same document (see new cl. 27.11). Further, the QCA does not agree with stakeholder submissions that the scope of the access rights granted under the SAA should be

[875] QR, sub. 26, p. 95.
[873] Yancoal, sub. 27: 4.
[874] Asciano, sub. 28: 20.
[876] All references to clauses in this Appendix, unless stated to be otherwise, are references to clauses of the QR 2105 SAA as amended by the QCA and attached to this Decision as Appendix G.
[877] New Hope, sub. 32: 28.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
		SAA should be expanded to include ancillary train services.[878] Aurizon also considers that the SAA should include an obligation to negotiate productivity variations in good faith subject to no financial disadvantage to QR, as well as limitations on relinquishment fees which arise due to productivity improvements. Aurizon does not support the QCA's proposed SAA structure but, nevertheless, within the proposed QCA SAA structure proposes stricter controls on confidential information between parties.[879] Glencore considers that the scope of what is contracted as access rights is defined too narrowly.[880] Asciano also noted that it is seeking that timeframes be clarified.[881]	and ineffective.[883]	extended to include reference to ancillary train movements. These have been the subject of further agreement or charges for 'ancillary services' in the past and we consider it appropriate that they remain so. A number of changes from the Draft Decision have been made to allow for an access holder to nominate multiple operators who will then execute a substantially identical access agreement in order to maintain the tripartite structure and also to quarantine sensitive information between operators. The mechanisms for nominating and allocating access rights and changing nominations have also been clarified. (for further reasoning see Summaries 7.1, 7.2 & 7.3 & associated analysis as well as Draft Decisions 7.3 & 7.)
Amendments to clause 4.6 (Representations and Warranties)	Pursuant to Draft Decision 7.7, the QCA identified amendments	New Hope generally agrees with the QCA's amendments except that	QR said that schedules are not the appropriate place for warranties	The QCA's required amendments are consistent with the October

[882] See Queensland Rail, sub. 26: 94–95.
[878] Aurizon, sub. 20, p. 23.
[879] Aurizon, sub. 20, pp. 34-35 & 43.
[880] Glencore, sub. 25, p. 4.
[881] Asciano, sub. 28: 19.
[883] Queensland Rail, sub. 33: 63.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
(Draft Decision 7.7)	to this clause which are required to provide a more balanced risk position between QR and access seekers, access holders & operators.	it proposes to move the QCA's clause 4.7(a)(vii) to Schedule 5.	and that it is appropriate for parties to warrant as to the correctness of information.[884]	2015 Draft Decision. (for further reasoning see Summary 7.3 & associated analysis as well as Draft Decision 7.7)
Amendments to clause 5 (Accreditation) (Draft Decision 7.7)	Pursuant to Draft Decision 7.7, the QCA identified amendments to this clause which are required to provide a more balanced risk position between QR and access seekers, access holders & operators.	New Hope agrees with the QCA's amendments but proposes some additional amendments intended to reflect the fact that there may be more than one operator (cl. 5(d) New Hope SAA).	QR does not comment specifically on the QCA's proposed amendments.	The QCA's required amendments are largely consistent with the Draft Decision. (for further reasoning see Summary 7.2 & associated analysis as well as Draft Decision 7.7)
Transferral of clause 5.7 to Schedule 3 in QR's proposed 2015 SAA (Interim Take or Pay Notices) (Draft Decision 7.7).	The QCA proposed that, in the interest of clarity and efficiency, this clause would be better placed in the Reference Tariff schedule.	New Hope raised concerns with the inclusion of interim take-or-pay notices without an adjustment to reflect the threshold take-or-pay tests.[885] Aurizon has significant concerns with inclusion of interim take-or-pay notices. Aurizon recommends that the words "conclusive evidence" are removed so that the final year-end bill can be amended to reflect an adjustment of take-or-pay amounts (if required).[886]	QR said that interim take-or-pay notices provides for timely and efficient resolution of disputes rather than having to wait up to 12 months to discover disputes.[887]	The QCA's required amendments are largely consistent with the Draft Decision. The QCA agrees with stakeholders that the interim take-or-pay notices should not be deemed to be accepted nor should they be conclusive evidence of a stakeholder's take-or-pay obligations. However, we consider that the interim take-or-pay provisions should remain as there are times when it may be appropriate for take-or-pay to be calculated outside of the usual 12-monthly take- or-pay period. However, as New Hope said, there

[884] Queensland Rail, sub. 33: 63.
[885] New Hope, sub. 31: 21.
[886] Aurizon, sub. 20, pp.49-50.
[887] Queensland Rail, sub. 33: 44.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning*[857]	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
				should be an adjustment provision so that the approved ceiling revenue limit reflects all take-or-pay including take-or-pay invoiced via interim take-or-pay notices. This and some other consequential amendments to accommodate interim take-or-pay notices have been included in Schedule D to the Undertaking.
Amendments to clauses 6.1 (Access Charges), 6.2 (Obligation to make payments) and 6.6 (Adjustments) (Draft Decisions 7.3 & 7.4)	Pursuant to Draft Decisions 7.3 & 7.4, the QCA identified amendments to these clauses which are required to provide for a tripartite structure. The QCA also deleted clause 6.1(c) and amended the definition of "Access Charges" to clarify and streamline the mechanics of Take or Pay Charges.	New Hope agrees with the QCA's amendments to clause 6. However New Hope also proposes an amendment to clause 6.2(a) as the New Hope has concerns that its operator has received invoices dated earlier than the date of receipt. New Hope also agrees with QR that there should be clarity in relation to which party is responsible for take-or-pay obligations.[888] Aurizon is concerned that, because of a limited definition of access, an operator may be exposed to payment of ancillary charges for stowage, shunting etc (see Decision above).[889]	QR interprets the QCA's amendments as removing the requirement to pay take-or-pay charges. Further, QR submits that the agreement is unclear as to the method of calculating take-or-pay if more than one operator is nominated.[890]	The QCA's required amendments are largely consistent with the Draft Decision. However, the QCA agrees with stakeholder submissions to clarify that the date for payment of an invoice is ten BD's from the date the invoice is received (noting that this may also be subject to the Notices deeming provisions). The QCA does not consider that its amendments have removed the requirement for an access holder to pay take-or-pay charges. These remain as part of the definition of "Access Charges" and as part of the calculation of Access Charges which is outlined in Schedule 3 to Appendix G. However, the QCA agrees that, to clarify matters, the access holder should, in the first

[888] New Hope, sub. 31: 21.
[889] Aurizon, sub. 20, p. 44.
[890] QR, sub. 26, p. 95.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
				instance, be liable for access charges under the SAA (the payment obligations as between the access holder and operator can be left to the relevant haulage agreement). (for further reasoning see Summary 7.2 & associated analysis as well as Draft Decisions 7.3 & 7.4)
Insertion of new clause 6.7 (Performance Level Reporting Regime) (Draft Decision 7.10).	See comments above in relation to KPI reporting regime.	New Hope supports the QCA's inclusion of performance reporting requirements. However, New Hope is concerned that the KPIs do not contain any financial incentives and that the dispute provisions should apply to the KPI provisions (see cl. 6.7(e) & (f) New Hope SAA).[891] Aurizon supports the QCA's amendments. However, Aurizon submits that the reporting requirements should be expanded to require QR to report to access holders on the track condition for each relevant system and any deviation from a previously established baseline condition. Aurizon believes that QR should have a positive obligation to ensure that its reported data is correct.[892]	QR considers that mandating a weekly reporting regime imposes a significant administrative and cost burden on QR and may provide a distorted view of QR's performance as it does not account for seasonality, maintenance regimes or access holder operations. QR also considers that the QCA's proposed regime is one-sided as the operator is not subject to a mandatory performance regime. Further, QR said that performance levels should not be determined by third parties.[896]	The QCA's required amendments are largely consistent with the Draft Decision. However, the QCA has included some additional reporting criteria, made the provisions subject to the dispute resolution provisions and removed the weekly reporting obligations. The QCA considers that financial incentives are a matter for the parties to negotiate once meaningful data is available. (for further reasoning see Summary 7.4 & associated analysis as well as Draft Decision 7.10)

[891] See also New Hope, sub. 4: 8 and New Hope, sub. 32:29.
[892] Aurizon, sub. 20, p. 54.
[896]

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
		Glencore supports the inclusion of a performance reporting regime. However, Glencore's preferred approach is for Schedule 5 of the SAA to be fully settled and approved by the QCA along with the 2015 DAU. If not, Glencore submits that QR should be required to submit a performance regime for approval by the QCA within 3 months of the undertaking being approved.[893] Yancoal's submissions on the performance reporting regime under the SAA are largely similar to Glencore's.[894] Asciano said that a failure to agree performance levels should be grounds for a dispute, the reporting requirements should be expanded and remedies should be included.[895]		
Amendments to clauses 7.1 (Maintenance), 7.2 (Network Control), 7.3 (Compliance) and new clause 8.3 (Ad Hoc Trains) (Draft Decision 7.7).	Pursuant to Draft Decision 7.7, the QCA identified amendments to these clauses which are required to provide a more balanced risk position between QR and access seekers, access holders, and operators including by providing that Network Control must be conducted	New Hope supports the QCA's amendments. However, New Hope has proposed further amendments which are intended to make QR ensure that third parties are contractually bound (where relevant) to meet the same network maintenance requirements as QR (cl. 7.1(d) New	QR submits that the definition of "Maintenance Work" impermissibly extends QR's obligations to be inconsistent with s. 119 of the QCA Act.[903] QR also submits that it should not be liable for Third Party Works as it may not have control over those Third Parties (cl. 7.1(d)). Further, QR submits that the SAA	The QCA's required amendments include changing the definition of 'Maintenance Work' from that proposed in the Draft Decision to avoid any possible overlap with the definition of 'Extension' under the QCA Act. The QCA does not accept that the

[893] Glencore, sub. 25, p. 4.
[894] Yancoal, sub. 27, p. 4.
[895] Asciano, sub. 28: 19–20.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
	subject to the Network Management Principles, making the maintenance requirements more consistent with the earlier regulatory precedents and imposing the same Prudent Practice obligations on QR which apply to access holders and operators.	Hope SAA) as well as provide that QR will consider adjoining networks.[897] Aurizon supports the QCA's amendments. However, Aurizon remains concerned that QR has the ability to unilaterally amend Interface Standards without an obligation to consult with operators.[898] Glencore generally supports the QCA's Draft Decision. However, Glencore considers it appropriate to require maintenance of the network in accordance with a general threshold such as "good operating and maintenance practice".[899] Asciano said that, where a change to the Interface Standards has the potential to impact on Queensland Rail's maintenance obligations, Queensland Rail should be required to consult with access holders and operators.[900] Asciano also considers that Queensland Rail's	should be clear that QR does not assume any liability for acting in accordance with its obligations under the TIA.[904] Queensland Rail also said that New Hope's proposed amendments (to cl. 7.1(d)) are inappropriate and that compliance with safety standards on adjoining networks is a matter for the relevant operator.[905] QR has submitted a new clause "Ad Hoc Train Services" which allow for an operator to request and QR to accept (in its discretion) to run an ad hoc train service which is not subject to take-or-pay charges. Queensland Rail also said that it is not willing to allow an operator to dictate to it what interface standards it may adopt.	deletion of cl. 7.2(e) exposes QR to liability for acting in accordance with its TIA obligations. The QCA also requires amendments to cl. 7.1 to provide that QR will procure that any third parties with whom QR has a contractual arrangement will meet the same network maintenance requirements as QR are required to meet. This is important to maintain the integrity of Queensland Rail's maintenance obligations. Changes to the definition of 'Interface Standards' in the ORM and the DAU have also been made which impose an obligation on Queensland Rail and operators to agree changes to the Interface Standards. This is appropriate given that these standards are agreed in the first instance and also provide the benchmark by which QR must maintain the network.

[903] Queensland Rail, sub. 26: 96.
[897] See New Hope, sub. 32: 29 and sub. 24 (SAA).
[898] Aurizon, sub. 20: 45.
[899] Glencore, sub. 25: 4.
[900] Asciano, sub. 28: 20.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
		obligations in relation to train control are unclear.[901] Most stakeholders raised concerns with the Ad Hoc Train Services provisions. Stakeholders said that, at a minimum, Ad Hoc Train Services should be counted toward an access holder's take-or-pay obligations and QR should not be excused from negligence.[902]		We have not included Glencore's suggestion because the maintenance requirements under the DAU have also been strengthened. We have not included all of Asciano's suggested amendments as we consider that some of these are overly prescriptive. However, we have made some further amendments to other clauses where we have agreed with Asciano's statements and these are noted below. We do not agree with New Hope that QR should also be specifically required to take into account adjoining networks when exercising network control. Given the above required amendments and the requirements in the DAU to consult with other railway managers, we consider that these additional amendments would be overly prescriptive. We agree with stakeholders that QR should not escape liability for negligence merely because a train service is run on an ad hoc basis. However, we do not agree that the

[904] QR, sub. 26, pp. 96-97.
[905] Queensland Rail, sub. 33: 63.
[901] Asciano, sub. 28: 20.
[902] Yancoal, sub. 35: 3; Glencore, sub. 30: 3; New Hope, sub. 31: 24–25.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
				use of ad hoc paths should reduce an access holders take-or-pay liability. This is because, whether or not an ad hoc path is used, QR will have still reserved the contracted train paths with access holders and it is entitled to expect that revenue. Also, QR will be prevented from using ad hoc train paths to gain a take-or-pay windfall by the Approved Ceiling Revenue Limit.
Amendments to clause 8.2 (Additional Train Services) (Draft Decisions 7.3 & 7.4).	Pursuant to Draft Decisions 7.3 & 7.4, the QCA identified amendments to this clause which are required to provide for a tripartite structure.	New Hope supports the QCA's amendments.	QR does not comment specifically on the QCA's proposed amendments.	The QCA's required amendments are largely consistent with the Draft Decision. (for further reasoning see Summary 7.2 & associated analysis as well as Draft Decisions 7.3 & 7.4)
Amendments to clause 8.4 (Compliance) (Draft Decision 7.7).	Pursuant to Draft Decision 7.7, the QCA identified amendments to this clause which are required to provide a more balanced risk position between QR and access seekers, access holders & operators.	New Hope generally supports the QCA's amendments. However, New Hope believes that the references to 'substances' or 'things' is overly vague and should be deleted (cl. 8.3(b)(v) & 8.3(c) New Hope SAA) and the notification provisions should be reciprocal. New Hope also said that QR's previous cl. 8.3(b)(viii) was overly broad.[906] Asciano said that the obligations to	QR submits that the QCA's proposed amendment unnecessarily limits QR's contractual rights.[908]	The QCA's required amendments are largely consistent with the Draft Decision. However, the QCA agrees with stakeholder submissions in regard to the deletion of the use of the terms 'substances' and 'things' as overly vague. We do not accept Queensland Rail's submission that the amendment to cl. 8.3(b)(viii)

[906] New Hope, sub. 32: 29.
[908] Queensland Rail, sub. 26: 97.

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		notify in relation to a failure to comply with the agreement should be limited to material failures and that the obligation should be reciprocal.[907]		unnecessarily limits its rights. An Operator should be allowed to operate within the scope of its agreement. We accept Asciano's suggested amendment as the use of 'material' will provide a meaningful threshold to the requirement to report breaches which may otherwise be an overly onerous requirement. We also agree that the obligation to notify of breaches should be reciprocal. We have also included that certain obligations on the Operator should be limited according to prudent practices. (for further reasoning see Summary 7.3 & associated analysis as well as Draft Decision 7.7)
Amendments to clause 8.5 (Compliance Before Commencing to Operate a Train Service) (Draft Decisions 7.3 & 7.4).	Pursuant to Draft Decisions 7.3 & 7.4, the QCA identified amendments to this clause which are required to provide for a tripartite structure.	New Hope generally supports the QCA amendments and disagrees with Queensland Rail's submission that the QCA's required amendments are not specific to certain train services (cl. 8.4(a)(i) and (iv)).[909]	QR submits that the right to reduce the right to operate train services may not be sufficient to remedy non-compliance with the requirements of clause 8.4(a).[910]	The QCA's required amendments are largely consistent with the Draft Decision. The QCA does not accept QR's proposition that cl. 8.4(c) may not be sufficient to remedy compliance. The QCA considers that the wording of the clause is sufficiently broad enough to allow, for example, the reduction of all of

[907] Asciano, sub. 28: 21.
[909] New Hope, sub. 32: 29.
[910] QR, sub. 26, p. 97.

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				an operator's right to operate if the relevant "Failure" affects all of the operator's Train Services. We have accepted QR's drafting in relation to the preparation, by the operator, of an operating plan and EIRMR before commencing operations. (for further reasoning see Summary 7.2 & associated analysis as well as Draft Decisions 7.3 & 7.4)
Amendments to clause 8.7 (Alterations to Train Services) (Draft Decisions 7.3, 7.4 & 7.7).	Pursuant to Draft Decisions 7.3 & 7.4, the QCA identified amendments to this clause which are required to provide for a tripartite structure. The QCA also amended the clause to include a new definition "Alternative Schedule Time" to promote a more balanced risk position between QR and access seekers and existing access holders in accordance with Draft Decision 7.7.	New Hope supports the QCA amendments with only minor amendments for consistency (cl. 8.6(c)).	QR submits that the definition of "Alternative Schedule Time" and "Useable Schedule Time" does not balance the interests of all the parties but rather places the obligation on QR to balance the interests of individual operators against the efficiency of the supply chain.[911]	The QCA's amendments are consistent with the Draft Decision. The QCA does not accept QR's submission that the required amendments place unreasonable obligations on QR. The operation of the provisions and the relevant definitions do not place an absolute obligation on QR to replace a scheduled Train Service rather QR is required to use reasonable endeavours. The reasonable endeavours of QR are further limited if providing a useable schedule time would trigger additional costs to QR or it would alter other train movements.[912] Also, placing these obligations on QR is appropriate given QR has information in

[911] QR, sub. 26, p. 102.
[912] See cl. 8.6(a)(ii) of the 2015 DAU.

