



Queensland

Queensland Competition Authority and Other Legislation Amendment Bill 2010

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2010

A Bill

for

An Act to amend the Queensland Competition Authority Act 1997, the Queensland Competition Authority Regulation 2007 and the Transport Infrastructure Act 1994 for particular purposes

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Queensland Competition Authority and Other Legislation Amendment Act 2010*.

2 Commencement

Sections 62 to 64 commence on the later of the following days—

- (a) the day a gazette notice is made under the *Transport Infrastructure Act 1994*, section 438A as inserted by the *Transport and Other Legislation Amendment Act (No. 2) 2010*, section 74;
- (b) the day this Act receives the royal assent.

Part 2 Amendment of Queensland Competition Authority Act 1997

3 Act amended

This part amends the *Queensland Competition Authority Act 1997*.

4 Amendment of s 5 (Definitions—the dictionary)

Section 5, ‘the schedule’—
omit, insert—

‘schedule 2’.

5 Amendment of s 10 (Authority’s functions)

(1) Section 10(f), ‘Ministerial declarations’—

omit, insert—

‘declarations of services under part 5’.

(2) Section 10—

insert—

‘(ha) to monitor compliance with approved access undertakings; and’.

6 Amendment of s 69E (Object of pt 5)

Section 69E, after ‘in,’—

insert—

‘significant’.

7 Amendment of s 70 (Meaning of *facility*)

(1) Section 70(2)—

omit.

(2) Section 70(3)—

renumber as section 70(2).

8 Amendment of s 72 (Meaning of *service*)

Section 72(2)(d)—

omit.

9 Replacement of pt 5, div 2 hdg (Ministerial declarations)

Part 5, division 2, heading—

omit, insert—

‘Division 2 Declarations of services’.

10 Amendment of pt 5, div 2, sdiv 1 hdg (Criteria for declaration recommendations and Ministerial declarations)

Part 5, division 2, subdivision 1, heading, ‘Ministerial’—
omit.

11 Amendment of s 76 (Access criteria)

(1) Section 76(1)(a) and (b), ‘candidate’—
omit.

(2) Section 76(2)—
insert—

‘(ba) that the facility for the service is significant, having regard to—

- (i) the size of the facility; or
- (ii) the importance of the facility to the Queensland economy;’.

(3) Section 76(2)(ba) to (d)—
renumber as section 76(2)(c) to (e).

(4) Section 76(3), ‘(2)(d)’—
omit, insert—

‘(2)(e)’.

(5) Section 76(3)—
insert—

‘(i) if the facility for the service extends outside Queensland—whether access to the service provided outside Queensland by means of the facility is regulated

by another jurisdiction and, if so, the desirability of consistency in regulating access to the service.’.

12 Amendment of s 77 (Requests about declarations)

Section 77(1) and (2), ‘candidate’—

omit.

13 Amendment of s 79 (Making recommendation)

(1) Section 79(3)—

omit, insert—

‘(3) The authority must publish the recommendation and the reasons for the recommendation in the way the authority considers appropriate.’.

(2) Section 79(4), ‘candidate’—

omit.

14 Insertion of new s 79A

After section 79—

insert—

‘79A Period for making recommendation

‘(1) The authority must use its best endeavours to make a recommendation under section 79 within 6 months from the day the authority received the request.

‘(2) However, the 6 month period mentioned in subsection (1) does not include any of the following—

(a) if the authority conducts an investigation for making the recommendation and gives a notice under section 185 to a person requiring the person to give information or produce a document for the investigation, a day in the period—

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- (i) starting on the day the notice is given to the person; and
- (ii) ending on the day the person complies with the notice;
- (b) if the authority publishes a document about the recommendation and invites persons to make submissions on the document to the authority within a stated period—a day in the period for making submissions stated by the authority.
- ‘(3) The authority must publish a notice on its website, while the authority is considering the making of the recommendation, stating—
 - (a) the day the 6 month period mentioned in subsection (1) started or will start; and
 - (b) the day the period will end; and
 - (c) for a day not included in the period under subsection (2)—the reason the day is not included in the period.

Editor’s note—

The authority’s website can be found at <www.qca.org.au>.

- ‘(4) If the authority fails to make the recommendation within the 6 month period mentioned in subsection (1), it must, as soon as practicable after the period ends, give written notice of the reasons for the authority’s failure to—
 - (a) the applicant for the request about the declaration of the service; and
 - (b) if the request was not made by the Ministers—the Ministers.’.

15 Amendment of s 80 (Factors affecting making of recommendation)

Section 80(1) to (3) and (5), ‘candidate’—

omit.

