Railing Queensland’s coal

A new era for Queensland’s coal export industry

May 2010
A message from the Treasurer of Queensland

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   6.1 Indicative timeline

Glossary
A competitive and prosperous Queensland coal export industry is the central objective of the Queensland Government as it prepares QR National for listing on the Australian Securities Exchange. By divesting Queensland Rail’s coal network assets, Queensland will have a fully privatised mine-to-port supply chain for the first time. The Government is preparing QR National as a vertically-integrated entity, much as it is now, to have the financial capacity to invest further in the network and extract greater efficiencies from the wheel-track interface.

As part of the Government’s plan to ensure a fair and open access regime, we are enhancing the competition framework that underpins the State’s coal rail operations.

This requires a mine-to-port coal supply chain that offers opportunity, confidence and surety – for every participant in the coal industry, large and small, current and future.

Our reforms aim to deliver a rail export framework that will be nimble, have the capacity to expand for greater demand, entrench non-discriminatory provisions, guard against marginalisation of smaller companies, and cater for new entrants.

Queensland has a strong, regulated rail environment that has fostered competition in the above rail market. Enhancements to this regime will give Queensland the nation’s best open access regime.

A new Access Undertaking, with new safeguards for mines and rail operators, has been submitted by Queensland Rail to the Queensland Competition Authority, and while the State Government welcomes this development, we will take the safeguards in the undertaking a step further.

We will be legislating to ensure even more transparent operations and thereby creating an environment even better suited to competition. We want competition and the efficiencies competition delivers.

The Queensland coal environment is complex – given there are more than 55 mines and 22 rail customers – all having very different haulage requirements. The roadmap we are developing is about making the supply chain as simple and as fair as we can, and at the same time ensuring that the all-important end-user customers remain confident in Queensland’s ability to deliver.

It is in everyone’s interests for this process to maximise haulage throughput from mine to port and onto customers safely and efficiently. Our focus is on delivering a fair, efficient export chain that will benefit users, customers, taxpayers and the broader economy.

It is our view that the privatisation of QR National and reforming the state’s access regime will be the catalyst for a new era of growth in Queensland’s coal export industry.

ANDREW FRASER
Treasurer
Minister for Employment and Economic Development
# Snapshot

A synopsis of Queensland’s rail network competition safeguards

The details of Queensland’s regulatory framework are discussed in detail through Sections three and four of this document. The following table provides a synopsis of Queensland’s regulatory safeguards and how they support competition in Queensland’s above-rail markets.