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				relation to all train services. An operator may have limited access in relation to other operators. (for further reasoning see Summaries 7.2 & 7.3 & associated analysis as well as Draft Decisions 7.3 7.4 & 7.7)
Amendments to clauses 8.8 (Operator to Supply Information), 8.9 (Queensland Rail may Supply Data) & 8.10 (Authorisations of Rolling Stock and Train Configurations) (Draft Decision 7.7).	Pursuant to Draft Decision 7.7, the QCA identified amendments to these clauses which, amongst other things, are required to provide a more balanced risk position between QR and access seekers, access holders & operators.	New Hope supports the QCA's amendments. However, New Hope proposes some additional amendments to cl. 8.8 which are intended to oblige QR to collect data and, if requested by an access holder or operator, supply data to that party. New Hope also want to ensure that QR warrants as to the accuracy of the data and that requesting parties do not have access to other parties' information and that QR acts reasonably in relation to communication links. Aurizon supports the QCA's amendments. However Aurizon also proposes some additional amendments to allow operators to use information provided by QR from equipment that is provided for in the RAB as required for part of the regulated service.[913] Asciano said that Queensland Rail's cl. 8.7 is unduly oppressive. Asciano considers that Queensland Rail should be required to consult in	QR submits that the QCA's proposed amendments are not commercially practical because it is not feasible or possible for the operator to retain the intellectual property in data collected by QR's train control systems. Further, QR contends that the intellectual property provisions may limit the use of supplied data by QR for billing and/or reporting purposes.[916] QR said that the operation of an effective interface between communication systems is critical to network safety and should not be subject to a reasonableness test. QR also said that, in relation to cl. 8.9, it should not be subject to a reasonableness test.[917]	The QCA's amendments are largely consistent with the Draft Decision. However, we accept Asciano's submission in relation to cl. 8.8 that, at a minimum, Queensland Rail should be required to minimise cost and disruption if it seeks to upgrade communication links. Further, we consider that consultation with operators is reasonable. These obligations will not compromise network safety but rather they are likely to increase safety by providing that every stakeholder is kept abreast of communication requirements. We do not accept New Hope's submission in relation to Queensland Rail supplying data. In this regard, we have largely maintained our Draft Decision which provides that the party which supplies data retains the IP. The parties are free to substantiate the question of supply between themselves.

[913] Aurizon, sub. 20: 46.

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		relation to communication system upgrades and also minimise cost and disruption to operators.[914] Asciano also agreed with the QCA's amendments to cl. 8.8 but said that approval should be in writing. Further, Asciano said that Queensland Rail should not be allowed to unreasonably withhold its consent to an operator's rolling stock certification.[915]		However, we have made the obligation on QR to supply data mandatory if reasonably requested by an operator. We have also included a number of amendments submitted by QR. We agree with Asciano that Queensland Rail should not unreasonably withhold its approval of an operator's certification. (for further reasoning see Summaries 7.2 & 7.3 & associated analysis as well as Draft Decisions 7.3 7.4 & 7.7)
Deletion of clause 8 in QR's proposed 2015 SAA (Operating Requirements Manual) (Draft Decisions 7.4 & 7.7).	The QCA removed the ability of QR to amend the ORM under the terms of the SAA. QR retains the ability to amend the ORM unilaterally for 'Safety Matters' or other minor matters under the terms of the QCA's proposed amended undertaking; and, with QCA approval, amend for other matters by submitting a draft amending access undertaking. This change means that, in	New Hope supports the QCA's deletion of this clause (see cl. 8.12 New Hope SAA). Aurizon supports the QCA's amendments but would like the provisions to provide additional obligations on QR to consult with operators prior to notification of a change to the ORM for safety matters.[918]	QR submits that the deletion of this clause and moving the ORM amendment provisions to the undertaking is inappropriate in that the QCA's reasoning for doing so is incorrect. QR believes that the ORM as part of the undertaking is only a 'snap shot' of the ORM and from then on changes should be contractual.[919]	The QCA's SAA amendments are largely consistent with the Draft Decision. However, there have been some further changes made to the ORM provisions within the DAU (see chapter 4 of this Decision).

[916] Queensland Rail, sub. 26, p. 97.
[917] Queensland Rail, sub. 33: 64.
[914] Asciano, sub. 28: 21.
[915] Asciano, sub. 28: 22.
[918] Aurizon, sub. 20, p. 46.
[919] QR, sub. 26, p. 97.

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	accordance with Draft Decision 7.4 and 7.7, the risk and responsibilities between QR and access seekers, access holders and operators is maintained whilst providing QR the ability to act more quickly in response to 'Safety Matters'.			
Amendments to clause 8.12 (Compensation) and 8.13 (Replacement of Operating Requirements Manual) (Draft Decisions 7.4 & 7.7).	The QCA, pursuant to Draft Decisions 7.4 & 7.7, identified amendments which appropriately balance the risks and responsibilities between the parties to the SAA by allowing the parties to the SAA to negotiate in relation to appropriate compensation for changes to the ORM which affect the parties.	New Hope supports the QCA's amendments.[920] Aurizon generally supports the QCA's amendments.	QR submits that the QCA's proposed amendments are not permitted by the QCA Act as QR contends that the QCA is purporting to impose a compensation process on QR for the exercise of statutory rights. QR also submits that it is inappropriate to disconnect the making of amendments from the compensation process as it potentially leads to inefficient Decision making.[921]	We have removed the compensation provisions from the ORM. QR, in order to amend the ORM will be required to submit a DAAU for all changes to the ORM. When considering the appropriateness of any DAAU, the QCA may, at that stage, also consider whether compensation is appropriate.
Amendments to clause 9 (Interface Risk Management) (Draft Decision 7.7)	Pursuant to Draft Decision 7.7, the QCA identified amendments to this clause which are required to provide a more balanced risk position between QR and access seekers, access holders & operators.	New Hope supports the QCA's amendments. New Hope has also proposed some additional amendments which are intended to make certain obligations in relation to compliance with the IRMP symmetrical between all parties (cl. 9.1(c) & (e) and 9.4(c) New Hope SAA). New Hope also proposes amendments which are	QR submits that, in cl. 9.6(d)(iv), the obligation to use 'all reasonable endeavours' to mitigate any loss or damage arising from the conduct of an inspection or audit is unclear and unnecessary.[922] Queensland Rail also said that arrangements for an assessment by the access holder of an operator's	The QCA's required amendments are largely consistent with the Draft Decision. The QCA also agrees with stakeholder submissions that obligations in relation to interface risks should be symmetrical. The QCA does not agree with QR that the obligation to use

[920] New Hope, sub. 32: 30.
[921] QR, sub. 26, p. 98.
[922] Queensland Rail, sub. 26, p. 98.

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		intended to accommodate multiple operators.	compliance with the IRMP is a matter for a rail haulage agreement.[923]	reasonable endeavours to mitigate damage is unclear. The meaning is clear on the face of the subclause. We have included some amendments submitted by QR in relation to changing an operating plan, ad hoc train services and access to inspect relevant property. We have also included additional mentions of environmental harm and requirements suggested by QR. (for further reasoning see Summary 7.3 & associate analysis as well as Draft Decision 7.7)
Amendments to clause 10 (Incident, Environmental and Emergency Management Plan Requirements) (Draft Decision 7.7).	Pursuant to Draft Decision 7.7, the QCA identified amendments to this clause which are required to provide a more balanced risk position between QR and access seekers, access holders & operators.	New Hope supports the QCA's amendments. New Hope also proposed a number of amendments intended to provide a balanced risk position including, placing obligations on QR in relation to conflicting IRMPs as QR is in the position of having access to all operators' IRMPS. Also, New Hope proposes to delete part of clause 10.2(c) which New Hope considers to negate the consultation requirements. New Hope also proposes extensive amendments to clause 10.7 to provide that operators only bear the direct cost of noise mitigation where the most efficient mitigation	QR is concerned that, by introducing the term "acting reasonably" rail safety, engineering and other operational requirements may be "watered down", disputed or replaced. QR states that it cannot be in a position where a third party dictates safety matters relating to its rail network. Further, Queensland Rail said that it should not be liable for failures in an operator's EMP. Queensland Rail also opposed New Hope's suggested deletion of cl. 10.2(b) as it considers that it may be required to remove obstructions	The QCA's required amendments are largely consistent with the Draft Decision. Also, the QCA agrees with stakeholder submissions that the obstruction provisions should be symmetrical and that QR should be obliged to raise an objection to an operator's proposed EMP if the plan is inconsistent with QR's or another operator's EMP. This accords with our decision to allocate risks and obligations to the parties best able to manage the risks. QR is the only single party which has access to every EMP so it is appropriate that it

[923] Queensland Rail, sub. 33: 64.

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		method is on the train, or where an unusual feature of a particular operator's train triggers the need for noise mitigation.[924] Aurizon considers that QR, when removing obstructions, should give consideration to whether or not the proposed form of removal could cause any actual or potential environmental harm.[925] Asciano said that Queensland Rail should make its emergency management plan ("EMP") available to Operators and that Queensland Rail's satisfaction should not be unreasonably withheld or delayed.[926] Asciano also made a number of statements in relation to noise mitigation, including that Queensland Rail should act reasonably.[927]	within a timeframe which does not permit full consultation.[928] Queensland Rail also opposes an obligation on itself to not cause obstructions and said that it is committed to consulting with access holders/operators in relation to noise mitigation measures.[929]	raises objections to inconsistencies. The QCA does not accept Queensland Rail's submission that the inclusion of the words 'acting reasonably' may result in Queensland Rail's safety or operational requirements may be 'watered down' The inclusion of these words is intended to prevent QR from acting whimsically or irrationally where it is given a wide discretion which could dramatically affect an operator's operations. The QCA agrees with Asciano's submission and considers that Queensland Rail's satisfaction in relation to an operator's proposed EMP should not be unreasonably withheld or delayed. We do not consider it necessary to provide that, in this clause, Queensland Rail must provide a copy of its EMP because Queensland Rail has already outlined its EMP in the ORM and also undertaken to consult in relation to amendments

[924] See, in addition to cl. 10.7, New Hope, sub. 24: 7; New Hope, sub. 32: 30.
[925] Aurizon, sub. 20: 46-47.
[926] Asciano, sub. 28: 22.
[927] Asciano, sub. 28: 22–23.
[928] See Queensland Rail, sub. 33: 64.
[929] Queensland Rail, sub. 33: 46.

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				(see cl. 4.1 of ORM). We agree with Asciano that it is reasonable for Queensland Rail to substantiate its noise mitigation expenses. However, we have not included all amendments proposed by stakeholders as they may overcomplicate the provisions which already contain sufficient checks on QR's discretion. The QCA does not agree with Aurizon's suggestion as the QCA considers that QR's obligation to comply with all laws, laws which include, for example, s. 319 of the *Environmental Protection Act 1994* (Qld) which imposes a general obligation to avoid environmental harm, are sufficient. We accept New Hope's submission that the final paragraph of 10.2(d) may negate other parts of 10.2. We do not accept Queensland Rail's argument that 10.2(b) should not be removed as it may impinge on the timely removal of obstructions. The obligation to consult is tempered by a reasonableness test. If the removal of an obstruction is so pressing that full consultation is not reasonable in the circumstances, then QR would not be required to fully consult. QR should also not be allowed to cause obstructions which may result in cancellations

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				without any consequences. (for further reasoning see Summary 7.3 & associated analysis as well as Draft Decision 7.7)
Amendments to clause 11 (Inspection of Trains and Rolling Stock) (Draft Decision 7.7).	Pursuant to Draft Decision 7.7, the QCA identified amendments to this clause which are required to provide a more balanced risk position between QR and access seekers, access holders & operators.	New Hope supports the QCA's amendments.	QR does not comment specifically on the QCA's proposed amendments.	The QCA's amendments are consistent with the Draft Decision. (for further reasoning see Summary 7.3 & associated reasoning as well as Draft Decision 7.7)
Amendments to clause 12 (Risk and Indemnities) (Draft Decision 7.7).	Pursuant to Draft Decision 7.7, the QCA identified amendments to this clause which are required to provide a more balanced risk position between QR and access seekers, access holders & operators. This includes, amongst other things, requiring the risks associated with Dangerous Goods to be dealt with by the general liability provisions and removing the overly onerous requirement for QR to approve every driver employed by an operator.	New Hope supports the QCA's amendments but proposes some slight amendments to the wording of clauses 12.1(a), (b) & (c) (New Hope SAA) which are intended to limit the liabilities of the parties to the same scope as the benefits each party gains under the agreement.[930] Asciano said that the definition of 'Operator's Customer' is overly broad and that the clause potentially exposes operators to liability for matters which they have not caused.[931] Asciano also said that it should not have to provide its conditions of carriage to Queensland Rail and that	QR submits that the QCA's proposed amendment to clause 12.2(c) undermines the intent of the clause by potentially exposing QR to liability to an operator's customer which is not a party to the agreement. Further, QR contends that, if the indemnity for carriage of Dangerous Goods in cl. 12.3 is deleted QR will be obliged to factor the increased risk into the access charges and that the risk of carriage of Dangerous Goods is under the primary control of the operator.[933] Queensland Rail also said that by deleting this indemnity the QCA is altering the risk profile of the SAA	The QCA's required amendments are largely consistent with the Draft Decision. We agree with Asciano that operators should not be liable to QR for matters over which they potentially have no control. This is why cl. 12.2(d) was deleted (see below); we have also amended the definition of "Operator's Customer". We also agree with Asciano that the requirement to provide its conditions of carriage to QR should be limited. The QCA considers that if QR will not be in a position to have Associates perform its obligations then cl. 12.5 will have no

[930] New Hope, sub. 32: 30.
[931] Asciano, sub. 28: 23–24.

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		Queensland Rail has the ability to insure itself for its liability.[932]	in a material way, detrimental to Queensland Rail.[934] QR also submits that Third Party Works may not be carried out by QR's associates but by third parties engaged by the State. In these circumstances, QR believes it should not be liable for these third parties.[935] QR also said that it must be satisfied that agents/contractors of an operator/access holder are appropriately qualified.[936]	application to it so does not accept QR's proposed deletion of this obligation. Further, the QCA accepts QR's statement that third parties who conduct work on or around the network on behalf of the State may not be engaged by QR and so QR should not be liable for these parties. The QCA deleted cl. 12.5(d) as the QCA agrees with stakeholders that this obligation, relating to every operator's driver, is overly onerous. In relation to cl. 12.2(d), the QCA does not believe it is appropriate for other parties to indemnify QR for losses which may occur as a result of QR's acts or omissions. Further, we agree with New Hope that the wording around the indemnities (i.e. 'or otherwise in connection with this agreement') to be overly broad and should be restricted to the scope of the benefit obtained under the agreements (Queensland Rail agreed with this amendment in its

[933] Queensland Rail, sub. 26: 99.
[932] Asciano, sub. 28: 24.
[934] Queensland Rail, sub. 33: 46.
[935] QR, sub. 26, p. 99.
[936] Queensland Rail, sub. 26: 99.

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				March 2016 submission). This is more consistent with the previous regulatory precedents. (for further reasoning see Summary 7.2, 7.3 & associated analysis as well as Draft Decisions 7.3 7.4 & 7.7)
Amendments to clause 13 (Limitations on Liability) (Draft Decisions 7.4 & 7.7).	Pursuant to Draft Decisions 7.4 & 7.7, the QCA identified amendments to this clause which are required to provide a more balanced risk position between QR and access seekers, access holders & operators. This includes, amongst other things, by limiting exceptions to the exclusion on liability for Consequential Loss and making QR's liability for failing to maintain the network more similar to the earlier regulatory precedents.	New Hope supports the QCA's amendments. However, in addition, New Hope proposes to remove the 'urgent possession' definition as New Hope considers that maintenance is either planned or an emergency (cl. 13.5 & 13.6 New Hope SAA).[937] New Hope also considers that the 10% threshold in relation to non-provision of access (cl. 13.6(d)) should be deleted as the clause would promote over-contracting behaviour by customers.[938] New Hope also supports the QCA's amendments to cls. 13.1, 13.4 & 13.6.[939] Glencore considers that clause 13.6(d) should be deleted as there are already significant protections for QR and it is not appropriate to pass the risk (of non-provision of	QR submits that the deletion of references to the indemnities in cls. 12.2 to 12.3 and cl. 27.18 within cl. 13.1(b), renders cl. 13.1(b) ineffective. QR contends that the QCA's proposed amendments to clause 13.4(b) increase the risk to QR in a manner which is inconsistent with the earlier regulatory precedents and that the QCA has not explained why it is appropriate. QR also considers that a cap on QR's liability should be reintroduced into cl. 13.4(c) as its deletion creates "significant downside systemic risk" to QR. In relation to QR's liability for non-provision of access, QR considers that the QCA's proposed amendment is a departure from	The QCA's required amendments are largely consistent with the Draft Decision. However, we have re-introduced the word 'directly' into clause 13.4(b) to make the provision more consistent with the same clause in the regulatory precedents. However, we remain of the opinion that maintenance of the network is of critical importance so as to warrant strong liability provisions. We also agree with stakeholders in relation to the removal of the 10% threshold in relation to claims for non-provision of access. We consider that QR is adequately protected by the remainder of the clause and the inclusion of this additional limitation

[937] See also discussion in New Hope, sub. 23, p. 16.
[938] New Hope, sub. 31: 22–23.
[939] New Hope, sub. 32: 30.