16 Amendment of pt 5, div 2, sdiv 3 hdg (Investigations about candidate services)

Part 5, division 2, subdivision 3, heading, ‘candidate’—
omit.

17 Amendment of s 81 (Power of authority to conduct investigation)

Section 81, ‘candidate’—
omit.

18 Amendment of s 84 (Making declaration)

Section 84—
insert—

‘(5) If the Ministers decide not to declare the service and the declaration recommendation was made under subdivision 4A, the decision does not affect the existing declaration for the service.’.

19 Amendment of s 85 (Notice of decision)

Section 85(2)—
omit, insert—

‘(2) Also, as soon as practicable after making the decision, the Ministers must—

- (a) give the designated material for the decision to the following—
 - (i) if a request about the declaration of the service was made by someone other than the Ministers—the applicant;
 - (ii) the owner of the service, unless a request about the declaration of the service was made by the owner;

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- (iii) if the owner and operator of the service are different entities—the operator, unless a request about the declaration of the service was made by the operator; and
- (b) give to the authority a written notice stating the decision and the reasons for the decision.’.

20 Amendment of s 86 (Factors affecting making of declaration)

Section 86, ‘candidate’—
omit.

21 Amendment of s 87 (Duration of declaration)

Section 87, ‘Ministerial’—
omit.

22 Insertion of new pt 5, div 2, sdiv 4A

Part 5, division 2—
insert—

‘Subdivision 4A Review of declaration

‘87A Declaration recommendation to be made before expiry of declaration

- ‘(1) At least 6 months, but not more than 12 months, before the expiry date of a declaration of a service, the authority must recommend to the Ministers that, with effect from the expiry date—
 - (a) the service be declared; or
 - (b) part of the service, that is itself a service, be declared; or
 - (c) the service not be declared.

-
- '(2) Before making the recommendation, the authority may consult with any person it considers appropriate.
 - '(3) The authority must publish the recommendation and the reasons for the recommendation in the way the authority considers appropriate.
 - '(4) If the authority makes a recommendation that the service, or part of the service, be declared with effect from the expiry date, the authority also must recommend the period for which that declaration should operate.

Note—

On receiving the recommendation the Ministers must, under subdivision 4, either declare all or part of the service, or decide not to declare the service.

'87B Notice of review

'The authority must, when it starts considering the making of a declaration under section 87A, tell the owner of the service that the authority is considering the matter.

'87C Factors affecting making of recommendation

- '(1) The authority must make a recommendation under section 87A(1)(a) if the authority is satisfied about all of the access criteria for the service.
- '(2) The authority must make a recommendation under section 87A(1)(c) if the authority is not satisfied about all of the access criteria for the service.
- '(3) Despite subsection (1), the authority may make a recommendation under section 87A(1)(c) if the authority is not satisfied that access to the service would, after the expiry date for the existing declaration for the service, be likely to have a substantial effect on a market.
- '(4) Despite subsections (1) and (2), the authority may make a recommendation under section 87A(1)(b) if the authority is

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satisfied about all of the access criteria for the part of the service.

‘87D Power of authority to conduct investigation

‘For making a recommendation under section 87A, the authority may conduct an investigation about the service.

‘87E Notice of investigation

‘(1) Before starting an investigation under this subdivision, the authority must give reasonable notice of the investigation to—

- (a) the owner of the service; and
- (b) any other person the authority considers appropriate.

‘(2) The notice must—

- (a) state the authority’s intention to conduct the investigation; and
- (b) state the name of the owner of the service; and
- (c) state the subject matter of the investigation; and
- (d) invite the person to whom the notice is given to make written submissions to the authority on the subject matter within a reasonable time stated in the notice; and
- (e) state the authority’s address.

‘87F Procedures for investigation

‘Part 6 applies to an investigation under this subdivision.’.

23 Amendment of s 88 (Recommendation to revoke)

Section 88, ‘Ministerial’—

omit.