<table>
<thead>
<tr>
<th>Maintaining Open Access and Competition</th>
<th>Regulatory Safeguards</th>
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<tr>
<td>Regulated access charges to prevent monopoly pricing</td>
<td>- QR Network’s current Access Undertaking adopts pricing principles which prevent QR Network from charging monopoly prices. These pricing principles are set out in the Queensland Competition Authority Act and include:</td>
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<td></td>
<td>- no price discrimination, except to reflect differences in service costs and risks</td>
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<td></td>
<td>- regulated charges are structured so as to allow the recovery of efficient costs, including an adequate rate of return on assets</td>
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<td>- prices should provide incentives to reduce costs or otherwise improve productivity.</td>
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<td>- Reference tariffs for access to the coal network are set by the independent regulator, the Queensland Competition Authority (QCA) through a public process.</td>
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<tr>
<td>Providing open network access</td>
<td>- Above rail competition is facilitated by third party access regulation (which includes a legislative obligation to negotiate with access seekers) and the Access Undertaking given by QR Network and approved by the QCA.</td>
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<td></td>
<td>- The QCA Act will be amended to include an obligation on vertically-integrated access providers to not discriminate between access seekers in negotiating for, and providing access. This is in addition to the existing protection in the Act that prohibits an access provider from preventing or hindering access, under an access agreement or access determination.</td>
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<td></td>
<td>- If a party (QCA or access seeker or holder) considers QR Network has breached its undertaking the party can seek a court order from the Court to enforce the undertaking.</td>
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<tr>
<td>Preventing higher access charges through cost shifting or cross subsidisation from unregulated operations to the regulated business</td>
<td>- The QCA Act will be amended to require access undertakings, given by vertically-integrated access providers, to include a requirement that the provider does not recover costs that are not reasonably attributable to the provision of the service (i.e. to prevent cross-subsidisations and cost shifting).</td>
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<td>- The QCA Act requires access providers to maintain separate regulatory accounts for the regulated asset. Such accounting ringfencing ensures reliable reporting of the regulated entity’s costs separate to other non-regulated activities.</td>
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<td>- Furthermore, to ensure cost shifting is not undertaken, the QCA Act allows the QCA to require preparation of a cost allocation manual. QR Network’s cost allocation manual has been approved by the QCA.</td>
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<td>- QR Network’s Access Undertaking also requires an annual audit of the regulated entity’s accounts, providing additional comfort on cost allocation.</td>
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<tr>
<td>Preventing price discrimination favouring QR National’s above rail operations</td>
<td>- QR Network’s Access Undertaking prohibits price discrimination (except to reflect differences in service costs and risks) and specifically states that QR Network will not differentially price for the purpose of preventing or hindering above rail competition.</td>
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<td>- Section 168A of the Act prohibits price discrimination (except to reflect differences in costs and risks).</td>
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<td>- Sections 104 and 125 of the Act prohibits conduct which hinders access, under an access agreement or determination, including price discrimination in favour of QR National’s above rail operations. If a party considers there has been a breach, it can seek a Court order to enforce the prohibition.</td>
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<td></td>
<td>- There will be a new legislative requirement for a vertically-integrated access provider to not unfairly discriminate between access seekers in negotiating with access seekers, or between access holders in providing access.</td>
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<tr>
<td>MAINTAINING OPEN ACCESS AND COMPETITION</td>
<td>REGULATORY SAFEGUARDS</td>
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| Ensuring equivalent service levels     | ■ The QCA Act prohibits access providers from engaging in conduct which prevents or hinders a user's access to a regulated asset. This includes conduct which favours QR Network's above rail operations.  
■ There will be a new legislated requirement for vertically-integrated access providers to not unfairly discriminate between access seekers in negotiating with access seekers, or between access holders in providing access.  
■ The QCA Act will be amended to include a new power for the QCA to investigate potential breaches. This is in addition to existing powers in sections 105 and 126.  
■ QR Network's Access Undertaking includes a standard access agreement which sets out prescriptive terms and conditions of access.  
■ For coal customers, QR must permit the publication of most aspects of access agreements – allowing access holders to assess whether they are being offered equivalent terms, including price.  
■ A formal dispute resolution process exists should access seekers consider QR Network's obligations have not been met.  
■ New reporting of the level of service provided by coal system (and, confidentially, by operator) will allow customers to assess whether they are receiving a consistent level of service.  
■ Under the Access Undertaking, the QCA may request an audit of any decision made by QR Network, eg about investment or train control.  
■ QR Network must report on a quarterly and annual basis on its performance and its compliance with access obligations. |
| Release of commercially sensitive customer information to QR National's above rail operations | ■ The QCA Act prohibits an access provider from engaging in conduct for the purpose of preventing or hindering a user's access, including the internal sharing of sensitive information for the benefit of the incumbent operator.  
■ QR Network's existing Access Undertaking includes additional ring-fencing provisions which restrict sharing of confidential information, such as management procedures for confidential information and movement of staff between QR Network and other QR business units. Financial penalties exist for breach of QR Network's ringfencing provisions.  
■ QR Network is subject to an annual compliance audit for information sharing and other ringfencing provisions. The audit plan and the external auditor engaged must be approved by the QCA. |
| Continuing network investment and maintenance programmes to foster above rail competition | ■ The QCA Act prohibits an access provider from engaging in conduct for the purpose of preventing or hindering a user's access under an access agreement or determination.  
■ The QCA Act allows the QCA to require QR Network to extend the network if supported by appropriate funding from proponents of the expansion.  
■ There are provisions in QR Network's current Access Undertaking which reduce the investment and regulatory risk of expansion, thus promoting timely investment. For example, QR Network, network users and the Queensland Resources Council participate in the development of a Coal System Master Plan which maps out future expansions. If QR Network receives support from at least 60% of users for a specific expansion, the scope of the capital expenditure associated with that expansion is automatically approved for addition to the regulatory asset base, thus providing certainty to QR Network that its investment will be recognised by the QCA.  
■ Reporting requirements make transparent whether QR Network is maintaining the network.  
■ QR Network must also maintain a safe railway in order to keep its accreditation as a railway manager. |
| Providing a fair allocation and scheduling of train paths for above rail operators | ■ The QCA Act prohibits access providers from engaging in conduct which prevents or hinders a user's access to a regulated asset under an access agreement or determination.  
■ There will be a new legislative requirement for a vertically-integrated access provider to not unfairly discriminate between access seekers in negotiating with access seekers, or between access holders in providing access.  
■ QR Network's current Access Undertaking incorporates scheduling and queuing provisions for the allocation of capacity.  
■ A formal dispute resolution process exists should access seekers consider QR Network's obligations have not been met. |
Section 1
Setting the scene
1.1 Why a robust, competitive rail haulage market is critical for Queensland’s economy