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		access) onto the party least able to control that risk (access holder).[940] Yancoal also submits that the closure of Wilkie Creek and reduction in non-coal traffic has produced spare capacity such that QR should not be allowed the 10% threshold in addition to its other protections regarding non-provision of access.[941] Asciano said that cl. 13.6(d) allows Queensland Rail to avoid liability for non-provision of access and shifts the risk of non-performance to access holders.[942]	the earlier regulatory precedents and is unexplained. Queensland Rail also said that the 10% threshold is making explicit a threshold which was left to be agreed in the previous regulatory precedents.[943] Queensland Rail also said that disruptions to business operations resulting in delays to train movements can be significant.[944]	inappropriately tips the balance of risk in QR's favour. We acknowledge that the regulatory precedents provided for a threshold to be agreed. When negotiating the performance levels & KPI's, the parties will be required to also turn their minds to this threshold and, if required, negotiate amendments to this clause. The QCA considers that consistent with general contractual principles it is appropriate to limit liability for Consequential Loss between the parties. We have also made cl. 13.3 more specific as this clause was potentially very broad. Consistent with regulatory precedents we have removed the liability cap. It is unbalanced to have QR's liability capped but have an access holder or operator's liability uncapped. We agree with Queensland Rail that certain material business interruptions could cause delays to train movements. We have also included reference to certain

[940] Glencore, sub. 25: 4 and sub, 30: 3.
[941] Yancoal, sub. 27, p. 4 and sub. 35: 3.
[942] Asciano, sub. 28: 24.
[943] Queensland Rail, sub. 33: 47–48.
[944] Queensland Rail, sub. 33: 64.

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				environmental harm as an emergency. In relation to QR's comments regarding departure from the regulatory precedents, as stated above, QR considers the regulatory precedents indicative and relevant but does not consider that the regulatory precedents should necessarily be carried over identically to the 2015 SAA in every instance. (for further reasoning see Summary 7.2, 7.3 & associated analysis as well as Draft Decisions 7.3 7.4 & 7.7)
Amendments to clause 14 (Suspension) and 15 (Termination) (Draft Decisions 7.3, 7.4 & 7.7).	Pursuant to Draft Decisions 7.3 & 7.4, the QCA identified amendments to this clause which are required to provide for a tripartite structure. In doing so, the QCA also identified amendments which are separate the risks and responsibilities between the parties appropriately.	New Hope supports the QCA's amendments. New Hope also suggests inserting an additional reasonableness test on QR in clause 14.1 and reiterating notice requirements in a new clause 14 so that the general notification clause is not inadvertently overlooked in relation to suspensions. New Hope also proposes some minor amendments which are in accordance with an ability to vary a train service description. New Hope also said that it is imperative that	QR takes issue with a number of amendments to these clauses including: cl. 14.1(ii) QR considers that if the rights of the access holder are suspended then the rights of the operator should be also; cl. 14.1 & 15, QR consider that the obligation to act reasonably is asymmetrical and is a deviation from the earlier regulatory precedents; 15.2, QR submits that access rights should terminate where no operator is nominated; and, cl. 15.6 QR submits that	The QCA's required amendments are largely consistent with the Draft Decision. However, the QCA agrees with QR that if the access rights of an access holder are suspended then the rights of any related operators should also be suspended. The QCA accepts that the obligation to act reasonably should be symmetrical. This is consistent with the QCA's reasoning in both the Decision and the Draft

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		an operator cannot 'lose' the end user's access rights.[945] Aurizon has noted, in keeping with its opposition to the QCA's proposed tripartite structure, that there is an inconsistency between the termination provisions and the security provisions.[946] Aurizon does not otherwise specifically comment on the QCA's amendments. Glencore considers that the references to 'substances or things' should be removed.[947] Asciano said that the words 'such consent not to be unreasonably withheld or delayed' should be added to the end of cl. 15.6(b).[948]	change in control provisions should also apply to the operator.[949] Queensland Rail also said that there is no reason why an operator should not be required to remove any substance or thing brought onto the network.[950]	Decision in relation to risk balance. The QCA does not agree that access rights should be terminated where no operator is nominated as there may be variations to nominations during the term of the agreement; or there may be sometime between an access holder executing the agreement and nominating an operator. The "Reduction" provisions should otherwise mitigate against idle access rights. There are a number of additional amendments which are in accordance with the tripartite structure. The QCA also requires the deletion of the reference to 'substance or thing' as overly vague and broad. We agree that Asciano's suggested amendment is reasonable, QR should not be allowed to act unreasonably. (for further reasoning see Summary 7.2, 7.3 & associated analysis as well as Draft Decisions

[945] New Hope, sub. 32: 31.
[946] Aurizon, sub. 20, p. 37.
[947] Glencore, sub. 25, p. 4.
[948] Asciano, sub. 28: 25.
[949] Queensland Rail, sub. 26: 100–101.
[950] Queensland Rail, sub. 33: 64.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning*[857]	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
				7.3 7.4 & 7.7)
Amendments to clause 16 (Insurance) (Draft Decisions 7.3 & 7.4).	Pursuant to Draft Decisions 7.3 & 7.4, the QCA identified amendments to this clause which are required to provide for a tripartite structure and balance the risks and responsibilities between the parties appropriately.	New Hope refers to Aurizon's submissions regarding the insurance provisions. New Hope also said that where the role of the end user and the operator are separated appropriately it will be clear which party carries the risk and therefore the appropriate insurance. Further, if QR is correct that joint insurance is not possible, the clause is likely to stand but be unused.[951] Aurizon identified a number of concerns with the insurance provisions including that it is not acceptable for another party to determine what the acceptable exclusions from a policy are and that provision of copies of insurance rather than certificates of currency is unreasonable.[952] Aurizon has included its proposed draft for the insurance provisions in attachment 1 to its submission.	QR submits that it is unclear how the amended cl. 16.11 would operate in practice. QR has made a range of comments in relation to Aurizon's suggested insurance clause amendments.[953]	The QCA's required amendments are largely consistent with the Draft Decision. In relation to Aurizon's suggested amendments we have, for the most part, not included these. We consider that Queensland Rail's drafting remains largely appropriate.
Amendments to clause 17 (Security) (Draft Decision 7.7)	Pursuant to Draft Decision 7.7, the QCA identified amendments to this clause which are required to provide a more balanced risk	New Hope supports the QCA amendments. However, New Hope also proposes to oblige QR to undertake a review of another	QR submits that the QCA's amendments introduce unnecessary uncertainty to the agreement.	The QCA's required amendments are largely consistent with the Draft Decision. However, the QCA also requires

[951] New Hope, sub. 33: 31.
[952] Aurizon, sub. 20: 47.
[953] Queensland Rail, sub. 33: 48–51.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
	position between QR and access seekers, access holders & operators. The amendments also help to promote efficient contracting between QR and access seekers as well as being more similar to the earlier regulatory precedents	party's security if that party requests it. New Hope also notes the QR should be made to return any security after the expiry of the agreement expeditiously to limit the security provider's costs in relation to maintaining the security (see cl. 17.4(b) New Hope SAA). New Hope also said that the financial capability test should be clarified.[954] Aurizon generally supports the QCA's amendments. However, Aurizon considers that the financial capability test as to whether a party is required to provide security should be clarified so that if a party has an acceptable credit rating it should not be required to provide security.[955] Asciano also said that the financial capability test should be clarified and the limitations on Queensland Rail's ability to call on security should be imposed.[956]	QR said that the provisos in relation to the provision of security are unclear and that an access holder or operator should not be able to request a review of security more than once in a 12 month period.[957]	the inclusion of a clause which provides that a security provider (acting reasonably) can oblige QR to undertake a review of its security requirements but no more than once in any 12-month period. The QCA also agrees with stakeholders that QR should be made to return security expeditiously, at the end of the term of an access agreement (or if an access agreement is assigned). We do not consider it appropriate to further specify the financial capability test. We believe that the amendments made provide scope for the parties to negotiate and agree on what is suitable security in the particular circumstances. Further, we do not propose to impose further limitations on the calling of security. If there are bona fide disputes these can be brought in the usual manner. The QCA does not agree with stakeholders that a contracting party (other than QR) should not be required to provide security.
Amendments to clause 18 (Adjustment for Changes) (Draft	Pursuant to Draft Decisions 7.3 & 7.4, the QCA identified	New Hope said that if an access holder is required to take the	QR said that the material change clause is intended to ensure that	The QCA agrees with New Hope that QR should not be able to

[954] New Hope, sub. 32: 31.
[955] Aurizon, sub. 20, p.48.
[956] Asciano, sub. 28: 25.
[957] Queensland Rail, sub. 33: 65.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
Decisions 7.3 & 7.4).	amendments to this clause which are required to provide for a tripartite structure.	downside of a material change it should be entitled to any upside as well.[958] New Hope also said that the adjustment for material change clause should not operate in relation to reference tariff service as these changes are already provided for in the DAU.[959] New Hope said that if material changes result in an access agreement uneconomic then access holders should be able to terminate their agreement.[960] Aurizon does not agree that in all cases any change in government funding should automatically result in an access charge review. Aurizon proposes that the material change clause should only permit a review of access charges for a change in government. funding where the access charge is below the revenue floor limit. Also, Aurizon considers that QR should advise the access holder of the term of relevant infrastructure TSC funding and an access holder should be able to terminate the access agreement where changes to access charges	QR is kept whole during the term of an agreement and not intended to provide a windfall to access holders. Also, QR said, the endorsed variation event trigger has a 2.5% threshold which, if not breached, could result in QR bearing costs it cannot recover so should be deleted.[962] QR said its ability to disclose information in relation to TSC payments is subject to confidentiality obligations but that it is also under an obligation in the QCA Act to provide information about how it calculates access charges. Queensland Rail accepts that an access holder should be able to terminate its access agreement if it becomes uneconomic if this right is reciprocal.[963]	circumvent the mechanisms within the DAU for variations to reference tariffs. Further, the 2.5% has been factored into the mix of costs, risks benefits and liabilities and should remain. We do not propose to limit material changes resulting from TSC variations to those which would result in the ceiling floor limit being breached. The TSC payments have also been factored into the mix of costs, risks benefits and liabilities and the access charges determined based on this mix should remain. We have not included a right for the parties to terminate if the agreement becomes uneconomic. Given that Queensland Rail agrees with this inclusion it may be that the parties can agree this amongst themselves. (for further reasoning see Summary 7.2, 7.3 & associated analysis as well as Draft Decisions 7.3 7.4 & 7.7)

[958] New Hope, sub. 24: 59 of NHC SAA.
[959] New Hope, sub. 31: 23.
[960] New Hope, sub. 31: 23.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
		due to a material change make the agreement uneconomic.[961]		
Amendments to clause 19 (Disputes) (Draft Decision 7.3, 7.4 & 7.7).	Pursuant to Draft Decisions 7.3, 7.4 and 7.7, the QCA identified amendments to this clause which are required to provide for a tripartite structure and more appropriately balance the risk position under the SAA.	Stakeholders supported the QCA's amendments.	QR regards that the effect of the QCA's amendment may be that QR may incur additional liability because third parties dictate safety requirements relating to its rail network.[964] QR said that New Hope's proposed amendments to cl. 19.4(a) undermine the tripartite agreement by allowing an access holder to lodge disputes which should be the preserve of accredited rail transport operators.[965]	The QCA's required amendments are consistent with the Draft Decision. The QCA does not accept QR's statement in relation to disputes being arbitrated by QR. QR said that it is a misreading of the clause to state that it is inappropriate to allow QR to determine safety disputes without reference to the Rail Safety Regulator because QR's proposed clause 19.5 provides that only disputes which are 'not otherwise resolved by the RSR' can be determined by QR. The QCA's position is that safety disputes should, unless otherwise resolved, be determined by the RSR and there should not be a fall back to a position where, in certain circumstances, QR is the arbiter in its own disputes. Further, we consider that all parties should have the ability to refer disputes to the rail safety operator. This is consistent with a

[962] Queensland Rail, sub. 33: 51, 65.
[963] Queensland Rail, sub. 33: 51.
[961] Aurizon, sub. 20: 48-49.
[964] QR, sub. 26, p. 101.
[965] Queensland Rail, sub. 33: 65.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning*[857]	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
				tripartite agreement. (for further reasoning see Summary 7.2 & 7.3 & associated reasoning as well as Draft Decisions 7.4 & 7.7)
Amendments to clause 20 (Force Majeure) (Draft Decisions 7.1 & 7.7).	As noted by the QCA, and pursuant to Draft Decisions 7.1 & 7.7, under the schedule of Access Principles, which the QCA agreed should be removed (see above, Draft Decision 7.1), the obligation of an access holder to pay Access Charges was suspended to the extent that the access holder's access could not be provided due to a Force Majeure Event (FME).	Stakeholders largely agreed with the QCA's amendments.[966] New Hope and Yancoal support the QCA's amendments but said that the access charges schedule to the SAA should be amended so that it is reconciled with the proposed approved ceiling revenue limit.[967]	QR considers that suspending payment obligations when there is a FME is inappropriate in a price cap regulatory model. Further, QR submits that it cannot be forced to make a claim on its insurance where the cost of repairing or replacing part of the network is not economic.[968]	The QCA considers that it strikes an appropriate balance between who bears the risk of an FME and incentivising Queensland Rail to reinstate the relevant part of the network to allow Queensland Rail to recover 50% of expected reference tariff access charges via the review event provisions and a subsequent variation to the reference tariff if the relevant track is repaired or replaced. The amendments required for this are largely within Schedule D to Appendix F. We have also reinstated the provisions from the regulatory precedents which provide for termination of the agreement for a prolonged FME (other than an event which damages or destroys the network). We have also made some amendments to clarify the operation of the provisions. (for further reasoning see Chapter

[966] See New Hope, sub. 32: 31 & sub. 31: 17; Glencore, sub. 30: 4.
[967] Yancoal, sub. 35: 3.
[968] QR, sub. 26, p. 101.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
				8 of the Decision)
Amendments to clause 21 (Relinquishment of Access Rights) (Draft Decisions 7.3, 7.4 & 7.7).	Pursuant to Draft Decisions 7.3, 7.4 and 7.7, the QCA identified amendments to this clause which are required to provide a more balanced risk position between QR and access seekers, access holders & operators as well as necessary amendments to provide for a tripartite structure.	New Hope generally supports the QCA's amendments. However, New Hope has proposed some amendments which it considers better reflect the way that the Western System operates (in particular ABCD scheduling) (cl. 21.1(a)(i) New Hope SAA). New Hope has also proposed deleting the requirement for an expert to determine whether an access holder has demonstrated to QR's reasonable satisfaction an existing access holder's sustained requirement for the relevant access rights (cl. 21.1(c) New Hope SAA). New Hope also consider that any relinquishment fee which QR recovers due to QR subsequently contracting relinquished access rights should be refunded (cl. 21.2(g) New Hope SAA). Aurizon considers that where an operator is seeking to implement certain operational efficiencies, relinquishment fees associated with a variance to train service entitlements and rolling stock configurations should be capped to the variation in access revenue arising from that change.[969]	QR said, amongst other things, that New Hope's proposed amendments leave the question of possible rebates of relinquishment fees open indefinitely.[973]	The QCA's amendments are largely consistent with the Draft Decision. We do not consider it appropriate to amend the scheduling provisions as we consider that the change is not justified and would require an assessment over a 12-month period which may unduly limit the reduction provisions. We do not propose to amend the relinquishment provisions to allow for relief from fees due if the relevant relinquishment is as a result of productivity improvements. This is because we consider that QR should be incentivised to make variations to access agreements or reference train services to improve efficiency. The access holders and operators should be incentivised by their reductions in above rail costs. However, we have amended the definition of "Relinquishment Fee" to allow for the parties (each acting reasonably) to agree to vary the calculation of any relinquishment fee (note that the Relinquishment Fee has also been limited to 80% of the NPV of future access charges – discussion

[969] Aurizon, sub. 20, pp. 34-35.
[973] Queensland Rail, sub.33: 65

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
		Glencore submits that relinquishment fees should be refunded to an access holder where QR subsequently contracts access rights which they would have otherwise been unable to contract but for the relinquishment and agrees that relinquishment fees should be reduced if they are incurred as a result of efficiency improvements.[970] Asciano also said that the relinquishment fee provisions allow Queensland Rail to double-dip and it is generally unbalanced.[971] Asciano also said that there may be circumstances where an access holder has no scheduled paths but continues to operate ad hoc trains and that the termination provisions should be clarified to not terminate in these circumstances.[972]		in chapter 8). We have also extended the "Relinquishment Date" to nine months. This is because the negotiation period in relation to a new access agreement is nine months and the two periods should be consistent. We agree with Asciano's statements in relation to no scheduled train paths. We have also included more reasonableness requirements on QR in relation to transfers. (for further reasoning see Summaries 7.2 & 7.3 & associated reasoning as well as Draft Decisions 7.4 & 7.7)
Amendments to clause 22 (Assignment) (Draft Decisions 7.3, 7.4 & 7.7).	Pursuant to Draft Decisions 7.3, 7.4 and 7.7, the QCA identified amendments to this clause which are required to provide a more balanced risk position between QR and access seekers, access holders & operators as well as necessary amendments to	New Hope generally supports the QCA amendments. However, New Hope does not agree with the proposition that a party may assign part of its rights and obligations under the agreement as this may have the effect of not preserving the risk profile under the SAA (cl.	QR does not comment specifically on the QCA's proposed amendments.	The QCA's amendments are consistent with the Draft Decision. The QCA considers that there are sufficient safeguards in relation to assignments to provide that an assignee will be able to discharge the obligations of QR therefore we do not accept that a partial

