

Statement of Regulatory Intent

**Queensland Rail 2025
DAU**

November 2023

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Foreword

This Statement of Regulatory Intent outlines our intended approach to managing information-gathering processes, stakeholder consultation and assessment timeframes throughout our investigation of Queensland Rail's 2025 draft access undertaking (DAU).

Queensland Rail has voluntarily submitted its DAU early enough that there is a high probability of having a replacement undertaking ready to approve when its current undertaking expires, if all parties contribute in a constructive way.

While it is a given that the new undertaking needs to be appropriate to approve under the *Queensland Competition Authority Act 1997* (the QCA Act), we consider it is also in the interests of all parties to complete the process on time, where possible. The processes set out in this Statement of Regulatory Intent support both goals. We intend to deliver our decisions within reasonable timeframes.

We recognise stakeholders' important role in our investigation – effective stakeholder engagement promotes a more informed decision-making process and better regulatory outcomes. Stakeholder participation is part of a balanced and transparent regulatory process and supports accountability and confidence in our decision-making.

We therefore encourage robust stakeholder involvement, with arguments backed up by facts and well-reasoned explanations. We also encourage stakeholders and Queensland Rail to collaborate throughout our investigation, where possible.

Effective stakeholder engagement

Effective stakeholder engagement is not an open-ended process of consultation and information provision. This Statement of Regulatory Intent outlines our expectations of stakeholders that participate in this regulatory process – especially how, and at what stages of the investigation, they can contribute to the process.

We consider early involvement by stakeholders provides for a more timely decision-making process and enhances opportunities for collaboration. In particular, should a stakeholder raise a significant issue, or propose a major policy change, early engagement will afford other stakeholders natural justice by giving them sufficient opportunity to consider and comment on matters that affect them.

We are keen to work with Queensland Rail, its customers and other stakeholders to build on the successful investigation that led to the on-time approval of Queensland Rail's current undertaking. The processes in this Statement of Regulatory Intent largely replicate those published for the investigation of Queensland Rail's 2020 DAU.

In publishing this Statement of Regulatory Intent, we are outlining our approach at the start of the investigation, as part of promoting a regulatory process that is effective, transparent, efficient and timely.

We invite submissions on Queensland Rail's 2025 DAU by **Friday 2 February 2024**.

Submissions

Closing date for submissions: 2 February 2024

Public involvement is an important element of our decision-making processes. Therefore, we invite submissions from interested parties. We will take account of all submissions received within the stated timeframes. Submissions, comments or inquiries regarding our assessment of Queensland Rail's 2025 draft access undertaking should be directed to:

Queensland Competition Authority

GPO Box 2257, Brisbane Q 4001

Tel (07) 3222 0555

www.qca.org.au/submissions

Confidentiality

In the interests of transparency, and to promote informed consultation, we intend to make all submissions publicly available. However, if a person making a submission believes information in it is confidential, they should claim confidentiality over the relevant information (and state the basis for that claim). We will assess confidentiality claims in accordance with the QCA Act. Among other things, we will assess if disclosure of the relevant information is likely to damage a person's commercial activities, and we will consider the public interest.

Claims for confidentiality should be clearly noted on the front page of a submission, and relevant sections of the submission marked as confidential. The submission should also be provided in both redacted and unredacted versions. In the redacted version, all information claimed as confidential should be removed or hidden. In the unredacted version, all information should be exposed and visible. These measures will make it easier for us to make the remainder of the document publicly available. A confidentiality claim template is available at www.qca.org.au/submission-policy.

The template gives guidance on the type of information that may help us to assess a confidentiality claim. We encourage stakeholders to use this template when making confidentiality claims.

Public access to submissions

Subject to any confidentiality constraints, submissions will be available for public inspection at our Brisbane office or on our website at www.qca.org.au. If you experience any difficulty gaining access to documents, please contact us on **(07) 3222 0555**.