Coal mining plays an integral role in the economy of Queensland. It injects billions of dollars per annum into the State and supports tens of thousands of Queensland jobs.

Over 85 per cent of the coal mined in Queensland is exported. It is critical for the State's current and future economic growth that we have both the rail infrastructure and systems, and a competitive market for coal haulage, in place to maximise the amount of coal we rail from mine through to port for export around the world.

The Queensland Government is committed to fostering competition in the State's coal haulage market. A competitive marketplace is essential to drive improved operational efficiency and more competitive pricing across the industry.

Coal haulage services in Queensland have evolved from Government-owned monopoly service provision, through QR Limited, to what is now a competitive market place with a second private rail operator, Pacific National, taking a strong foothold in the market.

With a competitive market now operating, it is timely for Government to remove itself from the State's coal supply chain to allow private investment to drive growth. This will ensure that commercial market forces and the industry participants are the determining factors for the growth and expansion of coal exports in Queensland.

In preparation for a privatised coal supply chain, the Government is enhancing the State's ‘open access’ regime. The existing protections for access seekers enshrined in legislation will be strengthened even further. New legislation will provide even greater protections to QR's competitors. There will be expanded prohibitions on QR not to unfairly discriminate in negotiating and delivering access services to competitors, requiring that access charges be determined on the basis of costs that are reasonably allocated to the relevant services, and in more rigorous internal governance obligations of the QR Group in the provision of access to QR companies. Further details of the new legislation are described in section 4.

*Railing Queensland’s Coal* provides an overview of the State's open access regime and details the further enhancements that will be implemented in 2010 as part of the Government's commitment to delivering the nation's most robust, efficient and competitive heavy-haul rail network.

1.2 The economic value of Queensland’s coal industry

Commercial coal mining has been undertaken in Queensland since 1843. Today, Queensland’s coal mining industry is one of our State’s most important economic drivers and our largest export industry. Queensland is the world’s largest exporter of seaborne coal. Queensland coal is exported to 38 countries worldwide and provides a major source of coking coal for Asian and Indian steel mills.

In 2008-09, Queensland produced 190 million tonnes of coal valued at an estimated $41.5 billion. Of this, Queensland exported 159.5 million tonnes with a total value over $37 billion. Coal accounts for an estimated 84 per cent of the value of Queensland’s total mining production. Despite the global financial crisis, coal sales in 2008-09 were up 131 per cent from the previous year and set a new record for the State. Sales were driven by continuing strong demand from China and India, as well as the return of demand from traditional markets.

Another encouraging sign for the strength of Queensland’s coal industry is that coal exports for the 2009-10 financial year are forecast to exceed 170 million tonnes.
In 2008-09 the Government’s revenue from coal royalties was $3.1 billion, however the five year average from 2004-05 to 2008-09 for coal royalties is around A$1.4 billion per year, with the proportion of coal royalties to the State’s General Government revenue around 4.3%, on average, over this period.

In the context of the broader State economy, coal mining in Queensland is estimated to contribute over A$26 billion per annum to the economy (equal to approximately 11% of Queensland’s Gross Value Added, which calculates broader economic benefits).1

The coal industry directly supports some 21,575 jobs.2 In many parts of central Queensland, entire communities have been built on the economic back of the coal mining industry and their economies and sustainability remain dependent on a strong, vibrant coal industry.