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- 24 Amendment of s 92 (Revocation)**
Section 92, ‘Ministerial’—
omit.
- 25 Amendment of s 93 (Notice of decision)**
Section 93, ‘Ministerial’—
omit.
- 26 Amendment of s 94 (When revocation takes effect)**
Section 94, ‘Ministerial’—
omit.
- 27 Amendment of s 95 (Effect of expiry or revocation of declaration)**
Section 95, ‘Ministerial’—
omit.
- 28 Amendment of s 96 (Register of declarations)**
Section 96, ‘Ministerial’—
omit.
- 29 Omission of pt 5, div 3 (Regulation based declarations)**
Part 5, division 3—
omit.
- 30 Amendment of s 100 (Obligations of parties to negotiations)**
Section 100—
insert—
-

[s 31]

- ‘(2) If the access provider is a related access provider in relation to a declared service, the access provider must not unfairly differentiate between access seekers in negotiating access agreements, or amendments to access agreements, relating to the service.
- ‘(3) Subsection (2) does not prevent a related access provider treating access seekers differently to the extent the different treatment is reasonably justified given the different circumstances, relating to access to the declared service, applicable to the related access provider or any of the access seekers.
- ‘(4) However, subsection (3)—
 - (a) does not authorise a related access provider to do anything the related access provider would be prevented from doing under section 104 or 125; and
 - (b) applies subject to sections 168A and 168C.
- ‘(5) A related access provider does not contravene subsection (2) to the extent the different treatment is expressly required or permitted by an access code or approved access undertaking for the declared service.’.

31 Amendment of s 118 (Examples of access determinations)

Section 118(1)(b), ‘accept, and pay for,’—

omit, insert—

‘pay for’.

32 Amendment of s 119 (Restrictions affecting making of access determination)

(1) Section 119(4)—

omit, insert—

-
- ‘(4) Despite subsection (2)(c), the authority may make an access determination requiring an access provider to extend, or permit the extension of, the facility if—
- (a) the requirement is consistent with a requirement imposed under an approved access undertaking for the service that was approved by the authority under section 136(4) or 142(2), and the requirements under subsection (4B) are met; or
 - (b) the requirements under subsection (5) are met.
- ‘(4A) An access determination mentioned in subsection (4)(a) may require the access provider to pay all or some of the costs of extending the facility if the requirement is consistent with a requirement imposed under the approved access undertaking.
- ‘(4B) For subsection (4)(a), the requirements are that the authority is satisfied—
- (a) the extension will be technically and economically feasible and consistent with the safe and reliable operation of the facility; and
 - (b) the legitimate business interests of the following entities are protected—
 - (i) the owner of the facility;
 - (ii) if the owner and operator of the facility are different entities—the operator.’.
- (2) Section 119(5), from ‘However’ to ‘only if’—
omit, insert—
‘For subsection (4)(b), the requirements are’.
- (3) Section 119(6), ‘(4)’—
omit, insert—
‘(4)(a) or (4)(b)’.

33 Amendment of s 127 (Register of access determinations)

Section 127(2)—

insert—

- ‘(f) if the access determination has been amended under subdivision 4—
 - (i) details of the amendment; and
 - (ii) the date the decision to amend the access determination was made by the authority; and
 - (iii) the date the amendment is to take, or took, effect; and
 - (iv) if the authority amended the access determination under section 127D—the authority’s reasons for amending the access determination;
- (g) if the access determination has been revoked under subdivision 4—
 - (i) the date the decision to revoke the access determination was made by the authority; and
 - (ii) the date the revocation is to take, or took, effect; and
 - (iii) if the authority revoked the access determination under section 127D—the authority’s reasons for revoking the access determination.’.

34 Insertion of new pt 5, div 5, sdiv 4

Part 5, division 5—

insert—

‘Subdivision 4 Amendment and revocation of access determinations

‘127A Application for amendment or revocation of access determination

- ‘(1) A party to an access determination may apply to the authority for the amendment or revocation of the access determination, if the party reasonably believes—
- (a) there has been a material change of circumstances since the access determination was made; and
 - (b) the material change of circumstances justifies the amendment or revocation of the access determination.
- ‘(2) An application under subsection (1) must be in writing and state the following—
- (a) the name and address of the party making the application;
 - (b) the name and address of the other parties to the access determination;
 - (c) details of the material change of circumstances the party reasonably believes has happened and why the party believes it justifies the amendment or revocation of the access determination.

‘127B Notice by authority of application for amendment or revocation

‘On receiving an application under section 127A, the authority must give a copy of the application to the other parties to the access determination.

‘127C Amendment or revocation with agreement of parties

- ‘(1) The authority may amend or revoke the access determination if—
- (a) an application for the amendment or revocation has been made under section 127A; and
 - (b) all other parties to the access determination agree with the amendment or revocation; and

-
- (c) the authority is reasonably satisfied—
 - (i) there has been a material change of circumstances since the access determination was made; and
 - (ii) the material change of circumstances justifies the amendment or revocation; and
 - (d) the requirements under sections 119 and 120 are satisfied.
- ‘(2) For subsection (1)(d), the following provisions apply as if the amendment or revocation of the access determination were the making of an access determination—
- (a) for an amendment—sections 119 and 120; or
 - (b) for a revocation—section 120.
- ‘(3) The authority must give written notice of the making of the amendment or revocation to all parties to the access determination.
- ‘(4) The notice must state the day the amendment or revocation takes effect.