1 Introduction

In October 2022, Queensland Rail committed to submitting a voluntary draft access undertaking (DAU) by the end of October 2023.¹ We considered this would support the objective of having an appropriate replacement undertaking ready to approve before the 2020 undertaking terminates at the end of June 2025.

On 10 November 2023, Queensland Rail submitted its voluntary DAU in accordance with section 136 of the Queensland Competition Authority Act 1997 (the QCA Act).

This Statement of Regulatory Intent outlines our intended approach to managing information-gathering processes, stakeholder consultation and assessment timeframes throughout our investigation.

We are publishing this statement to promote a structured, transparent and predictable process for assessing the proposal. We recognise stakeholders' important role in our investigation and encourage robust stakeholder involvement and collaboration.

This document sets out how we intend to manage the mechanics of the regulatory process. It is not intended to be an exhaustive statement of our process for assessing the 2025 DAU. The assessment will proceed in accordance with the requirements of the QCA Act.

1.1 Legislative requirements

The QCA Act outlines various procedures we must apply while assessing Queensland Rail's 2025 DAU:

- Section 146 provides for us to issue a notice of investigation to commence an investigation for deciding whether to approve the DAU. A notice of investigation states our intention to conduct the investigation and invites interested parties to make written submissions on the proposed DAU.
- Section 138(3)(c) requires that we publish the DAU and invite persons to make submissions on it.
- Section 138(3)(d) requires that we consider any submissions received by stakeholders (within the consultation period) before deciding whether to approve the DAU.
- Section 173(1)(d) states that we must comply with natural justice in undertaking a DAU investigation. Consistent with this, we will publish a draft decision to provide stakeholders with an opportunity to comment on our relevant positions.

These requirements will form the basis of our 2025 DAU assessment process (see Figure 1).

¹ Queensland Rail, [Queensland Rail Access Undertaking](#), letter to the QCA, 23 October 2022.

Figure 1 Indicative 2025 DAU assessment process



We intend to incorporate additional processes where we consider they will provide for a more transparent and effective 2025 DAU assessment. For instance, in addition to consulting on Queensland Rail's DAU and our draft decision, we may seek further stakeholder submissions on specific matters.

We will also have regard to the rights outlined in the *Human Rights Act 2019* (Qld). In relation to access to Queensland Rail's declared services and to our investigation of Queensland Rail's DAU, these rights may include property rights (s. 24) and the right to a fair hearing (s. 31). We will analyse these matters appropriately as we prepare our decision concerning approval of the DAU.

1.2 Approach to assessing the 2025 DAU

Section 138 of the QCA Act outlines the factors affecting the approval of a DAU. In particular, we may approve Queensland Rail's 2025 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 (Box 1).

Box 1: Section 138(2) of 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:

- 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.

We will assess the 2025 DAU having regard to these matters and stakeholder submissions.

2 Consultation approach

Public involvement is an important element of the regulatory process. Effective consultation with interested parties is integral to a balanced and transparent regulatory process; it also supports accountability and confidence in our decision-making.

We are outlining our intended approach to consultation so that stakeholders are aware of how, and at what stages of the investigation, they can contribute to the DAU assessment process.

2.1 Consulting on the 2025 DAU

Our assessment of the 2025 DAU will be most effective if the stakeholders who participate in consultation are well-informed. We have a role in disseminating relevant information to stakeholders at various stages during the DAU assessment process to provide for more effective consultation.

Where necessary, we will release consultation papers to provide context and summarise key aspects of specific issues. However, we intend to restrict the use of consultation papers to strategic matters or where a particular need for one is identified.

This will make our role of disseminating information to stakeholders more effective, as targeted consultation will address particular matters in a more direct way (see section 2.3).

2.2 Opportunities for collaborative stakeholder submissions

We encourage open communication between stakeholders, including early signalling of perceived issues. We will provide opportunities for collaboration to resolve these issues, as it will improve the regulatory process.

Stakeholders will therefore have an opportunity to make collaborative and consensus submissions during a subsequent consultation period immediately following the initial consultation period after we release our draft decision.