[970] Glencore, sub. 25: 4 and sub, 30: 3.
[971] Asciano, sub. 28: 25–26.
[972] Asciano, sub. 28: 26.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
	provide for a tripartite structure.	22.1 & 22.2 New Hope SAA). Asciano said that an identical approach should apply to both Queensland Rail and the access holder in that parties should be released from their obligations upon assignment. Also, Asciano said that an operator should be allowed to assign its rights.[974]		assignment of rights would increase a party's risk. Any incoming assignee also must agree to be bound by the undertaking and the SAA. We do not agree with Asciano that the release and discharge provisions should be symmetrical as the assigned obligations provision relates to assignment by an access holder to a related party. In these circumstances it is appropriate that the access holder remains liable for the assigned obligations. Also, we do not agree that an operator should have the right to assign its rights. This is because, the access holder holds the access rights and should retain the discretion to transfer or nominate. Further, if the Access Holder and the Operator are the same person under the SAA then the Access Holder's rights can be assigned but any new Operator will need to be renominated under the assigned agreement. We have also clarified that an access holder may assign if it is not in material breach and that QR must act reasonably. (for further reasoning see

[974] Asciano, sub.28: 26.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
				Summaries 7.2 & 7.3 & associated analysis as well as Draft Decisions 7.3 7.4 & 7.7)
Amendments to clause 23 (Representations and Warranties) (Draft Decision 7.7).	Pursuant to Draft Decision 7.7, the QCA identified amendments which are required to provide a more balanced risk position between QR and access seekers, access holders & operators. This includes removing the operator's warranty as to the standard of the network and making explicit that if an operator does inspect the network, the inspection does not necessarily restrict the operator's right to claim against QR.	New Hope supports the QCA's amendments but proposes minor amendments to accommodate multiple operators.[975]	QR submits that if an operator inspects the network prior to operation it should accept some responsibility for satisfying itself as to the standard of the network.[976]	The QCA's required amendments are largely consistent with the Draft Decision. However, we have also made the warranties between the Operator and Queensland Rail reciprocal. The QCA does not accept QR's statement implying that, by removing the operator's warranty, the operator has no responsibility for satisfying itself as to the standard of the network. The QCA considers that removal of the operator's warranty does not limit the responsibility of the operator in the manner described by QR. Instead deletion of this warranty removes the limitation placed on QR's responsibility for, amongst other things, matters which may not be reasonably foreseeable to an operator, despite the operator conducting an inspection of the network. (for further reasoning see Summary 7.3 & associated analysis as well as Draft Decision 7.7)

[975] New Hope, sub. 32: 31.
[976] QR, sub. 26, p. 102.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
Amendments to clause 25 (Notices) (Draft Decision 7.7).	Pursuant to Draft Decisions 7.3, 7.4 and 7.7, the QCA identified amendments to this clause which are required to provide for a more efficient operation of the network as well as necessary amendments to provide for a tripartite structure.	New Hope supports the QCA's amendments but proposes minor amendments in accordance with the tripartite structure. New Hope also said that it has been their experience that Queensland Rail has been willing to receive notices by email in other agreements.[977]	QR states, amongst other things, that it does not accept service by email.[978]	The QCA's required amendments are consistent with the Draft Decision. We consider that in modern times it is appropriate that parties be able to give and receive notices by email. This is efficient and prompt and thereby increases the efficiency of the system as a whole.
Amendments to clause 27 (General) (Draft Decision 7.3 & 7.4).	Pursuant to Draft Decisions 7.3 & 7.4, the QCA identified amendments to this clause which are required to provide for a tripartite structure.	New Hope supports the QCA's amendments. New Hope also proposes an amendment to clause 27.1(b) which is intended to ensure that an access holder is not liable to pay any duty which QR incurs if it is incurred due to a default by QR. New Hope also said that all amendments should take effect between all parties.[979]	QR submits that the clause is not legally effective in that an amendment cannot take effect only between some parties to the agreement.[980]	The QCA's required amendments are largely consistent with the Draft Decision. However, the QCA considers that, if an access holder nominates multiple operators to utilise its access rights, each operator will be required to enter into a separate tripartite access agreement along with the access holder and QR. This should nullify QR's comments in relation to the variation clause. We also agree with New Hope that an access holder should not be liable for any duty which QR incurs as a result of QR's default. (for further reasoning see Summary 7.3 & associated analysis as well as Draft Decisions 7.3 &

[977] New Hope, sub. 32: 31–33.
[978] QR, sub. 26, p. 102.
[979] New Hope, sub. 32: 32.
[980] Queensland Rail, sub. 26, p. 102.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
				7.4)
Amendments to clause 27.19 (Sublease) (Draft Decision 7.7).	Pursuant to Draft Decision 7.7, the QCA identified amendments to this clause which are required to provide a more balanced risk position between QR and access seekers, access holders & operators.	New Hope supports the QCA's amendments but also considers that, given the importance of land tenure, QR should be required to warrant that it holds, and will comply with the requisite tenure (cl. 27.18(e) New Hope SAA).	QR does not comment specifically on the QCA's proposed amendment.	The QCA's required amendments are consistent with the Draft Decision The QCA does not believe it is appropriate for QR to warrant that it holds, and will comply, with its various tenure obligations. But, if tenure is lost, an access holder's obligations to pay access charges should be reduced commensurate with that loss. (for further reasoning see Summary 7.3 & associated analysis as well as Draft Decisions 7.7)
Amendments to definition of "Acceptable Credit Rating" (Draft Decision 7.7).	Pursuant to Draft Decision 7.7, the QCA identified amendments to this clause which are required to provide for more efficient operation of the network and are more balanced as between QR and access seekers.	New Hope said that it welcomes the additional clarity and would accept a credit rating of "A" as previously proposed by Queensland Rail.	QR states that a BBB- S&P rating is not a suitable minimum and does not meet QR's board approval policies.[981]	We consider that a credit rating of "A" would strike an appropriate balance, as noted by New Hope this has also previously been acceptable to Queensland Rail.
Amendments to definition of "Alternative Schedule Time" (Draft Decision 7.7).	Pursuant to Draft Decision 7.7, the QCA identified amendments to this clause which are required to provide a more balanced risk position between QR and access seekers, access holders & operators.	New Hope supports the QCA's amendments.	QR submits that the definition does not balance the interest of all parties but rather places an inappropriate burden on QR.[982]	The QCA's amendments are consistent with the Draft Decision. See also above in relation to amendments to cl. 8.6 of the 2015 SAA. (for further reasoning see Summary 7.3 & associated analysis as well as Draft Decision 7.7)
Amendments to definition of	Pursuant to Draft Decision 7.7,	New Hope said that the QCA's	QR submits that the QCA's	In accordance with the maxim that

[981] QR, sub. 26, p. 102.
[982] QR, sub. 26, p. 102.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
"Force Majeure Event" (Draft Decision 7.7).	the QCA identified amendments to this clause which are required to provide a more balanced risk position between QR and access seekers, access holders & operators.	amendment is not inconsistent as an FME is not the same as an operator failing to obtain or maintain rights to access private infrastructure.[983]	proposed amendments allocate the risk to QR for matters which are solely within the control of the operator.[984]	the party best able to manage a risk should bear that risk, we agree that access holders should bear the risk of FME's in relation to that access holder's private infrastructure or mine etc. However, we also agree with New Hope that the amendment is not inconsistent with an operator/access holder's obligation to obtain and maintain right to private infrastructure. We have therefore maintained this amendment but amended the definition of "Queensland Rail Cause" (see below). Further, we note that the clause 20.2(b) only operates in relation to the "Network" and not private infrastructure.
Amendments to definition of "Maintenance Work" (Draft Decision 7.7).	Pursuant to Draft Decision 7.7, the QCA identified amendments to this clause which are required to provide a clarified and more balanced risk position between QR and access seekers, access holders & operators.	Stakeholders support the QCA's amendments.	QR submits that the QCA's amendments improperly impose an obligation on QR to fund Extensions.[985]	The QCA's amendments are largely consistent with the Draft Decision. However, see above in relation to possible overlap with the definition of "Extension" under the QCA Act. (for further reasoning see Summary 7.3 & associated analysis as well as Draft Decisions 7.7)
Amendment to "Net Financial	Pursuant to Draft Decision 7.7,	New Hope supports the QCA's	QR does not specifically comment	We agree with New Hope that

[983] New Hope, sub. 32: 32.
[984] QR, sub. 26, p. 102.
[985] QR, sub. 26, p. 102.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
Effect" (Draft Decision 7.7).	the QCA identified amendments to this clause which are required to provide a more balanced risk position between QR and access seekers, access holders & operators. For example, if QR is able to [increase the tariff] due to an adverse financial effect, it should also be required to lower the tariff for a beneficial financial effect.	amendments. However, New Hope also proposes that any change in government funding should be relevant to particular commodities.	on the QCA's proposed amendments.	changes due to changes in government funding should be relevant to particular commodities.
Amendments to definition of "Operational Constraint" (Draft Decision 7.7).	Pursuant to Draft Decision 7.7, the QCA identified amendments to this clause which are required to provide a more balanced risk position between QR and access seekers, access holders & operators.	New Hope supports the QCA's amendments but proposes deleting the term "Urgent Possessions". New Hope also said that having to act reasonably is not vague or unclear.[986]	QR submits that the QCA's proposed amendments may have the effect of limiting QR's ability to impose an operational constraint, including for safety reasons. QR further submits that the amendments are an unexplained deviation from the 2010 regulatory precedent.[987]	The QCA's amendments are consistent with the October 2015 Draft Decision. (for further reasoning see Summary 7.3 & associated analysis as well as Draft Decisions 7.7)
Amendment to definition of "Queensland Rail Cause" (Draft Decision 7.7).	Pursuant to Draft Decision 7.7, the QCA identified amendments to this clause which are required to provide a more balanced risk position between QR and access seekers, access holders & operators.	New Hope supports the QCA amendments.[988]	QR is concerned that by inserting "Force Majeure Event" into the definition allocates the risk of a force majeure event to QR when such events are outside of QR's control. QR considers that this change is a deviation from the earlier regulatory precedents.[989]	The QCA's required amendments are largely consistent with the Draft Decision. However, see Chapter 8 in relation to increased incentives for QR to repair damaged track and apply for a review of the reference tariff to recover lost access charges. Also, in accordance with our stated policy on risk sharing, we have

[986] New Hope, sub. 32: 32.
[987] QR, sub. 26, p. 103.
[988] New Hope, sub. 32: 32.
[989] QR, sub. 26, p. 103.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
				amended this definition to clarify that an FME only operates in this definition to the extent that the relevant FME affects the Network or QR's ability to provide the contracted access. (See Chapter 8 for further discussion and Decision)
Amendment to definition of "Third Party Works" (Draft Decision 7.7).	Pursuant to Draft Decision 7.7, the QCA identified amendments to this clause which are required to provide a more balanced risk position between QR and access seekers, access holders & operators.	New Hope supports the QCA amendments.	See above for QR's submissions in relation to "Third Party Works".	The QCA's required amendments are largely consistent with the Draft Decision. See also above in relation to the QCA's response to QR's concerns. (for further reasoning see Summary 7.3 & associated analysis as well as Draft Decisions 7.7)
Amendments to clause 28.2 (Construction) (Draft Decision 7.7).	Pursuant to Draft Decision 7.7, the QCA identified amendments to this clause which are required to provide a more balanced risk position between QR and access seekers, access holders & operators.	New Hope agrees with Queensland Rail's position.[990]	QR considers that the QCA's proposed change is not consistent with the QCA Act and cannot be overridden in the SAA.[991]	We accept Stakeholder statements and have reinserted the deleted clause.
Amendments to Schedule 1 (Reference Schedule), Item 9 (Security Amount) (Draft Decision 7.7).	Pursuant to Draft Decision 7.7, the QCA identified amendments to this clause which are required to provide a more balanced risk position between QR and access seekers, access holders &	New Hope supports the QCA amendments and notes that, in relation to Queensland Rail's argument that the amount is insufficient, the agreement provides for replenishment.[992]	QR submits that the security amount in the reference schedule should be increased to account for the length of most access agreements.[993]	The QCA's amendments are consistent with the Draft Decision. (for further reasoning see Summary 7.3 & associated analysis as well as Draft Decisions 7.7)

[990] New Hope, sub. 32: 32.
[991] QR, sub. 26, p. 103.
[992] New Hope, sub. 32: 32.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
	operators.			
Amendments to Schedule 2 (Train Service Description – Stowage)	Pursuant to Draft Decision 7.7, the QCA identified amendments to this clause which are required to provide a more balanced risk position between QR and access seekers, access holders & operators.	New Hope supports the QCA amendments. New Hope also said that Queensland Rail should be required to provide some stowage/storage at no additional charge.[994]	QR considers that the amendment is unnecessary given the provisions in relation to "Storage".[995]	The QCA's amendments are consistent with the Draft Decision. (for further reasoning see Summary 7.3 & associated analysis as well as Draft Decisions 7.7)
		In addition to particular provisions which the QCA proposed be amended, New Hope also proposed amendments to cl. 8.11(b), definition of "Adjoining Network", definition of "Authority", definition of "Change in Law", definition of "Consequential Loss", definition of "Emergency Possession", definition of "Infrastructure", definition of "Network Interface Point", definition of "Original Train Service Take or Pay Threshold", definition of "Planned Possession", definition of "Through-Running Train" as well deleting the definition of "Train Schedule" [check whether used] and reducing take-or-pay charges	QR said that New Hope's proposed amendment to 8.11 is based on a misunderstanding of the term Network.[997] Further Queensland Rail said that, despite having an opportunity to comment on the DAU, a change in law is still outside of its control.[998] Further, Queensland Rail said that New Hope's proposed amendments to the definition of "Dangerous Goods" should not be inserted as the parties should be allowed to agree the treatment of goods to be carried.[999]	We agree with New Hope that cl. 8.12 should be symmetrical. Noting Queensland Rail's concerns, the clause has been amended so that QR only needs to inform an operator in relation to damage which is relevant to that operator. We also agree with Asciano that Queensland Rail should not be allowed to unreasonably withhold its approval of accreditation (cl. 8.10). We do not accept New Hope's statements in relation to the definition of a "Change in Law" – as asserted by Queensland Rail, these changes are still outside of

[993] QR, sub. 26: 104.
[994] New Hope, sub. 32: 32.
[995] QR, sub. 26: 104.
[997] Queensland Rail, sub. 33: 64.
[998] Queensland Rail, sub. 33: 65.
[999] Queensland Rail, sub. 33: 65.

QCA October 2015 Draft Decision ("Draft Decision")	*QCA Reasoning[857]*	*Stakeholders' submissions*	*Queensland Rail's ("QR") Submissions*	*QCA Response and Decision*
		from 100% of the relevant access charge in schedule 3 of NHC's amended SAA (New Hope SAA) Asciano said that cl. 8.9(a) should be amended to require that Queensland Rail should not unreasonably withhold its acceptance of certification.[996] Asciano suggested amendments to the definition of "Repeated Breach" to limit the term to breaches of material terms of the SAA.		Queensland Rail's control. We do agree with New Hope's proposed amendment to the definition of "Dangerous Goods". Queensland Rail's drafting could potentially allow for anything to be deemed a dangerous good and thereby increase costs inefficiently. There are objective codes which determine what is properly considered a dangerous good. We agree with Asciano that the definition of "Repeated Breach" should be limited by the inclusion of the words "material". Insignificant breaches of the SAA should not give Queensland Rail a right to terminate the agreement.

[996] Asciano, sub. 28: 22.

APPENDIX D: CL. 1.4 AND SCHEDULE I AMENDMENTS

Other issues and proposed amendments to cl. 1.4 and 2.7.2

Clause	*Issue*	*Response*
1.4.1(a)	This clause summarises when cl. 1.4 applies. Queensland Rail said that the drafting was not fully consistent with cl. 2.7.2(d). Queensland Rail said that it potentially exposed Queensland Rail to bearing the indirect costs that it incurred.	Reference to an access seeker funding 'all costs directly incurred' has been deleted and Clause 1.4.1(a) has been simplified for consistency with cl. 2.7.2(d).
1.4.1(b)(ii)	This clause specifies that a Funding Agreement must have been executed for Queensland Rail to be obliged to complete the relevant stage of an extension, however, the signing of a funding agreement is a requirement of the Extension Conditions which are referred to in cl. 1.4.1(b)(i).	Clause deleted. A specific reference to executing Funding Agreement has been added to cl. 1.4.2(c)(vi) for clarity.
1.4.1(c)	This clause was subject to cl. 1.4.1(d)	cl. 1.4.1(d) has been deleted.
1.4.1(c)(i)(B)	Both New Hope and Queensland Rail noted that the wording potentially precluded Queensland Rail funding part of an Extension	Addressed. Words ' or part thereof' added.
1.4.1(d) Now deleted.	This clause. Queensland Rail said that it was beyond the QCA's power to impose an obligation on Queensland Rail to invest in the network only under the QCA Act. They said Queensland Rail's rights of ownership are absolute under the QCA Act as Queensland Rail is the accredited rail infrastructure manager in respect of the declared service.	Clause deleted. Clause 1.4 applies when there is an Access Funder and cl. 1.4.4 provides sufficient clarity on Queensland Rail's roles and responsibilities in this situation.
1.4.2(a)	Erroneous reference to cl. 2.7.2(c) instead of cl. 2.7.2(d)	Reference changed.
1.4.2(a)(i)	Queensland Rail stated that the drafting implied that Queensland Rail would be expected to supply information which would not be available until after the concept study before this study was completed.	The word 'available' has been added to make it clearer that the intention is to make Queensland Rail provide an Access Seeker with clarity over what is likely to be required to complete the study process.
1.4.2(a)(i)(C)	Queensland Rail objected to the phrase 'acting reasonably' in relation to safety requirements. They said safety requirements were not negotiable and therefore should not be subject to waiver.	The word 'reasonably' has been changed to 'appropriately'. The intent is that the safety standards imposed are consistent with the type of facility being built.
1.4.2(a)(i)(E) Now deleted.	Queensland Rail asked for clarification of term 'operational integrity'.	Clause deleted. The required information would be expected to derived from the application of cl. 1.4.2(a)(i)(D).
1.4.2(a)(ii)	Both Queensland Rail and New Hope noted that the wording of cl. 1.4 did not provide sufficient clarity that the study process did not have to be rigidly applied.	Introduction to cl. 1.4 amended by adding: 'by completing the required Extension Stage (or Stages).'