‘127D Arbitration of dispute about amendment or revocation of access determination

- ‘(1) This section applies if—
- (a) a party to an access determination has made an application under section 127A; and
 - (b) another party (the *disputing party*) to the access determination does not agree with the amendment or revocation of the access determination applied for.
- ‘(2) The disputing party may give written notice to the authority that an access dispute exists.
- ‘(3) On receiving a notice under subsection (2), the authority must give written notice of the access dispute to all other parties to the access determination.

-
- ‘(4) Subject to subsection (6), the authority must make a written determination (a *subdivision 4 determination*) in an arbitration on the amendment or revocation of the access determination.
- ‘(5) Without limiting subsection (7), the authority may make a subdivision 4 determination that amends or revokes the access determination only if the authority is reasonably satisfied—
- (a) there has been a material change of circumstances since the access determination was made; and
 - (b) the material change of circumstances justifies the amendment or revocation.
- ‘(6) At any time before the authority makes its determination—
- (a) the party who made the application under section 127A may withdraw it; or
 - (b) the disputing party may give the authority written notice stating that the disputing party withdraws the notice given under subsection (2) and agrees with the amendment or revocation applied for.
- ‘(7) Sections 117(5) to (7), 117A to 123 apply to the arbitration of the access dispute by the authority as if—
- (a) a subdivision 4 determination were an access determination; and
 - (b) a notice given under subsection (2) were an access dispute notice.
- ‘(8) For subsection (7), section 122 applies as if the following were substituted for paragraph (c)—
- ‘(c) no material change in circumstances has happened since the access determination was made.’.

35 Amendment of s 128 (Making codes)

Section 128—

insert—

-
- ‘(4) The Ministers may make a code only if the Ministers consider it appropriate to do so having regard to—
- (a) the matters mentioned in section 138(2)(a) to (g); and
 - (b) any other matters the Ministers consider relevant.’.

36 Amendment of s 134 (Consideration and approval of draft access undertaking by authority)

Section 134(2)—

omit, insert—

- ‘(2) If the authority refuses to approve the draft access undertaking, it must give the owner or operator a written notice (a *secondary undertaking notice*) stating the reasons for the refusal and asking the owner or operator to—
- (a) amend the draft access undertaking in the way the authority considers appropriate; and
 - (b) give the authority a copy of the amended draft access undertaking—
 - (i) within 60 days of receiving the notice; or
 - (ii) if the authority extends, or further extends, the period by written notice given to the owner or operator in the period or extended period—within the period as extended.’.

37 Insertion of new s 136A

After section 136—

insert—

‘136A Compulsory amendment of draft access undertaking for declared service given voluntarily

- ‘(1) This section applies if—
- (a) the owner or operator of a declared service, or a person who expects to be the owner or operator of a declared

service, (the *relevant person*) gives a draft access undertaking for the service to the authority under section 136; and

- (b) the authority refuses to approve the draft access undertaking mentioned in paragraph (a) (the *final draft access undertaking*); and
 - (c) the authority has previously refused to approve a draft access undertaking given to it under section 136 by the relevant person.
- ‘(2) The notice given to the relevant person under section 136(5) may include a request for the relevant person to—
- (a) amend the final draft access undertaking in the way the authority considers appropriate; and
 - (b) give the authority a copy of the amended final draft access undertaking—
 - (i) within 60 days of receiving the notice; or
 - (ii) if the authority extends, or further extends, the period by written notice given to the relevant person in the period or extended period—within the period as extended.
- ‘(3) If the relevant person complies with a request under subsection (2), the authority may approve the draft access undertaking.
- ‘(4) If the relevant person does not comply with a request under subsection (2), the authority may prepare, and approve, a draft access undertaking for the service in relation to the relevant person.’.

38 Amendment of s 137 (Contents of access undertakings)

Section 137—

insert—

- ‘(1A) An access undertaking for a declared service that is, or is to be, provided by a related access provider in relation to the

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service must include adequate requirements for ensuring the provider does not—

- (a) unfairly differentiate between access seekers in negotiating access agreements, or amendments to access agreements, relating to the service; or
- (b) unfairly differentiate between users of the service in providing access to the service; or
- (c) recover, through charges for access to the service, costs that are not reasonably attributable to the provision of the service.’.