We encourage stakeholders to collaborate during the subsequent consultation period after our draft decision, and to provide joint submissions. It is hoped that stakeholders will take this opportunity to discuss certain issues and, where possible, reach a consensus.

We intend to have regard to consensus positions that stakeholders submit to us, as part of our assessment of the 2025 DAU.

2.3 Timeframes for consultation

When stakeholders have adequate time for consultation, they can prepare quality submissions. Unplanned extensions to submission deadlines can then also be avoided. We are mindful of providing certainty to stakeholders about expected consultation periods. This will provide greater predictability for the overall timeliness of the DAU assessment process. Our intended consultation timeframes are:

- 8 to 12 weeks for a DAU consultation period
- 6 to 8 weeks for a post-draft-decision consultation period (plus a subsequent period for collaborative submissions)
- at least 2 weeks for stakeholders to respond to targeted consultation papers.

While these indicative timeframes provide guidance, we will have regard to the scope of issues being presented. Stakeholders will be made aware of consultation timeframes on our website and in relevant stakeholder notices.

2.4 Obligations for stakeholders

Sections 230 to 233 of the QCA Act outline a number of obligations and responsibilities when stakeholders provide information to us. It is an offence to:

- provide information to us that is false or misleading to the person's knowledge (s. 230)
- provide a document to us that is false, misleading or incomplete to the person's knowledge and without notifying us that it is false, misleading or incomplete (s. 231)
- obstruct our staff members from exercising our functions under the QCA Act (s. 232)
- intimidate another person that is providing evidence as part of an investigation (s. 233).

Stakeholders should be mindful of these obligations, particularly when submitting information or participating in the DAU investigation.

2.5 Disclosure of information

Stakeholder involvement is a key element of our decision-making process. In the interests of transparency, and to promote informed discussion, we intend to publish the information received from stakeholders on our website. However, in accordance with the QCA Act, we will not disclose information that is considered confidential (see section 6).

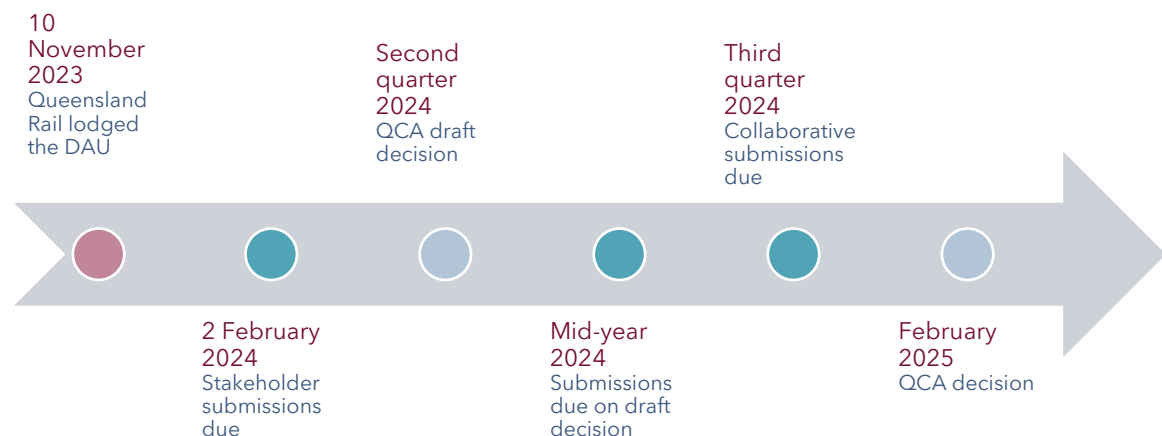
Disclosing information will assist stakeholders to identify key issues, while maintaining an open transparent process will support accountability and confidence in our decision-making. Disclosing information is also consistent with the principles of natural justice. Natural justice requires that people or organisations who may be affected by our decision are informed of relevant matters considered as part of the decision-making process and provided an opportunity to respond to these matters.