Clause	*Issue*	*Response*
1.4.2(a)(ii) (A)(B)(C)(D) Moved to definitions section	QR and New Hope asked for more clarity with respect to the Extension Stages.	Extension Stage is now a defined term in the definitions section.
1.4.2(a)(iii) and (iv)	Both New Hope and Queensland Rail asked for more flexibility with respect to the staging of the Extension (if both parties agreed)	Accepted in principle. Both clauses have been amended to clarify that only one extension stage and a time could be funded (rather than having to agree to fund, or not fund, them all).
1.4.2(a) - final summary	New Hope and Queensland Rail asked for more flexibility in staging the expansion by allowing for stages to be skipped if agreed by both parties.	Accepted in principle. 1.4.2(c) added. There is no requirement to complete all stages of the study process if both parties agree (acting reasonably) that an extension stage is unnecessary.'
1.4.2(c)(iii) (C) Now 1.4.2(d)(iii)(C)	This clause stated that the extension should not impact on the safety of any person maintaining, operating or using the network. New Hope suggested an edit to make it clear that positive safety benefits would be accepted.	Accepted in principle. The term 'adversely' added to make it clear that changes which had a positive impact on safety outcomes would be acceptable.
1.4.2(c)(iv) Now 1.4.2(d)(iv)	This clause stated that access agreements needed to executed for the additional capacity. Queensland Rail said the words “on terms and conditions consistent with this Undertaking unless otherwise agreed” are minor and inconsequential. Queensland Rail said the 2015 DAU is clear on the requirements for access agreements and the phrase is not necessary.	This clause has been amended to simply say that access negotiations need to be progressing as per Part 2 of the undertaking. The agreements themselves may not be executed until the extension is well progressed.
1.4.2(c)(vi) Now 1.4.2(d)(vii)		For clarity, a new cl. (1.4.2(d)(vi)) has been added with specific reference for the requirement to execute a funding agreement. The reference to funding in the original clause has been removed. In addition cl. 1.4.2(f) has been added to provide users with confidence that Queensland Rail will progress funding agreement negotiations.
1.4.2(e) Deleted.	Queensland Rail and New Hope noted that this clause was worded in a way that may not be applicable to the study stages of an extension	This clause has been deleted and the specific tasks listed that were listed are now detailed in clause 5 of Schedule I in relation to the relevant study stages.
1.4.2(f)	Queensland Rail said that this clause was unnecessary given the dispute cl. (1.4.7)	The clause has been deleted and amendments made to cl. 1.4.7(i) which specifies when a dispute can be referred directly to the QCA.
1.4.3(a)	Both New Hope and Queensland Rail asked for more flexibility with respect to the funding study process (if both parties agreed).	Amended to specifically allow for an individual project stage to be funded.
1.4.3(b)(iv) Now 1.4.3(b)(v)	Both New Hope and Queensland Rail asked for the contracting requirements to be allowed to vary with the requirements of the stage of the Extension being funded.	The clause has been amended to make it clear that not all tasks listed may be relevant to all stages of the extension process.

Clause	*Issue*	*Response*
1.4.3(b)(v)(B)	Queensland Rail noted that the reference to Schedule E was generic and did not specify which obligations were being referred to.	Specific reference to the prudency tests in Schedule E added.
1.4.3(b)(iv)	Included to clarify that this is an important obligation.	New clause inserted to required Queensland Rail to transfer the 'economic benefit' of an extension.
1.4.7	Queensland Rail raised issues relating to the dispute process.	Clause 1.4.7 and 6.1.4 have been amended to clarify.
1.4.8	Queensland Rail said that the investment funding provisions did not reference the Building Queensland Act.	New clause added.
2.7.2(b)(iii)	Both New Hope and Queensland Rail asked for the contracting requirements to be amended to clarify that an agreement to complete all project stages was not required in order to ask the Access Seeker to fund a particular project stage.	Words 'or Extension stage' added.
Definition of a Access Funder	Definition included reference to Access Seekers Nominee which Queensland Rail said went beyond the power of the Act.	Reference to an access seekers nominee has been deleted from the definition of an Access Funder.
Definition of Access Funder	Both New Hope and Queensland Rail noted that it was not sufficiently clear that an Access Funder for a single Extension could be more than one party.	Amended to allow for more than one party being an Access Funder for clarity.
Definition of Extension Costs	New Hope noted the definition potentially included costs which Queensland Rail might have incurred assessing an Access request that did not need an Extension. Queensland Rail also raised concerns as to costs payable by it.	Additional clause added so that Extension costs do not include 'any costs or expenses it would routinely incur when assessing an access application'. Also, former (c)(iii) within the definition of 'Extension Costs' has been deleted.
Definition of Efficient Costs	Application of definition was too restrictive for the use of the term throughout the DAU.	Extended the definition of Extension Costs by clarifying that its use in the context of providing access is only an example of one application.
Asset replacement	Asset replacement was included in the definition of maintenance but is also include in the definition of Extension in the QCA Act.	Definition of maintenance in the SAA to be amended to remove the reference to replacement. See Appendix F.

Schedule I Amendments

Clause	*Issue*	*Response*
3(a)(i)(A)	The clause specified that the Access Funder was required to fund all the project stages and Queensland Rail and New Hope noted that more flexibility was required.	The requirement for the Access Funder to fund the relevant stage of the study process is set out in cl. 1.4.3 and the study processes (stages) are set out in the definition of Extension Stages. Clause deleted.
3(a)(i)(B)	This clause specified that the access funder should fund Queensland Rail's efficient costs.	Clause deleted.
3(a)(i)(C)	This clause specified that a Funding agreement must be executed in accordance with clause 3(b)(i).	Not clear which clause was being referred to as there was no cl. 3(b)(i). In any event the inclusion of cl. 1.4.2(c)(v) makes this clause redundant. Clause deleted.
3(a)(ii)	Required Queensland rail to construct. and operate and maintain an extension in accordance with the undertaking.	Issue dealt with in cl. 1.4.4. Clause deleted.
3(a)(iii)	Required that costs that Queensland Rail would have incurred without the extension could not be included in the cost of an extension.	This clause has been moved to the definition of Extension costs. Clause deleted
3(a)(iv)	This clause specified that the access funder should not fund Queensland Rail's costs if they were judged to be inefficient.	The addition of cl. 1.4.3(b)(iii) now makes this unnecessary Clause deleted
3(a)(v)	Required that the concept of legitimate business interests be agreed by parties.	This process is likely to be complex and time consuming and could potentially delay the agreement / funding of projects prior to the completion any studies. Deleted due to other amendments relating to construction and costs.
3(b)	This clause stated that Queensland Rail had no obligation to bear costs in advance of a funding agreement being signed.	This is effectively a repeat of cl. 1.4.1(c)(ii) Deleted.
3(c)	This clause limited Queensland Rail's right to charge additional fees or charges to fund extension costs.	Moved to Section 4. Queensland Rail Rights and Responsibilities
3(d)(e) and (f)	This clause provided guidance on how the funding agreement terms should be amended if there were multiple and/or subsequent funders'.	A new section 'multiple and subsequent funders' has been added to the schedule. Moved to Section 7
4(a)(i)	This clause obliged QR to provide access right in accordance with an access agreement conditional only on an extension being commissioned.	The clause is now redundant since cl. 1.4.2(c)(iv) of the Undertaking specifies that as part of the extension conditions relevant access negotiations must be continuing in accordance Undertaking unless they are conditional only on an extension being commissioned.

Clause	*Issue*	*Response*
		Deleted.
4(a)(ii)	This clause obliged Queensland Rail to assist, construct and commission an extension consistent with the commercially balance allocation of risks.	The allocation of contract risks is detailed in cl. 8.1 while the obligation for Queensland Rail to undertake each extension stage is specified in cl. 1.4.2(c)(d) of the Undertaking.
4(a)(iii)	This clause requires Queensland Rail to pay the user funder the full economic benefit of an extension. It is dealt with in detail in the 'Full Economic Benefit Transfer' Clause.	Addressed in cl. 6. cl 1.4.3(b)(v) has also been added to the Undertaking specifying that a funding agreement must require the full economic benefit to be transferred to the access funder. Deleted.
Full Economic Benefit Transfer cl.5.		Clause moved to cl. 6
6(b) Now 3(b)	This clause required Access Funders to fund all of Queensland Rail's Extension costs. Comments were made by Queensland Rail and New Hope that there should be the option that Queensland Rail fund Extension Costs	'Unless otherwise agreed' added to the first sentence.
7(a)(iii) Now 4(a)(iii)	Comment made by Queensland Rail and New Hope that some clauses read as if all funding processes should be funded at the signing of the first funding agreement.	'as relevant to the stage of an Extension being funded' add to the end of Clause
5(c)	The clause stated that Queensland Rail should expeditiously undertake extension studies.	Edited to be specific to Concept, Pre-feasibility or Feasibility Studies
8(i) and (j) (deleted)	The clause required that an independent auditor be allowed to audit each funding agreement.	The role of the independent auditor is no longer defined in Schedule I. It is anticipated that, if required, this role will be specified within the terms of the relevant funding agreement.
9	This clause detailed the obligations of Queensland Rail and access funders when an extension was being constructed.	Clause combined into the Extension Studies Clause to improve clarity and duplication.
9(a) (deleted)	Requirement for Queensland Rail to expeditiously construct.	Deleted. This should be provided for in the relevant funding agreement.
9(b)	Requirement for Access Funders to be involved in major planning decisions.	Moved to cl. 5(d)(i)
10.13	Independent auditor clause deleted	See above.

APPENDIX E: WEST MORETON NETWORK COSTS ALLOCATION—PREVIOUS AND CURRENT ASSESSMENTS

2009 DAU

The issue of allocating West Moreton common network costs to different traffics first arose in our assessment of the 2009 DAU, submitted by then QR Network (now Aurizon Network).

2009 DAU proposal

The 2009 DAU was developed at a time when the West Moreton network's capacity was almost fully utilised—97 per cent of the capacity (109 of the 112 paths) was forecast to be used by coal and non–coal traffics combined (Figure 3 in Section 8.3 of this Decision).

The 2009 DAU proposed the following coal allocators for:

- regulatory asset base: the 2009 DAU distinguished between assets that existed before West Moreton coal traffic began in the mid–1990s and infrastructure subsequently built or replaced, and proposed allocating:
  - for capital spending since 1995 including forecast capital expenditure proposed during the 2009 DAU period: 100 per cent to coal
  - for assets in place before 1995: 75.6 per cent to coal, to reflect the proportion of paths forecast for use by coal–carrying services (84 out of 111 forecast weekly paths[1000])
- maintenance cost: 92.7 per cent to coal, based on coal's share of forecast gtk.

QCA 2009 Draft Decision

Our 2009 Draft Decision did not approve the 2009 DAU's allocator for regulatory asset base including forecast capital expenditure, but accepted the allocator for maintenance cost.

Since the West Moreton network was then capacity constrained, our 2009 Draft Decision considered it was appropriate to determine coal reference tariff on the basis that all traffics were paying the same price and stated:

> *Put another way, it is not necessary for the non–coal traffics to pay the same tariffs as coal traffics. It is only necessary that the tariffs charged to the coal services not subsidise the non–coal services. So, if QR Network charges the other traffics lower tariffs, the Authority is entitled to treat those traffics as though they pay the same tariff as coal, when assessing whether QR Network is receiving sufficient revenue.*[1001]

For determining a tariff on a capacity constrained network, our 2009 Draft Decision proposed the approach that 'each user's train service covers an equal proportion of the common cost of providing that asset base' and stated:

> *The share borne by coal will be based on the average proportion of available western system train paths forecast to be used by coal during the term of the 2009 DAU, or 75.6%.*[1002],[1003]

[1000] The path–based allocator was based on the average number of forecast paths during the undertaking period and included coal services operating through the Metropolitan network, which did not traverse the West Moreton network.
[1001] QCA (December 2009a): 79.
[1002] QCA (December 2009a): 80.

Our 2009 Draft Decision applied this allocator (75.6 per cent) to capital expenditure incurred on the West Moreton common network since 1995, including forecast capital expenditure proposed during the 2009 DAU period. In doing so, our 2009 Draft Decision rejected the 2009 DAU's proposal to allocate 100 per cent of such capital expenditure to coal. Our 2009 Draft Decision stated:

> *it is not apparent that all post–1995 capital expenditure has been for incremental coal infrastructure. Some of that capital expenditure has been to replace failing wooden bridges with culverts which is an investment that is common to all traffics. Other expenditure has been to support increased tonnages. Yet coal and grain trains on the western system have similar tonnages, lengths and axle loads, therefore any expenditure to handle additional tonnages is common to both coal and grain trains.*[1004]
>
> *While QR Network has proposed to include 100% of western system incremental capital expenditure in the regulatory asset base, the Authority considers that only 75.6% of this should be applied to calculating coal tariffs. The Authority considers this approach to be reasonable as incremental investment improves the standard of the track for both coal and non–coal services, which all benefit from the resulting increased reliability and lower maintenance requirement.*[1005]

For assets that were in place before 1995, our 2009 Draft Decision further reduced the 75.6 per cent allocator to reflect the impact of metropolitan peak hour passenger operations on West Moreton paths. In doing so, we accepted advice from QR Network that the 'metro blackout' reduced the available paths by about 20 per cent[1006] and determined the proportion of potential paths available to coal services to be 80 per cent of 75.6 per cent or 60.5 per cent.[1007]

The pre–1995 asset base was treated separately so that Queensland Rail did not receive a return for sunk costs that related to paths that were unavailable to West Moreton network coal train services when they began in 1995 due to metropolitan operational constraints.[1008]

Accordingly, our 2009 Draft Decision proposed allocating to coal traffic:

- regulatory asset base:
  - for capital spending since 1995 including forecast capital expenditure: 75.6 per cent
  - for assets in place before 1995: 60.5 per cent
- maintenance cost: 92.7 per cent, consistent with the 2009 DAU proposal.

In response, QR Network submitted the same West Moreton network reference tariff as proposed in our 2009 Draft Decision, which we approved.[1009]

[1003] The asset base allocator (75.6 per cent) used for deriving the reference tariff reflected coal's proportion of 'total forecast paths' (not 'available paths') and included paths originating from Ebenezer, which do not traverse the West Moreton network. From Figure 1, we note that the 2009 DAU's weekly forecast paths (excluding Ebenezer paths) of 109 were slightly less than the total available paths of 112.

[1004] QCA (December 2009a): 83.

[1005] QCA (December 2009a): 87.

[1006] The 20 per cent metro blackout effect reflected the two three–hour periods to cater for the morning and afternoon weekday peaks of passenger traffic (QR Network, September 2008 and March 2009)

[1007] QCA (December 2009a): 80.

[1008] QCA (December 2009a): 84.

[1009] We proposed a West Moreton network tariff in our 2009 Draft Decision on QR Network's 2009 DAU (QCA, December 2009a: 69-94). QR Network submitted a tariff largely consistent with our 2009 Draft Decision in its 2010 DAU, in April 2010. We proposed to approve that tariff in our Draft Decision on pricing aspects of the 2010 DAU, on 2 June 2010 (QCA, June 2010a: 87-90). We gave final approval to the tariff in our 30 June 2010 Final Decision to approve an extension of the 2008 undertaking (QCA, June 2010b).