Table 1. Coal industry statistics - Queensland 2008-09

<table>
<thead>
<tr>
<th>Key indicator</th>
<th>2008-09 statistics</th>
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<tbody>
<tr>
<td>Total coal produced</td>
<td>190 million tonnes</td>
</tr>
<tr>
<td>Total value of coal mining production</td>
<td>$41.5 billion</td>
</tr>
<tr>
<td>Contribution to Queensland’s Gross Value Added</td>
<td>$26 billion</td>
</tr>
<tr>
<td>People employed directly in the coal industry</td>
<td>21,575</td>
</tr>
</tbody>
</table>

Despite the size and value of Queensland’s coal industry, the State still has significant untapped reserves of high-grade coking and thermal coals. These untapped reserves represent significant opportunities for the growth of the State economy and employment in Queensland.

Seizing these growth opportunities over the next 10-20 years and beyond in an economically efficient and sustainable manner is central to the Queensland Government’s planning for a stronger, more efficient coal industry and mine-to-port supply chain.

The most critical element of planning for the future privatised mine to port supply chain is the continuation of a fair, ‘open access’ regime for the Central Queensland Coal Network, which create competition in the above-rail market.

Fact: Queensland is the world’s largest exporter of seaborne coal.

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1 Coal economic value estimates provided by the Office of Economic and Statistical Research.

2 Department of Employment, Economic Development and Innovation website.
Section 2
The tracks
2.1 Queensland’s coal rail network

Queensland’s coal mines are connected to the State’s coal export terminals via five rail supply chains; the Newlands, Goonyella, Blackwater, Moura and Western systems. These systems stretch more than 2,200 kilometres and have more than 35 coal loading points.

The Central Queensland Coal Network (CQCN) is broadly defined as those rail tracks that are exclusively or almost exclusively used for the mine to port transport of coal. A map of the CQCN can be viewed on Page 11.

The mainline coal network is interconnected with numerous mine spur lines, which are built by mine operators to take coal from the mine to the major trunk lines.

2.2 History of Queensland’s coal rail network

Up until the 1960s, coal haulage volumes in Queensland were low and were driven by domestic demand. In the early 1960s the State’s first major multinational coal mining projects commenced in central Queensland. This was the start of Queensland’s multi-billion dollar coal export industry.

Export demand for Queensland’s minerals quickly grew and planning commenced for the construction of the State’s first purpose-built heavy haulage rail lines, capable of supporting large volumes of minerals over long distances.

The North West line, from Mount Isa to Townsville, was the first regional rail line that underwent a major rebuild to support the increased tonnages associated with mineral haulage.

The first major heavy haul rail line built in Queensland for the sole purpose of hauling coal was the Moura Short Line, through to the Port of Gladstone, which was completed in 1968.

Over the ensuing years, through to the early 1970s, an extensive upgrade of regional rail lines from Blackwater through to Rockhampton and Gladstone occurred to service new coal mines, creating what is known today as the Blackwater coal system.

The next and most significant advancement of heavy haulage in Queensland occurred in the early 1980s to support the emerging Bowen Basin coal mines. During this period an extensive network of central Queensland regional rail lines was rebuilt, interconnected and extended to support heavy coal haulage. As part of this project, over 1600 kilometres of track was electrified. This was one of the nation’s largest engineering projects of its kind at the time.

The result was the addition of the Goonyella and Newlands coal systems, which serviced the northern and southern Bowen Basins through to the Ports of Hay Point and Abbot Point respectively.

This period formed the foundation for what today is known as the Central Queensland Coal Network (CQCN). Since that time, significant expansions to the CQCN have occurred as new mines have opened and production has increased. There has also been substantial growth in rollingstock as the capacity of the CQCN has expanded.

2.3 Current and proposed expansions to existing coal systems

As shown on Figure 1, there are two significant missing links in Queensland’s coal systems, which when constructed will further enhance interactivity and supplementation between the coal systems.

The northern missing link is a 69km stretch of rail from North Goonyella to Newlands. A $1.1 billion project has commenced to build this missing link, and upgrade the existing Newlands system through to the Port of Abbot Point. The project is occurring in conjunction with an upgrade of the Port of Abbot Point, and when complete the system will have capacity for 50 million tonnes per annum.