39 Amendment of s 138 (Factors affecting approval of draft access undertaking)

(1) Section 138(1)—

omit, insert—

‘(1) This section applies to a draft access undertaking given to, or prepared by, the authority under this subdivision.’.

(2) Section 138(2)(f)—

omit, insert—

‘(f) the effect of excluding existing assets for pricing purposes;

(fa) the pricing principles mentioned in section 168A;’.

(3) Section 138(2)(fa) and (g)—

renumber as section 138(2)(g) and (h).

40 Insertion of new s 138A

Part 5, division 7, subdivision 1—

insert—

‘138A Terms of particular approved access undertakings

- ‘(1) This section applies to an approved access undertaking for a declared service that is, or is to be, provided by a related access provider in relation to the service.
- ‘(2) The approved access undertaking may require or permit the related access provider to do the following, in the circumstances stated in the undertaking—
- (a) treat access seekers differently in negotiating access agreements, or amendments to access agreements, relating to the declared service; or
 - (b) treat users differently in providing access to the declared service.
- ‘(3) However, subsection (2)—
- (a) does not authorise an approved access undertaking to require or permit the related access provider to do anything—
 - (i) the related access provider would otherwise be prevented from doing under this Act; or
 - (ii) the related access provider would, but for section 104(6)(a) or 125(6)(a), be prevented from doing under section 104 or 125; and
 - (b) applies subject to sections 168A and 168C.’.

41 Amendment of s 140 (Consideration and approval of draft amending access undertaking by authority)

Section 140(2)—

omit, insert—

- ‘(2) If the authority refuses to approve the draft access undertaking, it must give the responsible person a written notice (a *secondary amendment notice*) stating the reasons for the refusal and asking the person to—

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- (a) amend the draft access undertaking in the way the authority considers appropriate; and
- (b) give the authority a copy of the amended draft access undertaking—
 - (i) within 30 days of receiving the notice; or
 - (ii) if the authority extends, or further extends, the period by written notice given to the person in the period or extended period—within the period as extended.’.

42 Replacement of s 144 (Application of subdivision)

Section 144—

omit, insert—

‘144 Application of sdiv 3

‘This subdivision applies to a draft access undertaking given to, or prepared by, the authority under subdivision 1 or 2.’.

43 Insertion of new s 150AA

Part 8, division 7, subdivision 4—

insert—

‘150AA Requirement to give information about compliance with approved access undertaking

- ‘(1) The authority may take action under this section to find out whether a responsible person is complying with section 150A in relation to an approved access undertaking.
- ‘(2) The authority may, by written notice given to the responsible person, require the responsible person to give the authority, within the time (not less than 14 days) stated in the notice, stated information about the responsible person’s compliance with the approved access undertaking.

‘(3) The responsible person must comply with the requirement within the time stated in the notice, unless the responsible person has a reasonable excuse.

Maximum penalty—500 penalty units or 6 months imprisonment.

‘(4) A responsible person is not required to comply with a requirement to give information if the responsible person claims on the ground of self incrimination a privilege the responsible person would be entitled to claim against giving the information were the responsible person a witness in a prosecution for an offence in the Supreme Court.

‘(5) The authority or responsible person may apply to the Supreme Court for a determination of the validity of a claim of privilege.’.

44 Amendment of s 153 (Orders to enforce prohibition on hindering access)

(1) Section 153, heading, from ‘prohibition’—

omit, insert—

‘prohibitions on hindering access or unfairly differentiating’.

(2) Section 153(1), ‘104 or 125’—

omit, insert—

‘100(2), 104, 125 or 168C’.

45 Amendment of s 168A (Pricing principles)

Section 168A, ‘declared’—

omit.

46 Insertion of new ss 168B and 168C

After section 168A—

insert—

‘168B Information to be considered by authority in making decisions

- ‘(1) This section applies to the making of any of the following decisions by the authority—
- (a) a decision to make a recommendation to the Ministers under section 79, 87A or 88;
 - (b) an access determination;
 - (c) a decision to approve, or refuse to approve, a draft access undertaking under section 134, 136, 136A, 140 or 142;
 - (d) a decision about whether to make a ruling under division 7A.
- ‘(2) Subsection (3) applies if a person makes a submission, or gives information, (*late information*) to the authority after the period for making the submission or giving the information stated by the authority.
- ‘(3) The authority may make the decision without taking late information into account if doing so is reasonable in all of the circumstances.
- ‘(4) For subsection (3), in deciding whether it is reasonable in all of the circumstances the following factors must be taken into account—
- (a) whether the late information was available, or ought reasonably to have been available, to the person during the period mentioned in subsection (2);
 - (b) the length, complexity and relevance of the late information;
 - (c) how much time has elapsed since the period mentioned in subsection (2) ended;
 - (d) how advanced the authority’s decision making process is when the late information is received.
- ‘(5) Subsection (6) applies if—

-
- (a) the authority has required a person to give information, or produce a document, to it within a stated period for the purpose of making the decision; and
 - (b) the person fails to comply with the requirement.
- ‘(6) The authority may make the decision on the basis of the information available to it at the time.’