3 Assessment timeframes

We are outlining the expected timeframes for assessing Queensland Rail's 2025 DAU, to provide greater certainty for stakeholders.

In accordance with section 147A of the QCA Act, we must use our best endeavours decide whether to approve or refuse to approve a DAU within six months after the investigation starts. Figure 2 shows indicative times for key milestones.

Figure 2 Indicative timeframes for the 2025 DAU



Updating indicative timeframes

Timeframes required to assess a DAU depend on the issues encountered throughout the investigation. The timeframes may need to be adjusted to account for periods of time that are excluded from the assessment timeframe in accordance with the QCA Act (s. 147A), namely:

- stakeholders responding to notices given under section 185 of the QCA Act, requiring information or documents to be provided
- consultation periods
- other matters that Queensland Rail agrees should be excluded.

In accordance with section 147A(4) of the QCA Act, the assessment timeframes are being published on our website at the start of our investigation. This is intended to guide stakeholders through the expected regulatory process. We will update the expected timeframes as required.

4 Late information

To promote the timely consideration and assessment of Queensland Rail's 2025 DAU, all stakeholders are encouraged to provide information and submissions by the relevant due date.

While there may be legitimate reasons for late information, such as new information becoming available, stakeholder compliance with deadlines is important for timely decision-making.

Indeed, natural justice requires that matters be processed in a timely way and does not permit an open-ended process of information provision, particularly when ample time has already been allowed.

4.1 Disregarding late information

We may make a decision without taking into account late information – submissions or other information provided by stakeholders after the submission deadline provided – if doing so is reasonable (s. 168B of the QCA Act).

In determining whether it is reasonable to disregard late information, the QCA Act (s. 168B(4)) requires us to take into account:

- whether the late information was available, or ought reasonably to have been available, to the person during the consultation timeframe provided
- how long, complex and relevant the late information is
- how much time has elapsed since the timeframe provided for consultation ended
- how advanced our decision-making process is when the late information is received.

We intend to consider whether to take late information into account on a case-by-case basis, where it is reasonable to do so in accordance with the QCA Act. Where stakeholders provide late information, they should also consider providing a detailed explanation as to why it would be reasonable to have regard to the late information.

4.2 Considering late information

Where we will have regard to information provided after the stated deadline, we intend to publish a stakeholder notice that such information has been provided. This will result in greater transparency.

We will consider, on a case-by-case basis, whether additional consultation is required to provide stakeholders with an opportunity to consider the late information. Where the late information has implications for consultation periods and the overall timeframes of the assessment process, we will outline any changes to timeframes in a stakeholder notice and on our website.

5 Information requests

Additional information from Queensland Rail and other stakeholders may be required during the investigation for us to adequately assess the 2025 DAU. We intend to implement a structured process for acquiring information that will limit the potential for lengthy delays to the assessment process. The process may involve:

- issuing an informal request for information to be provided within a reasonable timeframe, and/or
- issuing a notice under section 185 of the QCA Act to request information.

This approach is consistent with the process we used to request information from stakeholders in previous investigations.

5.1 Information requests

Where we identify the need to obtain information from a particular stakeholder, we may make an informal request for the required information. However, we may consider it necessary to move directly to issuing a section 185 information notice.

We intend to inform stakeholders in writing of the type of information that we are requesting and the reason it is required. This written request will also detail the preferred format.

All information requests will set out appropriate timeframes for providing information.

If the relevant stakeholder does not comply with the informal request (or does not provide adequate reasoning for not doing so), we will be minded to issue a section 185 notice to request the information.

5.2 Section 185 information notices

In accordance with section 185 of the QCA Act, we may issue a written notice requiring a person to give a statement to us setting out stated information or give a stated document by a certain date. Failure to comply with a section 185 notice (without a reasonable excuse) could attract a penalty as provided for by the QCA Act.

Periods of time waiting for persons to respond to section 185 notices are excluded from the six-month decision-making timeframe in the QCA Act. We will determine, on a case-by-case basis, whether consultation on such information is appropriate and, if that is the case, provide adequate time for stakeholders to comment.