The southern missing link is required to connect the coal-rich Surat basin with the Moura system, with upgrades through to the Port of Gladstone. The economic feasibility of this project is currently being assessed. The project is a joint venture between QR Network, the Australian Transport and Energy Corridor Pty Ltd and Xstrata Coal.

2.3.1 Potential new coal systems

The emergence of the Galilee Basin (located inland from the Bowen Basin) and its huge thermal coal reserves has required planning to commence for a new coal rail corridor through to the Port of Abbot Point. The proposed rail corridor will be an estimated 500 kilometres.

The initial proposal for this new corridor is for the track to be built and operated by the Galilee Basin mine operator/s or dedicated railway operators.
Figure 1. Central Queensland Coal Network
The coal systems account for around 22 per cent of Queensland total rail tracks. The privatised QR National will operate Queensland’s coal systems.

The remainder of the State’s rail track network, some 7,800 kilometres of track, will continue to be operated by the Government-owned Queensland Rail.

The regional freight and passenger network are those tracks predominately used for the haulage of general freight, other minerals and grains and passenger transport. Figure 2 shows a map of Queensland’s regional freight and passenger network.
Section 3
A regulated coal network. Facilitating competition in the above rail market now and into the future
Facilitating competition in the above rail market now and into the future

The Queensland coal rail network operates under the most developed access regime for mineral haulage in Australia. The Queensland Government is committed to ensuring the State's open access regime continues to be robust, comprehensive and effective.

3.1 Third party access regulation explained. Why it's important

Third party access regulation may be applied where owners of monopoly infrastructure have the potential to exercise market power by denying access to their facilities or charging excessive prices, thereby hindering or preventing competition within a market.

Access regulation is a legally-binding means of ensuring the infrastructure owner allows other users to use the infrastructure to operate their business. In the case of Queensland's coal rail network (the tracks), access regulation ensures third party train operators can negotiate with QR Network to operate their trains on the QR Network tracks. This is critical to fostering competition in the coal haulage market, which is good for coal companies and the broader supply chain.

Third party access regulation operates by mandating that the provider of the service must negotiate for access with access seekers. In the event that the two parties are unable to agree, the matter can be referred to an independent regulator who will make a final decision on the terms of access, including price. This essentially balances the power of the access provider and the access seekers.

As the regulator has the ability to determine the access price, the third party access regime ensures the access provider cannot monopoly price and overcharge for the use of its service.

3.2 Queensland’s open access regime

Queensland’s open access regime has been in place for more than a decade and has been effective in promoting competition within Queensland’s coal haulage industry.

The Queensland Competition Authority Act 1997 (QCA Act) contains:
• a process for declaring services provided by essential economic infrastructure
• a legislated obligation on declared access providers to negotiate with access seekers for access to declared services

The Queensland Competition Authority (QCA) is Queensland’s independent economic regulator. It was established by the Queensland Government in 1997 to ensure:
• significant government business activities which compete with the private sector do so fairly (Competitive Neutrality)
• Government and non-government owned monopolies do not abuse their market power (Monopoly Prices Oversight)
• that essential economic infrastructure is accessible to all potential users (Third Party Access).

The QCA is a separate statutory authority. The QCA Act prohibits the Government from directing the QCA in relation to its role as access regulator. Rail transport services, which are provided by QR Limited, including the Central Queensland Coal Network (CQCN), are declared for third party access under the QCA Regulation 2007.

Therefore, in relation to rail, the QCA is responsible for:
• assessing and approving access undertakings
• arbitrating access disputes
• monitoring QR’s compliance with the access regime
• enforcing breaches of access obligations through the courts.

The CQCN access regime is discussed in detail in Section 3.5.
3.4 Growing competition. How Queensland’s open access regime is delivering results

The success of the regulatory regime in promoting competition in above rail services can be seen by the number and scale of significant coal haulage contracts awarded to Pacific National in 2009 and 2010. Pacific National has already contracted 30 million tonnes for Queensland and is projecting further increases in tonnage as expansion opportunities arise. Pacific National’s current contracted tonnages will give it approximately 17 per cent of the Queensland coal haulage market.

In addition to coal haulage, Pacific National is an established operator of intermodal freight haulage on the Queensland freight network.