However, in making that proposal QR Network did not accept our 2009 Draft Decision methodology for assessing the tariff; in part the methodology for allocating the asset value and *forecast capital* expenditure between coal and non–coal services.[1010]

2013 DAU

Queensland Rail's 2013 DAU proposal

The 2013 DAU was developed at a time when the West Moreton network was capacity constrained—95 per cent of the capacity (106 of the 112 paths) was contracted for use by coal and non–coal traffics combined (Figure 3 in Section 8.3 of this Decision).[1011] In relation to the six uncontracted paths, Queensland Rail stated:

> *Government have not indicated a willingness to contract additional coal services and in relation to non–coal freight, above rail operators have not shown a willingness to contract additional services.*[1012]

Queensland Rail said that since the system was capacity constrained, the 2009 Draft Decision principle for determining a ceiling price applied—that is, all traffics should be assessed as paying the same price regardless of whether they actually did.[1013]

The 2013 DAU proposed the following coal allocators for the regulatory asset base:

- for capital spending since 1995 including forecast capital expenditure proposed during the 2013 DAU period:
  - 100 per cent of capital spending on the common network that Queensland Rail required miners to underwrite or Queensland Rail determined was required solely to facilitate coal services.
  - 72.6 per cent of the remainder of capital spending, reflecting coal's proportion of total contracted paths (that is, 77 of 106 contracted paths).[1014]
- for assets in place before 1995: 61.7 per cent, to reflect that 15 per cent of West Moreton network paths were unavailable due to peak hour metropolitan blackout (that is, 85 per cent of 72.6 per cent).[1015]

In doing so, Queensland Rail did not accept the 2009 Draft Decision approach of a *pro rata* allocation of the entire common network capital expenditure between coal and non–coal services. Queensland Rail stated:

> *Permitting 100% of end–user funded assets to be included in reference tariff building blocks aids Queensland Rail's investment decisions as it would be unacceptable to proceed with an investment, even if it is end–user funded, in circumstances where only a partial return is included in reference tariff building blocks but a full return is rebateable to end–users.*

[1010] QR Network (February 2010: 99–118; April 2010: 104–115).

[1011] In the 2013 DAU, Queensland Rail had proposed using then contracted volumes as its forecast for the 2013 DAU period (Queensland Rail, 2013a: 15).

[1012] Queensland Rail (November 2013d): 5.

[1013] Queensland Rail (June 2013a): 8.

[1014] Queensland Rail (June 2013a): 9–10. Queensland Rail applied a similar approach to propose coal train path allocation percentage for the Macalister to Columboola section—that is, for post–1995 assets coal traffic pay 100 per cent of end–user funded and coal–specific spending and 50 per cent of the remainder of spending, reflecting coal's share of contracted paths (that is, 14 of 28 contracted paths).

[1015] Queensland Rail applied a similar approach to propose coal train path allocation percentage for the Macalister to Columboola section for pre–1995 assets of 42.5 per cent (that is, 85 per cent metro adjustment of 50 per cent path allocation).

Similar to the argument above, Queensland Rail said that in circumstances where it is considering funding infrastructure that relates solely to facilitating coal, an investment is unlikely to proceed where only a partial return is included in reference tariff building blocks. This is because the shortfall in return is unlikely to be recouped from non–coal traffics in circumstances where the infrastructure is not required by them.[1016]

Queensland Rail accepted the 2009 Draft Decision approach to further reduce the coal train path allocator that applied to pre–1995 assets because of the impact of metropolitan peak hour period on the availability of West Moreton network paths. However, Queensland Rail did not accept the reduction percentage in the 2009 Draft Decision. Queensland Rail stated:

> *While Queensland Rail does have a Brisbane Metropolitan Region passenger weekday peak between the hours of 7:00AM to 9:30AM and 3:00PM to 6:30PM, a strict peak curfew for non–passenger trains is not in place. This being said, Queensland Rail's network planners do have difficulty finding slots for non–passenger trains during these periods ... Queensland Rail proposes to apply a 15.0% reduction to the coal train path allocation percentage applied to pre–1995 assets rather than the 20.0% previously applied by the QCA.*[1017]

The 2013 DAU retained the 2009 DAU's approach of allocating West Moreton network maintenance cost to coal traffics based on the share of forecast gtk. Additionally, the 2013 DAU proposed allocating operating costs to coal traffics based the proportion of total contracted paths.

The 2013 DAU proposed recovering the coal–allocated costs from the 77 contracted coal paths.

QCA 2014 Draft Decision

Our 2014 Draft Decision did not approve the 2013 DAU's allocators for regulatory asset base including forecast capital expenditure and operating cost, but accepted the allocator for maintenance cost.

Allocation of common network capital expenditure

On the allocation of capital expenditure, we reiterated our 2009 Draft Decision that the underlying investment, where it is on the common network, improves the track standard for all traffics that benefit from the resulting increased reliability and lower maintenance requirement. We also observed that most of the post–1995 capital expenditure had been on the shared network and said that although one business (coal) was growing and another business (non-coal) was not, that was not a reason for coal to pay for 100 per cent of the new infrastructure. Therefore, we considered it reasonable to apply a *pro rata* allocation to such capital expenditure.[1018]

Train path allocator

On the train path allocator for coal, our 2014 Draft Decision observed that the issue was whether coal's share should be based on 'contracted paths' or 'available paths'.

Our 2009 Draft Decision stated that coal's share should be based on the proportion of available paths.[1019] However, our June 2014 consultation paper proposed to accept coal's share based on contracted (106) paths rather than available (112) paths, as we considered that contracted paths were verifiable and reflected clear evidence of customer demand.[1020]

[1016] Queensland Rail (June 2013a): 10.
[1017] Queensland Rail (June 2013a): 9.
[1018] QCA (October 2014): 145–146.
[1019] As noted, the train path allocator that was used for deriving the reference tariff in the 2009 Draft Decision was based on coal's proportion of 'total forecast paths' (not 'available paths') and included paths originating from Ebenezer, which do not traverse the West Moreton network.
[1020] QCA (June 2014): 9–10.

Queensland Rail supported our consultation paper approach to use contracted paths. However, New Hope had concerns with that approach, which related to actual capacity exceeding the capacity that Queensland Rail was willing to contract. New Hope said:

> *The level of paths which is contracted is artificially constrained (below true system capacity) by Government (QR's shareholder). NHG has been seeking to contract additional train paths for the past three years and has been unable to do so because of this constraint. This, when combined with the use of contracted train paths in developing tariffs, has a number of implications, including:*
>
> - *To the extent that capacity is withheld due to a Government requirement, which we understand is motivated by the potential future needs of passenger services, the cost of this uncontracted capacity should be allocated to 'non–coal' users when developing the notional coal asset base, rather than simply allocating the RAB between coal and non–coal on the basis of contracted paths.*[1021]

Upon further consideration, in our 2014 Draft Decision we considered that there was merit in the train path allocator reflecting all available train paths, not just contracted paths. Accordingly, we proposed the train path allocator based on coal's share of available paths—that is, 77 of 112 available paths, or 68.8 per cent. We observed that our position was consistent with the 2009 Draft Decision. Our 2014 Draft Decision accepted that using total available paths will provide Queensland Rail with better incentives to increase the number of paths for coal train services, which will promote the efficient use of the network.[1022]

Metro blackout sterilisation effect

On the effect of metropolitan passenger operations, our 2014 Draft Decision noted that stakeholders had divergent views on the impact of the blackout period.

In response to our June 2014 consultation paper which proposed a reduction of 22 per cent, Queensland Rail stated that it no longer supported reducing the pre–1995 asset base to reflect the metropolitan blackout arguing that it introduced asset stranding risk. Queensland Rail also said that if we applied a metro blackout, the sterilisation effect should be lower (12.1 per cent) than its original submission of 15 per cent.[1023] Conversely, other stakeholders (New Hope, Bentley and Aurizon) said the 22 per cent sterilisation effect in our consultation paper underestimated the actual impact of metropolitan blackout on West Moreton capacity.[1024]

Our 2014 Draft Decision retained the position from our 2009 Draft Decision and stated that it was appropriate to apply the metropolitan blackout to the pre–1995 assets so that Queensland Rail did not get a return for capacity that was not available to coal trains.[1025] We also retained the 22 per cent sterilisation effect from our consultation paper, keeping open the option to revisit it as part of our Final Decision, subject to Queensland Rail providing compelling new information.[1026]

Maintenance and operating cost allocation

Our 2014 Draft Decision accepted Queensland Rail's proposed gtk–based allocator for allocating total maintenance costs to coal traffic.[1027]

[1021] New Hope (July 2014): 3
[1022] QCA (October 2014): 146.
[1023] Queensland Rail (July 2014): 13–19.
[1024] QCA (October 2014): 147.
[1025] QCA (October 2014): 148.
[1026] QCA (October 2014): 148.
[1027] QCA (October 2014): 122–123.

Our 2014 Draft Decision also accepted Queensland Rail's approach of using a train path–based allocator for operating costs. However, we used a train path allocator based on coal's share of total available paths, not total contracted paths.[1028]

In summary, our 2014 Draft Decision proposed allocating to coal traffic:

- regulatory asset base:
  - for assets added since 1995 including forecast capital expenditure: 68.8 per cent, reflecting coal's share of total available paths
  - for assets in place before 1995: 53.6 per cent, reflecting a sterilisation effect of 22 per cent (that is, 78 per cent of 68.8 per cent)
- maintenance cost: 91 per cent, based on the share of forecast gtk consistent with Queensland Rail's proposal
- operating cost: 68.8 per cent, reflecting coal's share of total available paths.

However, the matter of the allocation of common network costs to coal traffics was not settled because Queensland Rail withdrew the 2013 DAU in December 2014. Subsequently, Queensland Rail submitted a DAU in May 2015.

2015 DAU

Queensland Rail's 2015 DAU proposal

The 2015 DAU has been developed in light of a material fall in demand for below-rail services on the West Moreton network—about three–fifths of the available capacity (66 of the 112 paths) is forecast to be used by coal and non–coal traffics combined resulting in about 40 per cent of spare capacity (Figure 3 in Section 8.3 of this Decision). This was due to reductions of 18 per cent and 90 per cent for coal and non-coal train services respectively, compared to the contracted levels used in the 2013 DAU (see Section 8.10 of this Decision for our consideration of Queensland Rail's 2015 DAU volume forecasts).

Queensland Rail said that the changed volume scenario necessitated a different approach to allocating common network costs to coal traffics for pricing purposes.

Train path allocator

In the 2015 DAU, Queensland Rail did not accept the train path allocation in the 2014 Draft Decision based on coal's share of total 'available' paths. Queensland Rail said that the QCA's allocation approach was unreasonable and inconsistent with standard regulatory precedent and stated:

> *With only 53 of the 112 available weekly paths currently contracted, and 62.8 expected to be utilised this regulatory period, such an approach will prevent Queensland Rail from recovering its efficient costs including a return. This is inconsistent with the pricing principles in the QCA Act.*[1029]

Queensland Rail said that in the current environment its primary concern was revenue certainty and stated:

> *Queensland Rail would clearly be better off if it could increase the number of paths contracted to coal (subject to the Government imposed cap on paths for coal services, discussed below), as it provides it with increased revenue certainty for services that have a higher capacity to pay than non-coal services.*[1030]

[1028] QCA 2014d: 126.
[1029] Queensland Rail, sub. 2: 7.
[1030] Queensland Rail, sub. 2: 46.

For the 2015 DAU, Queensland Rail considered that the most reasonable way of applying the train path allocator was based on coal's share of forecast train paths, which produced an allocation of 95.4 per cent (that is, 63 of 66 paths).[1031]

Queensland Rail considered its 2015 DAU allocation approach was more consistent with the requirements of the QCA Act and regulatory treatment more generally, noting that the pricing principles in all Australian access regimes were premised on the entitlement of the infrastructure provider to recover its efficient costs.[1032]

Allocation of opening asset base

Queensland Rail said that while its proposed train path allocator reflected coal's share of forecast paths, it also acknowledged that there were a number of factors that restricted its ability to contract the full amount of the capacity created by the existing assets.[1033] Queensland Rail stated that the two main constraints were:

- preserved freight and passenger train paths from Rosewood to Toowoomba, which was 13 paths for freight[1034] and two for passenger services; and
- a constraint of 87 coal paths per week through Metropolitan Network specified by Queensland Rail's Responsible Ministers.[1035]

Queensland Rail considered it was reasonable to cap the allocation of the initial asset base (or opening asset value as at 1 July 2015) to coal traffics 'to reflect Government constraints on contracting capacity to coal'[1036] and stated:

> *In particular, the binding constraint is the maximum 87 coal paths per week, limiting the proportion of the capacity of the West Moreton Network that can potentially be contracted to coal to 87 out of 112 available paths, or 77.7%. This approach is consistent with the overarching objectives established by the QCA (as set out at the beginning of this section[1037]) of balancing Queensland Rail's right to recover its costs from users with mining customers' right to not be required to pay for capacity that they are not permitted to use. Given the asset value has been established on the basis of this constraint, it should be reviewed if there is any material change to that constraint in the future.[1038]*

[1031] The 95.4 per cent allocator applied to the Rosewood to Jondaryan section. The corresponding allocator proposed by Queensland Rail for the Jondaryan to Columboola section was 87.5 per cent (Queensland Rail, sub. 2: 48).
[1032] Queensland Rail, sub. 2: 48.
[1033] Queensland Rail, sub. 2: 48.
[1034] Queensland Rail's 17 July 2015 response to the QCA's request for additional information noted that the reference to '13 paths for freight' was incorrect and that it should be '14 paths for freight'.
[1035] Queensland Rail's 17 July 2015 response to the QCA's request for additional information clarified that the restriction was advised by the Department of Transport and Main Roads.
[1036] Queensland Rail, sub. 2: 45, 48.
[1037] Queensland Rail referenced the objectives set out in the QCA's June 2014 consultation paper for determining an appropriate allocation methodology—that is, a) Queensland Rail's reasonable desire to recover the investment it has made in the network to support the growth of coal traffic; and b) coal miners' interest in not paying for assets they are unable to use, whether that be because those paths are contracted to non-coal traffics or where a significant portion of capacity cannot be contracted because of restrictions that provide priority to passenger services on the metropolitan system.
[1038] Queensland Rail, sub. 2: 48.

Accordingly, for the post–1995 capital spending in the initial asset base, Queensland Rail proposed an allocator 'based on the relative share of forecast train paths, with coal's allocation capped at 77.7 per cent'.[1039]

In doing so, Queensland Rail said that it accepted the 2014 Draft Decision approach of a *pro rata* allocation of the common network capital spending between coal and non–coal services. Queensland Rail said that its proposed opening asset base in the 2015 DAU included all capital expenditure on the common network, including projects that were triggered by freight services (referred to as transport service contract (TSC) capital), which its 2013 DAU had allocated 100 per cent to non–coal traffics.[1040]

For the pre–1995 assets in the opening asset base, Queensland Rail said that consistent with previous practice it proposed reducing the allocator to reflect the impact of metropolitan passenger operations on the West Moreton network capacity and stated:

> *While Queensland Rail considers that this approach is not required from an economic theory perspective, it reflects a pragmatic way of addressing the concerns of customers around the impact of the passenger dominated Metropolitan Network on the available capacity of the West Moreton Network.*[1041]

Queensland Rail proposed a capacity impact due to metropolitan passenger operations of 12.1 per cent. Queensland Rail said its adjustment percentage was based on a review of the scheduling across the Metropolitan and West Moreton networks that considered the effects of peak passenger periods and planned maintenance. Accordingly, for the pre–1995 assets, the 2015 DAU proposed an allocator of 68.3 per cent (that is, 87.9 per cent of 77.7 per cent).[1042]

Allocation of forecast capital expenditure

Unlike the allocator for opening asset base, Queensland Rail proposed allocating forecast capital expenditure based on coal's share of forecast paths – that is, 95.4 per cent.[1043] Queensland Rail stated:

> *An infrastructure owner cannot expect to commit to what will become a sunk investment on the basis that only a portion of those costs can be allocated to existing users. Queensland Rail therefore considers that the allocation measure must be based on forecast expected usage, not total available paths … Basing the measure on forecast paths is essential if Queensland Rail is to retain any incentive to undertake future investments in the shared network.*[1044]

Queensland Rail said that its forecast capital program was primarily aimed at 'replacing assets as required in order to maintain the integrity of the rail network' and stated:

> *... there is opportunity for coal volumes to recover in the future. Queensland Rail does not consider it appropriate to allow the network standards to deteriorate in response to a potentially short term reduction in volume, as the deteriorated state may inhibit future opportunities for traffic volumes to increase.*[1045]

[1039] Queensland Rail, sub. 2: 49.
[1040] Queensland Rail, sub. 2: 49. See Section 8.14 of this Decision for our consideration of the TSC capital expenditure.
[1041] Queensland Rail, sub. 2: 49.
[1042] Queensland Rail, sub. 2: 51.
[1043] The 95.4 per cent allocator applied to the Rosewood to Jondaryan section. The corresponding allocator proposed by Queensland Rail for the Jondaryan to Columboola section was 87.5 per cent (Queensland Rail, sub. 2: 55-56).
[1044] Queensland Rail, sub. 2: 55–56.
[1045] Queensland Rail, sub. 2: 38.

> *Coal has 87 contracted paths through the SEQ network each week. Any growth in tonnages must take advantage of these existing paths as there are no new paths available.*[1046]

Queensland Rail's consultant, PwC stated:

> *Without incurring any additional capital or maintenance expenditure, the Rosewood to Jondaryan (R2J) part of the network could cater for 15.7 gross million tonnes (GMT) (up from 11.5 GMT); while the Jondaryan to Columboola part of the network could cater for 3.6 GMT (up from 3 GMT). Queensland Rail's analysis suggests that this additional volume and decline in coal path allocation (95 per cent to 84 per cent) would result in a ceiling price of $27.91/'000 gtk, or a 20 per cent decline.*[1047]

Allocation of maintenance and operating cost

On allocating the 2015 DAU maintenance costs, Queensland Rail stated that not all maintenance activities were volume-dependent. Nevertheless, Queensland Rail considered that the maintenance cost allocator should be based on the expected level of activity – that is, based on relative forecast volumes. Accordingly, Queensland Rail proposed allocating 98.2 per cent of the maintenance costs to coal services, based on coal's share of forecast gtk. Queensland Rail said its proposed allocation approach was consistent with its 2013 DAU proposal.[1048]

On allocating the 2015 DAU operating cost, Queensland Rail did not accept the 2014 Draft Decision approach of a train path allocator based on total available paths, stating that it will not be able to fully recover its efficient costs. Queensland Rail proposed allocating operating costs based on coal's share of forecast paths – that is, 95.4 per cent and stated:

> *By using Queensland Rail's general train path allocator [share of forecast train paths], Queensland Rail will have opportunity to fully recover the assessed efficient operating costs from the services that are expected to use the infrastructure.*[1049]

In summary, Queensland Rail proposed the following coal allocators in the 2015 DAU:

- Opening asset base:
  - for capital spending since 1995: 77.7 per cent, reflecting the cap based on maximum paths available for contracting by coal services as a proportion of total available paths
  - for assets in place before 1995: 68.3 per cent, reflecting 12.1 per cent sterilisation effect due to metropolitan passenger operations
- forecast capital expenditure and operating cost: 95.4 per cent, reflecting coal's share of total forecast paths
- maintenance cost: 98.2 per cent, reflecting coal's share of forecast gtk.

