

Explanation of proposed amendments to the Standard Rail Connection Agreement

1. Insurance

Aurizon Network agrees that insurance requirements should be reciprocal between Aurizon Network and private infrastructure owners. However, the current requirements in the QCA's final decision are difficult to implement in certain respects. In particular they require Aurizon Network to obtain insurance cover that would be difficult to obtain, highly priced, is inconsistent with Aurizon's insurance approach or duplicates cover already required or held.

In particular:

- Aurizon Network would self insure for property damage, consistent with the way in which it manages risk on the rest of the network.
- Third party property damage is covered by public liability insurance already held.
- Employee's insurance duplicates Workers Compensation Insurance we are obliged to hold.
- Public liability insurance and motor vehicle insurance is not available for general contractual obligations or the liability of the customer's rail hauler under the SRCA.

2. The treatment of connecting infrastructure at end of term of agreement

The QCA's decision provides for the transfer of ownership of the connecting infrastructure (not required by Aurizon Network to maintain the operational integrity of the mainline network) to the Owner on termination of the agreement. The Authority's decision is intended to address the situation where an Owner may wish to preserve future flexibility should it decide to utilise its private infrastructure subsequent to termination – e.g. if a closed mine became economic again.

The QCA's drafting contemplates that the connecting infrastructure will remain connected to the mainline network beyond termination but does not provide for arrangements to govern the associated and ongoing maintenance and management obligations. These include safety concerns, maintenance and other ongoing operational costs that arise with continuing the connecting infrastructure, and a necessity to continue access to private land to manage these factors.

Aurizon Network has proposed a number of changes to ensure that the ongoing management and maintenance obligations are addressed by way of an agreement to be entered into between the parties setting out the terms and conditions upon which the connecting infrastructure would remain connected to the mainline network beyond termination of the standard rail connection agreement.

3. Investigation of incidents

Aurizon Network recognises the views expressed by stakeholders and the Authority with respect to the management and investigation of incidents on Private Infrastructure. In order to ensure that the requirements of the *Transport (Rail Safety) Act 2010* are properly implemented, we propose a simpler approach to investigation where each party's RIM investigates on its own infrastructure, with the cooperation of the other party. We have endeavoured to draft these amendments in as simple and fair a way as possible.

4. Confidentiality

At the end of the term of the SRCA, confidentiality agreements will become ineffective. To address this we propose including a 30 year protection period for confidential information related to the agreement, and in the form of Confidentiality Deed to be executed by a third party RIM. We also propose amendments to clarify that the third party RIM is intended to sign the Deed and that other parties are required to keep information confidential, without the additional administrative burden of requiring other advisers etc to enter into a specific confidentiality deed.

5. Reciprocal rights of access to land in emergencies

To ensure that access to land – both Aurizon Network’s land and private owner’s land – is governed by the provisions of the Emergency Response Plan, we have included an explicit requirement that this access can only take place in accordance with the ERP and the IRMP.

6. Definition of “design”

The current drafting wrongly states that the connecting infrastructure is built on behalf of the “owner”. The owner of connecting infrastructure is always Aurizon Network. In the SRCA, “owner” means the private infrastructure owner. We have proposed removal of this term to eliminate confusion.

7. Restrictions on Aurizon Network’s ability to deal with connecting infrastructure

In order to ensure that connecting infrastructure and mainline infrastructure, of which connecting infrastructure is an integral part, are managed consistently by Aurizon Network, while protecting the interests of Private Infrastructure Owners in the future, we have proposed an amendment that would limit Aurizon Network's ability to encumber, transfer or dispose of connecting infrastructure except as part of a transaction involving the adjoining mainline infrastructure.

8. Provision of additional services

The current drafting of the Agreement is in our view unclear that where Aurizon Network is required to provide services under the terms of the agreement, and is not otherwise reimbursed for the costs of providing services through access charges, the Owner should reimburse Aurizon Network for the reasonable and prudent costs of carrying out the services. An amendment has been included to clarify this issue. Note that that amendment is clear that where costs are recovered in access charges, they cannot also be recovered through this mechanism.

9. Time to review design provided by customer

Design approval can be a significant process. We have proposed an amendment to ensure that when such approval will take longer than the base case of 10 days, or if there are extenuating circumstances, Aurizon Network is able to extend the period by written notice.

10. Provision of Train Services Plan

The primary reason for requesting the inclusion of a train services plan, is so there is a clear understanding of what the maintenance requirement will be, between the owner of Private Infrastructure (who is required to pay for maintenance of a connection), and Aurizon Network (who is responsible for completing such maintenance) .

Benefits of including a Train Services Plan include:

- Ensuring Aurizon Network is aware of the Connection utilisation to allow planning of maintenance in line with the Network maintenance schedule so that it is completed in an efficient way (ensuring system capacity retained for coal services)
- Ensuring that connections are not over maintained. Maintenance being the responsibility of Aurizon Network but the Private Infrastructure owner is required to pay for such maintenance, if maintenance occurs in line with TSP profile then Connecting Infrastructure won't be over or under maintained and appropriate work and cost is incurred by both parties.
- Removal of risk for Aurizon Network and the Rail Operator who utilises the connection that it is not under maintained and remains safe for use.

Although Aurizon Network could look to establish a maintenance profile based on Train Service Entitlements under Access Agreements this would not necessary provide a full picture of Connecting Infrastructure utilisation. For example;

1. Where the Connecting Infrastructure connects a maintenance depot to the mainline Network, the entrance and exit to the depot is dependant not on the train service entitlements under which the Rail Operator may be running, but on the maintenance profile for the operator and the number of consists that there are in the system. The maintenance profile (how often consists refuel, reprovision and are examined/repared) is individual to each operator, and

dependent on consist configuration and fleet age and type; issues difficult for Aurizon Network to make assumptions about.

2. Where the Connecting Infrastructure connects Private Infrastructure to the mainline and the Private Infrastructure is used for other reasons than just the loading or unloading of trains (i.e. there are storage roads/facilities) there remains the same problem as to anticipating traffic volume and subsequent weight over connecting infrastructure as outlined above.

There remains a risk that if Aurizon Network is left to anticipate the use of a connection, and assumptions are flawed, under or over maintenance of the connections may occur. Aurizon Network, in requesting a TSP, is looking to ensure that both the safety and costs and risks of over or under maintaining a connection are minimised to the benefit of the owner of the private infrastructure, Aurizon Network, and the total system through efficient maintenance planning.