Competition in the provision of rail network management services from interconnecting extensions to the network is also encouraged under the Access Undertaking. Coal companies and rail operators who wish to build their own extensions to the CQCN may require QR Network to interconnect their extensions to the existing network.

The construction and operation of these extensions form part of a contestable market for railway construction and management. An example is the proposed development the Surat Basin rail extension.

Professor Allan Fels reviews Queensland’s coal network regulation

Former Chairman of the Australian Competition and Consumer Commission, Professor Allan Fels provided a written report for QR Limited on “Competition policy in the context of the Queensland coal systems”.

In his report, Professor Fels describes the Queensland coal network open access regime as comprehensive and prescriptive, and a regime that is supplemented by appropriate investigative and enforcement powers.

**Highlights of the Fels report:**

- With respect to the question of price, the prospect of price discrimination can be completely eliminated by having a regulated, reference tariff for access

- With respect to denial of access.....the existence of pre-defined capacity allocation rules on the coal system – such as the “first come, first served” rule – are very effective at preventing input foreclosure

- QR Network’s ability to foreclose access is limited by the access regime

- Railroads are not analogous to electricity lines, gas pipelines or telecommunication networks where access had undoubtedly promoted competition. Unlike in these sectors, railroads require a very intimate and ongoing coordination of below-rail and above-rail functions.


Continued open access on Queensland’s non-coal regional freight network

It is important to note that Queensland’s regional freight and passenger network will continue to operate under the QCA’s regulated open access regime.

The track infrastructure that is transferred to the Government-owned Queensland Rail will be the subject of a separate declaration, through which the open access regime coverage will continue.
3.5 The Central Queensland Coal Network Access Regime

Access to the CQCN is regulated by the Queensland Competition Authority Act 1997 and the Queensland Competition Authority Regulation 2007 (2007 Regulation).

The QCA Act and 2007 Regulation are supplemented by the QR Network 'Access Undertaking', as approved by the QCA.

The QCA Act enshrines in legislation the core protections for access seekers. The process of approving the Access Undertaking provides stakeholders with the forum to further develop and refine the more detailed terms of access every four or five years.

The Access Undertaking is determined through a comprehensive submission, public consultation and review process. The usual approval process is outlined below:

- **Step 1**: QR submits undertaking
- **Step 2**: QCA reviews and public release of discussion paper
- **Step 3**: Public consultation
- **Step 4**: QCA Draft Decision
- **Step 5**: Public consultation
- **Step 6**: QCA Final Decision

If the QCA rejects the Access Undertaking, there is a process for the QCA to require the access provider to submit a compliant undertaking, or ultimately the QCA may prepare and approve an 'Access Undertaking' for the use of the declared infrastructure.

Section 137 of the QCA Act lists the types of matters that may be addressed in an Access Undertaking. These matters include, amongst other things:

- arrangements for separating the natural monopoly element of a business from its contestable businesses
- how charges for access to the service are to be calculated
- how contributions by users to the cost of establishing or maintaining the facility will be taken into account in calculating charges for access to the service
- how the spare capacity of the service is to be worked out
- terms relating to extending the facility
- information to be given to the QCA about compliance with the undertaking and performance indicators stated in the Access Undertaking

The following sections (3.5.1-14) outline the key safeguards and features of the access framework established by the QCA Act and QR Network's Access Undertaking. The description of the access regime for the CQCN is based on existing legislation and the existing, approved Access Undertaking (known as UT2).

Section 4 sets out proposed legislative changes to the QCA Act and the proposed changes to the Access Undertaking.
3.5.1 Negotiating for access
QR Network has a statutory obligation to negotiate in good faith with an access seeker. The Access Undertaking sets out in detail the steps for negotiating an access agreement and time frames within which the negotiations must occur. The QCA Act and the Access Undertaking stipulate the information which must be provided to the access seeker and to QR so that meaningful negotiations can occur.

The major steps for seeking access are as follows:
- access seekers make an access application to QR Network
- QR Network will provide an Indicative Access Proposal within 30 days, which amongst other things will provide an initial capacity assessment
- negotiation process including capacity analysis
- formal agreement including the preparation of an access agreement.