Queensland Rail said its allocation approach provided it with a greater opportunity to recover its efficient costs, even though it proposed to set reference tariffs below its ceiling price.[1050]

[1046] Queensland Rail, sub. 2 (Appendix 6): 7.
[1047] Queensland Rail, sub. 2 (Appendix 1): 13.
[1048] The 98.2 per cent allocator applied to the Rosewood to Jondaryan section. The corresponding allocator proposed by Queensland Rail for the Jondaryan to Columboola section was 96.8 per cent (Queensland Rail, sub. 2: 53).
[1049] Queensland Rail, sub. 2: 54.
[1050] Queensland Rail, sub. 2: 4, 7.

Stakeholders' comments on 2015 DAU proposal

New Hope said that Queensland Rail's proposed allocation approach to certain common network costs resulted in coal services being required to compensate Queensland Rail for reductions in demand for non-coal traffics.[1051]

New Hope also said that Queensland Rail's inability to recover non-coal's share of costs, due to declining demand for non-coal services, was Queensland Rail's commercial risk and that Queensland Rail's proposed allocation approach had the effect of transferring Queensland Rail's risk to coal producers.[1052]

New Hope proposed that common network costs should be allocated on the basis of:

- fixed costs based on the higher of coal's forecast or contracted paths as a share of system capacity
- costs that vary with usage (variable costs) based on coal's share of forecast usage
- recognition provided for restrictions on the number of coal services able to be contracted and metropolitan capacity constraints.[1053]

In addition, New Hope said that recognition of operational restrictions on coal traffics operating through the Metropolitan network should also be incorporated within any proposed allocation of costs to coal traffics.[1054]

2015 Draft Decision

Our 2015 Draft Decision supported the allocation of common network costs amongst the different classes of users on the West Moreton network. However, we did not approve Queensland Rail's proposed allocation approach in the 2015 DAU.

Our 2015 Draft Decision observed that previous considerations of West Moreton network pricing were undertaken in the context of available capacity being potentially insufficient to satisfy all requests for access rights. In contrast, the 2015 DAU had been developed in a fundamentally different market demand context.

We considered that the material reduction in demand for West Moreton network train paths and the constraints on the number of coal services that are able to be contracted to operate through the Metropolitan network (a maximum of 87 paths per week) necessitated an efficient approach of allocating common network costs.

We considered that most of Queensland Rail's below-rail infrastructure costs were fixed.[1055] Therefore, we proposed categorising common network costs as fixed and variable, and allocating:

- fixed costs (comprising common network assets, and fixed maintenance and operating costs) based on the relative proportion of the network capacity available to coal services to contract
- variable costs (comprising variable maintenance and operating costs) based on the relative volume forecast for all train services, as variable costs are directly affected by volumes.

In doing so, our 2015 Draft Decision accepted Queensland Rail's allocation approach to reflect the contracting restriction for coal services. But we applied that approach to all of West Moreton fixed common network costs, which included in addition to the opening asset base, forecast capital

[1051] New Hope, sub. 9: 24–25.
[1052] New Hope, sub. 9: 27.
[1053] New Hope, sub. 9: 25-26.
[1054] New Hope, sub. 9: 26.
[1055] For example, our 2015 Draft Decision considered that about 68 per cent of maintenance costs and about 82 per cent of operating expenditure related to activities that did not vary with usage.

expenditure and fixed maintenance and operating costs. We considered that coal traffics should only pay for the fixed common network costs of the paths they are able to contract to use.

We considered that Queensland Rail's proposed allocation approach would result in fixed common network costs associated with providing access to non-coal services being recovered from coal traffics that cannot access this capacity. We also did not propose to accept New Hope's approach to allocating fixed common network costs based on coal's forecast paths as a share of system capacity, as it would not give any consideration to the costs of spare capacity available for coal services to contract.

Therefore, we determined allocating fixed common network costs based on the relative train paths available for contracting by coal services—that is, based on 77 weekly paths (not 87 paths) to account for ten paths currently contracted to operate through the Metropolitan network which do not traverse the West Moreton network.

Our 2015 Draft Decision said that there was also a prima facie case that we consider the 2015 DAU provisions for reducing the value of assets contained in a regulatory asset base where demand for access has deteriorated to such an extent that regulated prices based on an unoptimised asset value would result in a further decline in demand for access. While optimisation could be applied with respect to coal and non-coal services' share of the common network, we were minded to approve reference tariffs for coal-carrying train services as part of our consideration of the 2015 DAU.

We also assessed Queensland Rail's proposed 12.1 per cent sterilisation effect due to metropolitan passenger operations. We were advised on this matter by B&H, which considered the new information from Queensland Rail, including that not all freight paths are affected by maintenance on the suburban lines in the Metropolitan network. B&H estimated that the sterilisation effect should be 17 per cent, which we proposed to apply for allocating the pre–1995 assets to coal traffics.

Our 2015 Draft Decision allocated the variable maintenance and operating costs based on coal's share of forecast volumes. We proposed that the coal–allocated costs should be fully recovered from the 63 forecast coal traffics.

We considered our approach provided Queensland Rail with a reasonable return on its investment in the West Moreton network for coal-carrying train services, and recovered the efficient costs of operating infrastructure assets to provide access to a regulated service, consistent with sections 138(2)(b) and 168A(a) of the QCA Act. Our approach also meant users did not pay for network capacity they were unable to contract, whether because those paths were contracted to non-coal traffics or because capacity could not be contracted due to government-imposed contracting restrictions, consistent with section 138(2)(e) and (h) of the QCA Act.

In summary, we proposed the following coal allocators for the 2015 DAU:

- Opening asset base:
  - for capital spending since 1995: 68.8 per cent, reflecting the cap based on maximum actual paths available for contracting by coal services as a proportion of available paths
  - for assets in place before 1995: 57.1 per cent, reflecting 17 per cent sterilisation effect due to metropolitan passenger operations (that is, 83 per cent of 77.7 per cent)
- forecast capital expenditure: 68.8 per cent
- maintenance and operating costs: 68.8 per cent of fixed costs and 98.2 per cent of variable costs.

Table 1 below summarises the coal–related common cost allocators that have been considered as part of the QCA's assessments of the 2009, 2013 and 2015 DAUs.

Table 1 West Moreton network cost allocation: previous and current assessments[1]

DAUs	*Opening asset base*		*Forecast capital expenditure*	*Maintenance costs*	*Operating costs*
	Pre–1995 assets	*Post–1995 assets*			
2009 proposal	75.6% (84/111 paths)	100%	100%	92.7% (coal share of forecast gtk)	na[2]
2009 Draft Decision	60.5% (to reflect 20% adjustment for metro passenger operations)	75.6%	75.6%	92.7%	na
2013 proposal	61.7% (to reflect 15% adjustment for metro passenger operations)	88.3%[3] (user funded capex: 100% other capex: 72.6% (77/106; contracted coal paths/ total contracted paths)	94.2%[3] (coal–specific capex: 100% other capex: 72.6%)	91.0% (coal share of forecast gtk)	72.6%
2014 Draft Decision	53.6% (to reflect 22% adjustment for metro passenger operations)	68.8% (77/112 paths; contracted coal paths/ total available paths)	68.8%	91.0%	68.8%
2015 proposal	68.3% (to reflect 12.1% adjustment for metro passenger operations)	77.7% (87/112 paths; maximum potential paths available for contracting by coal/total available paths)	95.4% (63/66 paths; forecast coal paths/total forecast paths)	98.2% (coal share of forecast gtk)	95.4%
2015 Draft Decision	57.1% (to reflect 17% adjustment for metro passenger operations)	68.8% (77/112 paths; maximum actual paths available for contracting by coal/total available paths)	68.8%	78.3%[3] (fixed: 68.8% variable: coal share of forecast gtk)	74.2%[3] (fixed: 68.8% variable: coal share of forecast gtk)

1. Allocation percentages reported for 2009 and 2013 DAUs relate to the Rosewood to Macalister section and for 2015 DAU relate to the Rosewood to Jondaryan section.

2. Operating cost allocation in the 2009 DAU was based on QR Limited's cost structures and allocators which are not applicable to Queensland Rail, following the separation of QR Limited into Aurizon and Queensland Rail. Therefore, those allocators are not discussed here.

3. value weighted average percentage.

Expected revenue and efficient cost analysis under the three allocation approaches

We analysed whether expected revenue across all traffics under each of the three allocation approaches considered in this Decision (i.e. Queensland Rail's approach, the miners' approach and the QCA's approach) would be enough to meet the efficient costs of providing access for all traffics on the West Moreton network (i.e. costs that reflect the overall capacity of the network to provide all those services).

For this analysis, we considered the efficient costs for the five-year period July 2015 to June 2020, where the costs comprised:

- efficient capital charges, based on the regulatory return on and of capital (see Section 8.16 of this Decision)
- efficient maintenance costs (see Section 8.11 of this Decision)
- efficient operating costs (see Section 8.12 of this Decision).[1056]

We first calculated these costs for the whole of the West Moreton network to identify the efficient total costs of providing access for all traffics on the West Moreton network.[1057] The present value[1058] of the efficient total costs for whole of the West Moreton network is estimated at $237.7 million.

Next, we calculated the costs assigned to coal services under each of the three allocation approaches. The present value of coal-allocated costs under each approach is estimated as:

- under Queensland Rail's approach—$211.1 million;[1059]
- under the miners' approach—$152.2 million;[1060] and
- under the QCA's approach—$178.1 million.[1061]

Since the coal-allocated costs are to be recovered from forecast coal services, they also represent the present value of expected revenue from providing access for coal service on the West Moreton network.

To each of these expected coal revenue amounts, we added around $6.8 million of the present value of expected revenue from non-coal service over the period 2015–2020, estimated on the basis of

[1056] Operating costs include an allowance for tax and working capital that were derived from the building blocks tariff model for the five-year period July 2015 to June 2020.

[1057] In the building blocks tariff model, efficient costs for the whole of the West Moreton network and return on investments were calculated by using a coal allocator of 100 per cent.

[1058] We used two WACC rates for calculating the present value—6.93 per cent for 2015–16 and 5.73 per cent for 2016–20 (see Sections 3.7 and 8.16 of this Decision).

[1059] We used coal allocators from Queensland Rail's 2015 DAU proposal, which included the fixed cost allocators (see Table 15 in this Decision) that were used for post-1995 asset base, forecast capital expenditure and operating expenditure, and included different allocators for pre-1995 assets and maintenance costs. Different allocators were used for the Rosewood to Jondaryan and the Jondaryan to Columboola sections (Queensland Rail, sub. 2: 44–56).

[1060] We used fixed cost allocators summarised in Table 15, allocated variable costs based on coal's share of forecast volumes, and used a different allocator for pre-1995 assets by reducing the opening asset base allocator in Table 15 by a 22 per cent Metro impact factor suggested by miners—see Section 8.4.1 of this Decision for our consideration of the Metro impact factor in allocating the pre-1995 assets.

[1061] We used coal allocators recommended in this Decision that included the fixed cost allocators based on our Draft Decision approach summarised in Table 15 but updated to account for our estimate of West Moreton network capacity and our assessment of the number of paths available to coal services to contract in the West Moreton network—see discussion under the heading 'Change in circumstances' in Section 8.3.3 of this Decision. We allocated variable costs based on coal's share of forecast volumes, and used a different allocator for pre-1995 assets—see Section 8.4.1 of this Decision.

information submitted by Queensland Rail,[1062] which produced an estimate of the expected access revenue across all services on the West Moreton network under each allocation approach.

The results of this analysis are summarised in Table 2 below, which shows that each of the three allocation approaches results in a shortfall in recovering the efficient total costs of providing access for all services on the West Moreton network.[1063] This analysis is based on Queensland Rail's forecast volumes which we have accepted (see Section 8.10 of this Decision), noting that those forecasts include one ad hoc non-coal train service. Nevertheless, as noted in Section 8.10 of this Decision, non-coal volumes are likely to be higher than Queensland Rail's forecast. If that were the case, the overall shortfall estimated in Table 2 will decrease and possibly become immaterial depending on the extent of the rise in non-coal service volumes. Effectively, the extent, and the existence, of the shortfall depends on non-coal volumes.

Table 2: Efficient costs and expected revenue across all services on the West Moreton network under the three allocation approaches (present value over the five-year period 2015–2020)

Allocation approaches	***Efficient costs of providing access for all services***	***Expected coal service revenue***	***Expected non-coal service revenue***	***Estimated overall shortfall due to Queensland Rail's non-coal-market environment***	
	($ million)	($ million)	($ million)	($ million)	% of total costs
Queensland Rail's approach	$237.7	$211.1	$6.8	($19.8)	(8%)
Miners' approach	$237.7	$152.2	$6.8	($78.6)	(33%)
QCA's approach	$237.7	$178.1	$6.8	($52.7)	(22%)

[1062] Queensland Rail expected actual revenue of around $1.5 million from non-coal service in 2015–16 (Queensland Rail, sub. 33: 9–10), which would be from the three non-coal services forecast for 2015–16. Since forecast non-coal services remain at three services during each year of the 2015 DAU period, we expect the non-coal services revenue would be around $1.5 million per year during the 2015 DAU period, subject to CPI escalation since all calculations in this analysis are in nominal dollars. Therefore, we escalated this non-coal revenue by the assumed inflation of 2.5 per cent and calculated the present value of the resulting non-coal revenue stream over the five-year period July 2015 to June 2020.

[1063] The outcome of an expected shortfall would remain unchanged if the three forecast non-coal services were expected to pay the same tariff as coal services. This could be assessed by escalating the coal service revenue amounts by the ratio 66/63 to calculate the equivalent revenue for total forecast (66) services and comparing the resulting amount with the efficient total costs of providing access for all services.

APPENDIX F: 2015 DAU MARK-UPS

[Attached separately]

APPENDIX G: 2015 SAA MARK-UPS

[Attached separately]

APPENDIX H: QUEENSLAND RAIL'S EXTENSION DAAUS

Queensland Competition Authority

File Ref: 832243 ver 2

26 June 2015

Ms Helen Gluer
Chief Executive Officer
Queensland Rail Ltd
GPO Box 1429
Brisbane QLD 4001

Dear Ms Gluer

Final decision: Queensland Rail's draft amending access undertaking – extension of termination date

On 25 June 2015, the Queensland Competition Authority (QCA) made a final decision to refuse to approve Queensland Rail's draft amending access undertaking to extend the term of the 2008 access undertaking (the April 2015 Extension DAAU).

Context

Queensland Rail's 2008 access undertaking is due to expire on 30 June 2015.

On 9 April 2015, the QCA received from Queensland Rail, under section 142 of the *Queensland Competition Authority Act 1997* (QCA Act), a DAAU to extend its 2008 undertaking's termination date to the earlier of (i) 30 June 2016 and (ii) the date on which we approve a replacement access undertaking.

On 4 June 2015, the QCA made a draft decision to refuse to approve the April 2015 Extension DAAU and invited interested parties to make written submission on the draft decision by 12 June 2015.

Stakeholder comments and QCA Position

Five stakeholders commented on the DAAU. New Hope supported the draft decision while Asciano, Aurizon, Glencore and Queensland Rail did not. Stakeholders' comments can be grouped as below.

No lawful basis

Queensland Rail's submission says "the QCA cannot lawfully refuse to approve a DAAU on the basis that Queensland Rail has not agreed to... retrospectivity". It makes this submission having earlier said "the QCA's refusal is essentially for the reason that Queensland Rail has not given a "commitment" for the reference tariffs to be approved under the 2015 DAU to be made retrospective and backdated to 1 July 2013".

In making its decision on the April 2015 Extension DAAU, one of the factors considered by the QCA was the absence, in the April 2015 Extension DAAU, of an indication that Queensland Rail remained committed to the inclusion of an adjustment charge to recoup or refund any variations between transitional and new tariffs from 1 July 2013 (an **Adjustment Charge**).

Level 27, 145 Ann Street, Brisbane Q 4000
GPO Box 2257, Brisbane Q 4001
Tel (07) 3222 0555
www.qca.org.au

This was relevant because, in the context where such an indication had previously been given in relation to earlier extensions of the 2008 undertaking which had been granted, the absence of such an indication in connection with the April 2015 Extension DAAU, if approved, would create uncertainty about the application of an Adjustment Charge; and this in turn would have a negative effect on the public interest and the promotion of the economically efficient operation of, use of and investment in, significant infrastructure (**the Uncertainty Issue**).