‘168C Prohibition on unfair differentiation by related access provider

- ‘(1) A related access provider in relation to a declared service must not unfairly differentiate between users of the service in providing access to it.
- ‘(2) A related access provider does not contravene subsection (1) to the extent the different treatment is expressly required or permitted by—
 - (a) an access code or approved access undertaking for the service; or
 - (b) an access agreement to which the provider is a party; or
 - (c) an access determination to which the provider is a party.
- ‘(3) This section applies despite section 102.’.

47 Amendment of s 171 (Application of part)

- (1) Section 171—
insert—
‘(ea) an investigation for part 5, division 2, subdivision 4A;’.
- (2) Section 171(ea) to (l)—
renumber as section 171(f) to (m).

48 Amendment of s 181 (Notice to witness)

Section 181, ‘chairperson’—

[s 49]

omit, insert—

‘authority’.

49 Amendment of s 185 (Giving information and documents to authority)

Section 185(1), ‘chairperson’—

omit, insert—

‘authority’.

50 Insertion of new pt 12

After section 247—

insert—

‘Part 12 Transitional and savings provisions for Queensland Competition Authority and Other Legislation Amendment Act 2010

‘248 Definitions for pt 12

‘In this part—

expiry day means the day that is 5 years from the day this part commences.

railway manager see the *Transport Infrastructure Act 1994*, schedule 6.

‘249 Exclusion of service from pt 5

‘(1) Despite section 72, part 5 does not apply to the service mentioned in subsection (2).

-
- ‘(2) The service is the use of rail transport infrastructure for providing transportation by rail between Queensland and another State if—
- (a) the infrastructure is standard gauge track; and
 - (b) the transportation is effected by using standard gauge rolling stock.
- ‘(3) Subsection (1) stops applying at the end of the expiry day.

‘250 Saving of declarations of particular services

- ‘(1) Each of the following services is taken to be a service declared by the Ministers under part 5, division 2—
- (a) the use of rail infrastructure (coal) for providing transportation by rail;
 - (b) the use of rail transport infrastructure for providing transportation by rail if the infrastructure is used for operating a railway for which Queensland Rail Limited, or a successor, assign or subsidiary of Queensland Rail Limited, is the railway manager;
 - (c) the handling of coal at Dalrymple Bay Coal Terminal by the terminal operator.

Note—

The services mentioned in subsection (1) were, immediately before the commencement of this part, declared under a regulation made under repealed section 97.

- ‘(2) Subsection (1) stops having effect in relation to a service—
- (a) at the end of the expiry day; or
 - (b) if the declaration of the service is revoked under part 5, division 2, subdivision 6—when the revocation takes effect.

Notes—

- 1 See section 95 in relation to the effect of the declaration ending.

- 2 Subsection (1) ceasing to have effect in relation to a service does not prevent the Ministers declaring the service under part 5, division 2 with effect after the expiry day.

‘(3) In this section—

Dalrymple Bay Coal Terminal means the port infrastructure located at the port of Hay Point owned by Ports Corporation of Queensland or the State, or a successor or assign of Ports Corporation of Queensland or the State, and known as Dalrymple Bay Coal Terminal and includes the following which form part of the terminal—

- (a) loading and unloading equipment;
- (b) stacking, reclaiming, conveying and other handling equipment;
- (c) wharfs and piers;
- (d) deepwater berths;
- (e) ship loaders.

existing system means the following—

- (a) the Blackwater system as shown in red on the diagram in schedule 1, part 1;
- (b) the Goonyella system as shown in red on the diagram in schedule 1, part 2;
- (c) the Moura system as shown in red on the diagram in schedule 1, part 3;
- (d) the Newlands system as shown in red on the diagram in schedule 1, part 4.