If the initial capacity assessment finds there is insufficient available capacity QR Network is required to outline the works and provide an indication of the cost of the works to provide the additional capacity, or provide an outline of the requirements for an investigation to determine the works/costs.

3.5.2 Dispute resolution
A dispute resolution process exists should agreement not be reached. This dispute resolution process is available in relation to any aspect of negotiating for access and states that a dispute will:
- first be referred to the CEOs of QR Network and the relevant access seeker
- where agreed, be referred to an expert for determination or
- alternatively, be referred to the QCA.

3.5.3 Preventing discrimination and anti-competitive behaviour
The QCA Act prohibits an access provider from ‘engaging in conduct for the purpose of preventing or hindering a user’s access to the declared service under an access agreement.’

Sections 104 and 125 specify that an access provider engages in this type of conduct:
- ‘if, having regard to the relevant criterion, the access provider provides, or proposes to provide, access to the declared service to itself, or a related body corporate of the access provider, on more favourable terms than the terms on which the access provider provides, or proposes to provide, access to the declared service to a competitor of the access provider.’
- the relevant criteria are the terms (taken as a whole) on which the access provider provides, or proposes to provide, access to the declared service to itself and the competitor having regard to the nature and quality of the service.

In relation to pricing, Section 168A of the QCA Act provides that ‘a vertically-integrated operator should not set terms and conditions that discriminate in favour of its downstream operations, except to the extent the cost of providing access to other operators is higher’.

To ensure that there is no unfair discrimination between coal companies in relation to the terms and conditions of access to the network, the Access Undertaking provides for the publication of the below rail aspects of access agreements of each access holder.

The Access Undertaking also requires QR Network to develop and use a Standard Access Agreement, as a basis for negotiation of access agreements between it and coal companies.
3.5.4 Pricing

QR Network’s Access Undertaking sets out the pricing principles and process for setting reference tariffs to determine the access charges QR Network may charge to third party above rail operators. Reference tariffs are the benchmark prices that guide commercial negotiations between QR Network and access seekers. If agreement on price can’t be reached then the regulated tariff applies.

Reference tariffs are determined by the QCA based on its assessment of the reasonableness and efficiency of QR Network’s forecast capital expenditure, maintenance and operating costs. Rigorous review of forecasts occurs including benchmarking against relevant industry comparators. Where appropriate, an adjustment is made to reflect productivity improvements expected during the period of the Access Undertaking.

In the case of new capital expenditure, the QCA assesses the prudence of QR Network’s capital expenditure and only when the QCA has approved the capital expenditure can it be included in QR Network’s regulatory asset base, from which the capital component of access tariffs are determined.

The QCA Act stipulates (section 168A) the pricing principles that govern the setting of access charges. These principles are applied by the QCA in setting QR Network’s reference tariffs.

Specifically, the nationally consistent pricing principles in Section 168A of the Act requires 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 vertically-integrated access provider to set terms and conditions that discriminate in favour of its downstream operations, 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.

The Access Undertaking complies with these principles.

It is possible for QR Network to charge different access seekers a different price but only if the cost of providing a service to a particular access seeker is higher or lower, or if there is a higher or lower level of commercial or regulatory risk attached to the service to be provided.
3.5.5 Allocating capacity
The Access Undertaking contains capacity allocation rules to guide the allocation of spare capacity on the network. These rules are called the Capacity Management Principles.

If spare capacity is not available, the Access Undertaking outlines how capacity will be allocated once additional capacity becomes available, either through the relinquishment or resumption of unused capacity held by access holders, or via constructing new infrastructure.

3.5.6 Scheduling trains
The Access Undertaking sets out the principles by which train paths will be allocated, scheduled and managed. These principles are called the Network Management Principles.

Scheduling on the network occurs according to the Network Management Principles which include:

- Master Train Plan (MTP) Principles (which detail the capacity required for train service entitlements)
- Intermediate Train Plan Principles (used to progress from the MTP to the Daily Train Plan (DTP) in the CQCN where there is cyclical traffic)
- DTP Principles (which indicates all scheduled train paths for the particular day in question).

3.5.7 Train control
Train control is governed by a set of rules, called the Traffic Management Matrix Rules, which guide which trains have priority in any given situation, with the paramount concern being to ensure safety. Access holders have access to real-time train management information so that they can assess whether decisions being made about train control are fair and within the rules.