It was also relevant because the absence of such an indication meant that QCA was not satisfied that the tariff for the proposed extension period was appropriate having regard to the matters relevant under section 138(2) of the QCA Act (**the Unestablished Tariff Issue**).

Effect of transfer notice

Queensland Rail made a further legal submission related to the effect of the Transfer Notice. This submission was that the Transfer Notice somehow had the effect that the April 2015 Extension DAAU must be approved; that refusing to approve the extension would create uncertainty; and that the extension was "consistent with the legally binding and unequivocal provisions of the Transfer Notice".

QCA does not consider that the matters relating to the Transfer Notice raised by Queensland Rail make it appropriate to approve the April 2015 Extension DAAU.

Refusing to approve the April 2015 Extension DAAU is not inconsistent with the Transfer Notice and does not create any relevant uncertainty. Clause 5 of the Transfer Notice states that nothing in it is to be taken to preclude amendment of the access undertaking. That would include amendment of the term of the access undertaking (which has happened on a number of occasions since the Transfer Notice was issued).

Further, although (in places) the terms of the Transfer Notice appear to extend the term of the 2008 undertaking indefinitely, the QCA is not satisfied that the Transfer Notice could validly have such an effect.

Addressing 'retrospectivity' in 2015 DAU

Aurizon said the issue of 'retrospectivity' should be addressed through the consideration of the 2015 draft access undertaking (the 2015 DAU).

While the QCA expects that the issue of 'retrospectivity' (or, more accurately, the application of an Adjustment Charge) will be considered in the 2015 DAU, the QCA does not consider this to make it appropriate to approve the April 2015 Extension DAAU.

This is because simply approving the April 2015 Extension DAAU and considering the Adjustment Charge in the 2015 DAU will not avoid the Uncertainty Issue or the Unestablished Tariff Issue identified above.

Regulatory coverage and failure to approve

Stakeholders made a range of comments about regulatory coverage and a refusal to approve the extension DAAU.

Asciano and Glencore said they do not use the western system, so a rejection decision would result in their losing regulatory certainty with no offsetting gains in terms of the timing applying for the western system tariffs. The QCA acknowledges that this offsetting benefit (not as to timing of, but as to an appropriate level of, the tariff) arises only for existing and future users of the Western system.

Queensland Rail, Glencore and Aurizon submitted there were shortcomings in the negotiate/arbitrate and other provisions of the QCA Act (which would operate if the extension DAAU was not approved). For instance, Glencore said there are protections in the existing undertaking (like defined time periods for various stages of the access negotiation period, access conditions restrictions, the queuing framework, reporting, QCA information and audit powers) that do not exist in the QCA Act. Queensland Rail said the negotiate/arbitrate provisions lack detail, are relatively untested and that any negotiation or arbitration under those provisions would be negated or adversely affected by the approval of the 2015 DAU. Aurizon said that the 2008 access undertaking not being extended would create regulatory uncertainty, particularly for any access negotiations already commenced, and that the QCA's interest in holding Queensland Rail to its previous commitments may not achieve the desired effect if Queensland Rail avoids giving the commitment, the 2008 access undertaking lapses and negotiations have to take place under Part 5 of the QCA Act.

The QCA notes that stakeholders have processes available under the provisions of Part 5 Divisions 4 and 5 of the QCA Act which address these matters. The QCA acknowledges that there is some uncertainty about how these provisions will apply given that they are untested, however the QCA is confident that the QCA Act will operate as Parliament intended and that the procedure will be practically workable. Importantly, a certain outcome from an access application is ultimately available through the arbitration provisions of the QCA Act. In this way the QCA Act ensures an access application can be concluded with certainty without an access undertaking being in place.

The QCA is not satisfied that if a negotiation or arbitration commences under the QCA Act and the 2015 DAU is subsequently approved, then the incomplete negotiation or arbitration would be negated or adversely affected. To the contrary, the QCA considers the approved undertaking would likely assist in bringing any such processes to a close.

Aurizon did not provide examples of negotiations already commenced under the 2008 undertaking (nor did any other stakeholder), however again the QCA is satisfied the QCA Act provides an appropriate process for the resolution of these matters should they arise. Many requirements will still remain effective e.g. Queensland Rail's obligations to act in good faith, to not unfairly differentiate between access seekers and to provide relevant information to an access seeker (under ss. 100(1), 100(2) and 101 of the QCA Act, respectively).

The QCA does not accept that it has an interest in holding Queensland Rail to its previous commitments as such. Rather the QCA is concerned with the uncertainties (and related consequences) created by Queensland Rail's actions (not those actions of themselves) and it believes that those matters should be considered (where relevant) under section 138(2) of the QCA Act. Parties are of course free to agree an access contract that differs from a tariff set out in an access undertaking.

The QCA has had regard to the certainty (as to the terms of the arrangements that would apply) that would be achieved if the April 2015 Extension DAAU were approved. The QCA considers that the benefit of that certainty is outweighed by the Uncertainty Issue and the Unestablished Tariff Issue that would be produced if the April 2015 Extension DAAU were approved.

Removal of western system tariff from extension DAAU

New Hope said it preferred an undertaking to remain in place, provided that did not prejudice its ability to recoup any over-payment of tariffs compared to the tariffs which (it asserts) ought to have applied had a new undertaking been in place on 1 July 2013 and said that the QCA's draft position on how the extension DAAU could be amended would achieve that outcome.

New Hope and Glencore suggested an alternative of removing the western system reference tariff from the undertaking for the extension period and extending the remainder of the undertaking. The QCA has had regard to these matters. However, we note Queensland Rail has not currently proposed to make such an amendment and there is insufficient time for Queensland Rail to submit such a proposal and have it considered before the expiry of the 2008 undertaking. Further, such an approach still risks creating the Uncertainty Issue (even if in some more limited form).

The QCA's approach

Queensland Rail previously sought seven extensions of its 2008 access undertaking. Between 30 March 2012 and 12 December 2014, in or in connection with its voluntary draft access undertakings, Queensland Rail had encouraged stakeholders to believe (and otherwise generally indicated) that it would give effect to new reference tariffs from 1 July 2013 by applying an Adjustment Charge (**Attachment 1**). The six extension requests from June 2012 to November 2014 were submitted and approved while that form of indication concerning an adjustment proposal was in place (**Attachment 2**). Queensland Rail's letters accompanying its extension DAAUs of May 2013, November 2013 and May 2014 also stated its intention to give effect to the new tariff from 1 July 2013 through adjustment charge provisions in its replacement DAU (**Attachment 2**).

Stakeholders did not object to the previous extension requests.

The QCA considered Queensland Rail's previous extension requests and stakeholder submissions in this context and approved the previous extensions.

Unlike previous extensions, the April 2015 Extension DAAU is not accompanied by a commitment from Queensland Rail to give effect to an Adjustment Charge as:

- Queensland Rail in December 2014 withdrew its June 2013 voluntary DAU that contained provisions to give effect to new tariff from 1 July 2013.
- Queensland Rail's cover letter accompanying the April 2015 Extension DAAU did not state its intention to apply tariff from 1 July 2013.
- The DAU Queensland Rail submitted on 5 May 2015 in response to the section 133 initial undertaking notice we issued, proposes to give effect to new reference tariff from the date we approve that DAU.

The QCA has considered stakeholder submissions in light of the above matters.

Our final decision

The QCA has considered Queensland Rail's April 2015 Extension DAAU and stakeholder comments as part of its consideration under s. 138(2) of QCA Act whether to approve or refuse to approve the April 2015 Extension DAAU.

The QCA's decision is to refuse to approve the April 2015 Extension DAAU. Having had regard to the matters mentioned in section 138(2) of the QCA Act, and weighing the competing considerations that arise, the QCA does not consider it is appropriate to approve the April 2015 Extension DAAU.

Queensland Rail's April 2015 Extension DAAU is not accompanied by a commitment from Queensland Rail to give effect to the new reference tariff from 1 July 2013 by means of an Adjustment Charge. The absence of such a commitment gives rise to the Uncertainty Issue and the Unestablished Tariff Issue.

The QCA has given careful consideration to the new material received from stakeholders concerning the regulatory uncertainty arising from not extending the 2008 access undertaking. In particular, the QCA has examined the potential uncertainty created by stakeholders having to rely on the untested process under the QCA Act for negotiating access to Queensland Rail's network rather than the provisions of an undertaking to which they are accustomed. While the QCA accepts the procedures are untested and that practical challenges may arise in respect of negotiations that commence in the interim period until a new access undertaking is approved, the QCA is not satisfied that these practical challenges are insurmountable or that the procedures under the QCA Act will be unworkable.

In the end, the QCA's task is to balance the future uncertainties flowing from on the one hand approving, and on the other hand not approving, the April 2015 Extension DAAU.

The QCA's position is that the disadvantages arising from approving the April 2015 Extension DAAU (particularly the Uncertainty Issue and the Unestablished Tariff Issue) outweigh the regulatory uncertainty, to the extent it may exist, from not approving the April 2015 Extension DAAU.

The way in which the QCA considers it is appropriate to amend the April 2015 Extension DAAU is by including the same kind of commitment as has previously been given by Queensland Rail, to give effect to new reference tariffs from 1 July 2013 by applying adjustment charge provisions to recoup or refund any variations between transitional and new tariffs.

Yours sincerely

Roy Green
Chair

ATTACHMENT 1

DRAFT ACCESS UNDERTAKINGS SUBMITTED DURING COURSE OF QUEENSLAND RAIL'S (QR) 2008 UNDERTAKING

DAU	*Date submitted*	*Date withdrawn*	*Adjustment charge provision*
March 2012	30 March 2012	25 February 2013[1] (QR withdrew March 2012 DAU and at the same time submitted the February 2013 DAU).	The DAU specified in cl. 3.4.2(b)(iii)(C) that 'after new Reference Tariffs are approved by the QCA in accordance with this clause 3.4.2(b) this Undertaking will apply as though it were amended to replace the Reference Tariffs with those new Reference Tariffs with effect on and from 1 July 2013.' The DAU included adjustment charge provisions in Schedule A, cl. 6. Clause 6.1(a) specified "If: 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 ... 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: ..."
February 2013	25 February 2013	28 June 2013[2] (On this date, QR submitted for the first time reference tariffs for western system coal services, and proposed consequential amendments to the February 2013 DAU. This, in effect, was a withdrawal of its February 2013 DAU and submission of a new voluntary draft access undertaking (the June 2013 DAU).[3]	The DAU specified in cl. 3.4.2(b)(iii)(C) the same provision as noted above in the March 2012 DAU. The DAU included adjustment charge provisions in Schedule A, cl. 6. Clause 6.1(a) specified the same provision as noted above in the March 2012 DAU.
June 2013	28 June 2013	12 December 2014[4]	The DAU specified in cl. 3.4.2(b)(iii)(C) the same provision as noted above in the March 2012 DAU. The DAU included adjustment charge provisions in Schedule A, cl. 6. Clause 6.1(a) specified the same provision as noted above in the March 2012 DAU.

[1] Queensland Rail, 25 February 2013.
[2] Queensland Rail, 28 June 2013
[3] http://www.qca.org.au/Rail/Queensland-Rail/More-on-QLD-Rail/Draft-Access-Undertaking/Archive/February-2013-DAU
[4] Queensland Rail, 12 December 2014.

ATTACHMENT 2

PREVIOUS EXTENSIONS OF QUEENSLAND RAIL'S 2008 UNDERTAKING

Extension DAAU	*Queensland Rail's (QR) proposal*	*Stakeholder comments*	*QCA decision*
April 2011	Proposed extending the term to 30 June 2012. In the letter accompanying the DAAU, QR said the extension will maintain regulatory coverage of train services until the approval of a replacement DAU, which it was yet to submit then.[1]	No stakeholder objected to the extension but stakeholders raised concerns about QR taking too long to submit a replacement undertaking.	We considered it reasonable to approve the extension, given that QR was yet to submit an undertaking that better reflected its business activities, noting that the decision did not prejudice our ability to issue QR a section 133 initial undertaking notice.[2]
June 2012	Proposed extending the term to 31 December 2012. In the letter accompanying the DAAU, QR said the extension will maintain regulatory coverage of train services until the approval of its March 2012 replacement draft access undertaking (DAU).[3] The March 2012 DAU included adjustment charge provisions to backdate reference tariff to 1 July 2013 (see **Attachment 1**).	No stakeholder objected to the extension.	We approved the extension.[4]
October 2012	Proposed extending the term to 30 June 2013. In the letter accompanying the DAAU, QR said the extension will allow sufficient time for consultation with stakeholders and approval of its March 2012 DAU.[5]	No stakeholder objected to the extension although New Hope wanted new reference tariffs to be in place by 1 July 2013 on the expectation that the tariffs for the regulatory period beginning 1 July 2013 would be lower.[6]	We approved the extension.[7]
May 2013	Proposed extending the term to 31 December 2013. In the letter accompanying the DAAU, QR said the extension will provide continued regulatory certainty for stakeholders while the QCA's approval process for the	No stakeholder objected to the extension. However, stakeholders were disappointed that QR was yet to submit its western system reference tariff proposal and were concerned about rolling forward the existing tariff, as they expected the tariff to decline from 1 July	We approved the extension on the basis that it would allow time to finalise the 2013 DAU assessment process and that Queensland Rail intended to apply an adjustment charge mechanism to recover (or return) the difference between the transitional tariffs and the

[1] Queensland Rail, April 2011.
[2] QCA, May 2011.
[3] Queensland Rail, April 2012.
[4] QCA, June 2012.
[5] Queensland Rail, October 2012.
[6] New Hope, November 2012.
[7] QCA, November 2012.

Extension DAAU	*Queensland Rail's (QR) proposal*	*Stakeholder comments*	*QCA decision*
	replacement February 2013 replacement DAU is finalised.[8] In the letter, QR also stated that it was proposing that transitional reference tariffs will apply from 30 June 2013, being current reference tariffs escalated by CPI. QR said the adjustment charge provisions in AU1 [February 2013 DAU] will allow the reference tariff to be backdated upon the approval of AU1. QR noted that transitional tariffs were applied in the 2005 and 2010 access undertakings.[9]	2013.[10] New Hope said 'the interim tariff applicable to the extension be set such as to minimise the risk of overpyament' and suggested adjusting QR's proposed interim tariff to reflect a lower weighted average cost of capital due to lower government bond rates and debt margins.	tariffs that would be approved as part of the 2013 DAU assessment process.[11]
November 2013	Proposed extending the term to the earlier of 30 June 2014 and the date on which we approve a replacement undertaking. In the letter accompanying the DAAU, QR said it intended to continue with its proposal that the transitional reference tariffs remain and continue to apply up until the approval of AU1 [June 2013 DAU[12]]. QR also stated the adjustment charge provisions in AU1 will allow the reference tariff to be backdated to 1 July 2013 upon the approval of AU1. QR noted that transitional tariffs were applied in both the 2005 and 2010 access undertakings and is also in practice with Aurizon Network.[13]	No stakeholder objected to the extension, although New Hope suggested we prioritise the determination of new reference tariffs as part of the 2013 DAU assessment process.[14]	We approved the extension DAAU.[15]
May 2014	Proposed extending the term to the earlier of 31 December 2014 and the date on which we approve a replacement undertaking. In the letter accompanying the	We did not receive any submissions.	We approved the extension DAAU.[17]

[8] In February 2013, Queensland Rail withdrew its March 2012 DAU and submitted the February 2013 DAU, which retained provisions to apply reference tariffs from 1 July 2013 through an adjustment charge (see **Attachment 1**).
[9] Queensland Rail, May 2013.
[10] Aurizon, May 2013; New Hope, May 2013.
[11] QCA, June 2013.
[12] In June 2013, Queensland Rail resubmitted its February 2013 DAU and included, for the first time, its proposed reference tariffs for the western system. The June 2013 DAU retained provisions to apply reference tariffs from 1 July 2013 through an adjustment charge (see **Attachment 1**).
[13] Queensland Rail, November 2013.
[14] New Hope, November 2013.
[15] QCA, November 2013.

Extension DAAU	*Queensland Rail's (QR) proposal*	*Stakeholder comments*	*QCA decision*
	DAAU, QR reiterated its intention to continue with its proposal to apply transitional reference tariffs until the approval the AU1 [June 2013 DAU] and said the adjustment charge provisions in AU1 will allow the reference tariff to be backdated to 1 July 2013.[16]		
November 2014	Proposed extending the term to the earlier of 30 June 2015 and the date on which we approve a replacement undertaking. In the letter accompanying the DAAU, QR said the extension will provide continued regulatory certainty for stakeholders and allow sufficient time for the completion of the AU1 [June 2013 DAU] approval process.[18]	We did not receive any submissions.	We approved the DAAU.[19] The letter accompanying the November 2014 extension DAAU did not withdraw Queensland Rail's earlier commitment to backdating tariffs and the relevant clauses were still before the QCA in the June 2013 DAU submitted by Queensland Rail.

[17] QCA, June 2014.
[16] Queensland Rail, May 2014.
[18] Queensland Rail, November 2014.
[19] QCA, December 2014.

APPENDIX I: LIST OF SUBMISSIONS

Organisation/individual	***Submission number***
Asciano	5, 28
Aurizon	6, 20, 29
Glencore	7, 25*, 30
New Hope	8, 9, 10, 11,12, 19*, 21, 22, 23, 24, 31*, 32*
Port of Brisbane	13
Queensland Rail	1, 2*, 3, 4, 17, 18*, 26*, 33*
Queensland Resources Council	14, 34
Sekitan Resources	15*
Yancoal	16, 27, 35

**Claims of confidentiality have been made for part or all of these submissions*

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