Note—

The diagrams in schedule 1 show the existing systems as of the day the repealed coal network declaration commenced.

handling of coal includes unloading, storing, reclaiming and loading.

included extension, of an existing system, means an extension of the existing system that—

-
- (a) is built after the commencement of the repealed coal network declaration; and
 - (b) does not connect the existing system to a coal basin to which the existing system was not connected on the commencement of the repealed coal network declaration; and
 - (c) does not connect the existing system to another existing system; and
 - (d) is owned or leased by—
 - (i) the owner or lessee of the existing system; or
 - (ii) a related body corporate of the owner or lessee of the existing system.

Note—

Updated line diagrams showing included extensions of the existing systems can be viewed on QR Network Limited's website at <www.qrnetwork.com.au>.

Queensland Rail Limited means Queensland Rail Limited ACN 132 181 090.

rail infrastructure (coal) means rail transport infrastructure that is—

- (a) an existing system; or
- (b) an included extension of an existing system.

repealed coal network declaration means the repealed declaration of the service mentioned in subsection (1)(a) under the *Queensland Competition Authority Regulation 2007*, repealed section 2B.

terminal operator means—

- (a) the owner or lessee of Dalrymple Bay Coal Terminal; or
- (b) a person operating Dalrymple Bay Coal Terminal for the owner or lessee.

[s 51]

51 Insertion of new sch 1

After part 12—

insert—

‘Schedule 1 Rail infrastructure for central Queensland coal network

section 250(3), definition *existing system*

‘Part 1 Blackwater system

Line diagram of Blackwater system to be inserted.

‘Part 2 Goonyella system

Line diagram of Goonyella system to be inserted.

‘Part 3 Moura system

Line diagram of Moura system to be inserted.

‘Part 4 Newlands system

Line diagram of Newlands system to be inserted.

52 Amendment and renumbering of schedule (Dictionary)

- (1) Schedule, definitions *candidate service*, *Ministerial declaration*, *private facility*, *public facility* and *regulation based declaration*—
omit.
- (2) Schedule—
insert—
‘expiry day, for part 12, see section 248.
extension, of a facility, includes an enhancement, expansion, augmentation, duplication or replacement of all or part of the facility.
railway manager, for part 12, see section 248.
related access provider, in relation to a declared service, means an access provider that—
- (a) owns or operates the service; and
 - (b) provides, or proposes to provide, access to the service to itself or a related body corporate of the access provider.’.
- (3) Schedule, definition *declaration*, paragraph (a)—
omit, insert—
‘(a) for part 5—a declaration of a service made by the Ministers under part 5, division 2; or’.
- (4) Schedule, definition *declaration recommendation*, paragraph (a), after ‘79’—
insert—
‘or 87A’.
- (5) Schedule, definition *investigation notice*—
insert—
‘(da) for an investigation under part 5, division 2, subdivision 4A—a notice of investigation given under section 87E; or’.

[s 53]

- (6) Schedule, definition *investigation notice*, paragraphs (da) to (k)—
renumber as paragraphs (e) to (l).
- (7) Schedule, definition *register*, paragraph (b), ‘Ministerial’—
omit.
- (8) Schedule—
renumber as schedule 2.

Part 3 Amendment of Queensland Competition Authority Regulation 2007

53 Regulation amended

This part amends the *Queensland Competition Authority Regulation 2007*.

54 Amendment of s 2 (Definitions)

Section 2, definitions *QR Limited*, *railway manager*, *repealed regulation* and *subsidiary*—
omit.

55 Omission of ss 2B and 2C

Sections 2B and 2C—
omit.

56 Amendment of pt 2 hdg (Repeal, savings and transitional provisions)

Part 2, heading, ‘, savings’—

omit.

57 Replacement of pt 2, div 2 (Savings and transitional provisions)

Part 2, division 2—

omit, insert—

‘Division 2 Transitional provision

‘5 Transitional provision for Queensland Competition Authority and Other Legislation Amendment Act 2010

‘The amendment of this regulation by the *Queensland Competition Authority and Other Legislation Amendment Act 2010* does not affect the power of the Governor in Council to further amend this regulation or to repeal it.’.

Part 4 Amendment of Transport Infrastructure Act 1994

58 Act amended

This part amends the *Transport Infrastructure Act 1994*.

59 Amendment of s 139 (Chief executive may decide matters on request)

Section 139(8), definition *access undertaking*, ‘the schedule’—

omit, insert—

‘schedule 2’.

60 Amendment of s 140 (Notice of dispute under agreement for access)

Section 140(4), definition *access agreement*, ‘the schedule’—
omit, insert—
 ‘schedule 2’.

61 Amendment of s 266 (Priority for regularly scheduled passenger services in allocating train paths)

(1) Section 266(2)—

insert—

‘(d) any other matter, if the information is reasonably required by the chief executive for identifying passenger service requirements.’