Where a section 185 notice is required to obtain information, and it results in delays to the 2025 DAU assessment process, we will outline any changes to our timeframes in a stakeholder notice.

6 Confidentiality

We prefer that submissions are made publicly available, wherever this is appropriate. However, a person making a submission who does not want particular information to be public, may claim confidentiality in respect of the submission (or any part of the submission).

Information that is not confidential will be published on our website and made publicly available.

In accordance with the QCA Act, information will be considered confidential where we consider disclosing the information would be likely to damage the person's commercial activities and would not be in the public interest.

If we consider information is confidential for the purposes of the QCA Act, we must take all reasonable steps to ensure the information is not, without the affected person's consent, disclosed to another person. However, stakeholders should be aware that we may still disclose confidential information without consent in particular circumstances set out in the QCA Act.²

Once the public version of a submission is published on our website, a confidentiality claimant may receive requests from other stakeholders seeking its confidential information. We encourage parties to accept appropriately given confidentiality undertakings to allow for the sharing of confidential information. This will ensure an open and transparent inquiry process.

6.1 Making a confidentiality claim

In making a confidentiality claim, a claimant should:

- clearly indicate the information that they consider should not be disclosed to another person
- state their view that disclosure of the information is likely to damage their commercial activities
- provide supporting justification for their view, and detail why they consider disclosing the information would not be in the public interest.

Our structured process for confidentiality claims involves stakeholders:

- identifying the category of confidential information associated with the claim
- using our template to submit a confidentiality claim.

Submissions (or sections of submissions) that are claimed to be confidential should be clearly identified. Where it is unclear why a submission has been marked 'confidential', the status of the submission will be discussed with the person making the submission.

We consider that this structured approach will assist stakeholders to identify confidential information for the purposes of the QCA Act and to submit well-substantiated confidentiality claims

² For example, refer to section 187(3) of the QCA Act.

for the 2025 DAU investigation process. This approach will also contribute to our timely assessment of such claims.

6.2 Confidentiality claim template

Stakeholders should provide sufficient reasoning about why the disclosure of information is likely to damage their commercial activities.

To provide guidance on the type of information that would assist our assessment of a claim for confidentiality, we have developed a confidentiality claim template for stakeholders. It prompts a claimant to:

- identify the information they consider to be confidential
- specify the category of confidentiality for each claim
- outline the reasons the information is considered to be confidential.

We would appreciate stakeholders using this template when making confidentiality claims. The template is available on our website at www.qca.org.au/submission-policy.

6.3 Categories of confidential information

We have identified specific categories of confidential information to provide stakeholders with guidance on how they should identify confidential information made available to us. When making a confidentiality claim, stakeholders should identify which category of confidential information describes the claim.

These categories of confidential information are presented to provide guidance only. Classification of a claim into a specific category will not guarantee non-disclosure of information. Nor are these guidelines intended to limit the scope of confidentiality claims made. We will assess each confidentiality claim on a case-by-case basis consistent with the requirements of the QCA Act.

Categories of confidential information include:

- commercially sensitive costs – cost information that would affect the stakeholder's ability to negotiate competitive bids or prices in the future
- market or strategic knowledge – information that communicates the behaviour or performance of a firm, which may hinder its ability to negotiate in future transactions
- intellectual property – valuable information that would unfairly benefit competitors if made public
- personal information – information that reveals personal information and details about an individual
- other – confidential information that is not within any of the above categories.

By using these categories as guidance, claimants can contribute to a timely regulatory process.

6.4 Disclosure of non-confidential information

A transparent approach to stakeholder consultation supports accountability and confidence in our decision-making process. On this basis, information that is not confidential will be published on our website.

If we refuse a request for confidentiality, we will notify the relevant stakeholder in writing before publishing the information. Where an assessment of claims for confidentiality results in delays to publishing such information, we will release a stakeholder notice to inform stakeholders.