(2) Section 266(4), ‘A’—

omit, insert—

‘Subject to subsection (5E), a’.

(3) Section 266—

insert—

‘(5A) If a railway manager becomes aware that a train path on a specific section of railway track used for regularly scheduled passenger services is, or will become, available for allocation, the railway manager must, during the period or at the time mentioned in subsection (5B), give written notice of the availability to the chief executive.

‘(5B) A notice under subsection (5A) must be given—

(a) if the train path will become available because of the impending expiry of an agreement for access to the specific section of railway track by an existing regularly scheduled passenger service—at least 6 months before the agreement expires; or

-
- (b) otherwise—as soon as practicable after the railway manager becomes aware of the availability.
 - ‘(5C) On receiving a notice under subsection (5A), the chief executive may, within the period mentioned in subsection (5D), give a written notice to the railway manager requiring that the train path be allocated to a stated passenger service with effect from—
 - (a) if the train path is not available when the notice is given by the chief executive—the day the train path becomes available; or
 - (b) otherwise—as soon as practicable after the notice is given by the chief executive.
 - ‘(5D) A notice given by the chief executive under subsection (5C) must be given—
 - (a) if the notice is given in response to a notice given by the railway manager under subsection (5B)(a)—within 3 months after receiving the notice given by the railway manager; or
 - (b) if the notice is given in response to a notice given by the railway manager under subsection (5B)(b)—within a reasonable time after receiving the notice given by the railway manager.
 - ‘(5E) A railway manager given a notice under subsection (5C) must allocate the train path to the passenger service stated in the notice with effect from the day or time mentioned in subsection (5D).’.
 - (4) Section 266(6)(b), ‘on the same route’—
omit.

62 Amendment of s 438 (Definitions for ch 13)

Section 438—

insert—

'network company' means a QR National company that is a railway manager for a railway situated in Queensland.

QR National company means QR National or a related body corporate of QR National.'

63 Insertion of new ch 13, pt 5

Chapter 13—

insert—

'Part 5 Governance

'438G Requirements about appointment of directors

'(1) The majority of the directors of a network company must consist of eligible persons.

'(2) In this section—

eligible person means a person who—

- (a) is not an employee of a QR National company; and
- (b) has not been an employee of a QR National company at any time during the ineligibility period; and
- (c) is not engaged by a QR National company to provide advisory or consultancy services to a QR National company, if the engagement could reasonably be regarded as material to that person; and
- (d) has not been engaged by a QR National company to provide advisory or consultancy services to a QR National company at any time during the ineligibility period, if the engagement could reasonably be regarded as material to that person; and
- (e) is not an employee of a company or partnership, an officer of a company, or a partner in a partnership, that is engaged by a QR National company to provide advisory or consultancy services to a QR National company, if—

-
- (i) the person is directly involved in providing those services; and
 - (ii) the engagement could reasonably be regarded as material to the company or partnership; and
 - (f) was not an employee of a company or partnership, an officer of a company, or a partner in a partnership, that was engaged by a QR National company to provide advisory or consultancy services to a QR National company at any time during the ineligibility period, if—
 - (i) the person was directly involved in providing those services; and
 - (ii) the engagement could reasonably be regarded as material to the company or partnership; and
 - (g) is not an employee of a company or partnership, an officer of a company other than a QR National company, or a partner in a partnership, that has a contract with a QR National company, if the contract could reasonably be regarded as material to the company or partnership; and
 - (h) does not have a substantial holding in a QR National company; and
 - (i) is not an officer of a company that—
 - (i) is not a QR National company; and
 - (ii) has a substantial holding in a QR National company.

employee, of a company, does not include a person who is engaged solely as a director of the company.

ineligibility period, in relation to an eligible person, means the period of 3 years prior to the appointment of the person as a director of the network company.

substantial holding has the meaning given in the Corporations Act.

‘438H Related party access agreements

- ‘(1) A network company must not enter into an access agreement with another QR National company unless the agreement has been approved by the board of directors of the network company.
- ‘(2) The board of directors of a network company must not approve an access agreement mentioned in subsection (1) unless the board is reasonably satisfied the agreement is on arms-length terms.
- ‘(3) In this section—
access agreement see the *Queensland Competition Authority Act 1997*, schedule 2.’.

64 Amendment of sch 6 (Dictionary)

Schedule 6—

insert—

‘*network company*, for chapter 13, see section 438.

‘*QR National company*, for chapter 13, see section 438.’.