3.5.8 Ringfencing arrangements
The Access Undertaking sets out procedures and measures to ensure separation of the regulated network business from its above-rail business, including:

- accounting separation between the above rail and below rail business – to ensure that there is no cross-subsidisation or cost shifting
- audit of the separate financial accounts
- submission to the QCA of a cost allocation manual to govern how shared costs between above rail and below rail are to be allocated
- dealing with confidential information of access seekers
- the transfer of employees between above and below rail businesses.

If there is a breach of the ringfencing measures, there is provision in the Access Undertaking for lodgement of a complaint, which if substantiated, could lead to payment of liquidated damages by QR Network, or other compensation.

QR Network must undertake an audit of its compliance with ringfencing provisions and report to the QCA on any breaches.

3.5.9 Expansion of the network
The Access Undertaking requires QR Network to develop a Coal System Master Plan. The Master Plan provides information on the following categories of capital expenditure:

- asset replacement expenditure
- general expansion capital expenditure
- customer specific spur projects.

Under the QCA Act (sections 118 and 119) the QCA can make a determination in an access arbitration requiring QR to extend the network provided the access seeker(s) pays for the costs associated with the expansion/extension. This is consistent with nationally agreed principles in the Competition Principles Agreement.

The Access Undertaking currently in place has a number of measures designed to reduce the regulatory risk associated with new investment, thus making expansions an easier commercial decision for QR to make. These measures include:

- a mechanism in the Access Undertaking that stipulates that once 60 per cent of users of the network want an expansion to proceed then the QCA will include this scope of investment in the regulatory asset base. This gives investment certainty to the network owner thus allowing expansions to proceed in a timely manner. These expansions proceed under the Master Plan for coal network expansion – the development of which involves users, customers and the Queensland Resources Council
  - once capital expenditure is included in the regulatory asset base, it will only be optimised out in a limited number of circumstances, thus reducing asset stranding risk
  - provision for QR Network to recover capital costs of customer specific infrastructure over the life of the mine asset
  - a Master Planning process which involves consultation with users and other stakeholders like the Queensland Resources Council.

3.5.10 Interconnecting infrastructure
The Access Undertaking outlines how rail infrastructure owned by a third party can be connected into the existing QR network. Where an access seeker proposes to construct infrastructure which connects into the QR network, QR Network reserves the right to design, project manage, construct, commission and maintain the interconnection infrastructure to a reasonable standard, and have the access seeker/holder pay QR Network under the relevant agreement governing the development of the connecting infrastructure.

3.5.11 Maintaining the network
There are a number of measures which monitor the level of maintenance undertaken by QR on the network. There are reporting requirements in the Access Undertaking, and there are statutory requirements in relation to accreditation as a railway manager.
These reporting requirements include public reporting of service quality, including information on:
- Transit times
- Cancellations
- Track quality index
- Temporary speed restrictions
- Incidents

A reduction in maintenance will show as a reduction in reported service quality.
QR Network must also maintain its accreditation as a railway manager. This requires it to maintain the track to a safe standard. It is subject to inspections of track standard and safety by the Safety Regulator.

3.5.12 Performance reporting

The regulatory regime promotes transparency and accountability of QR Network’s service delivery to encourage continuous improvement in performance and, more importantly, to monitor compliance with the access framework. QR Network must publicly release quarterly and annual performance reports. These reports provide evidence if any obligation is not being met in practice.

For instance, in relation to train control – QR Network’s performance can be measured by the Key Performance Indicator (KPI) known as Below Rail Transit Time (BRTT). QR Network is required to report on this on a quarterly basis.

The Access Undertaking requires QR Network to report both publicly and to the QCA on a regular basis on a range of matters, including Accounting Separation, Complaint Handling for Confidential Information, Management of Confidential Information, and Quarterly Network Performance reports.

Quarterly Network Performance reports

Quarterly reports submitted to the QCA, require detailed disclosures of the numbers of trains that are ‘healthy’ in that they reach their destination within the agreed allotted times, and ‘unhealthy’ if they do not reach their destination within that time. Delays attributable solely to QR Network as railway manager, delays attributable solely to the above rail operator, or not solely attributable are all separately disclosed on aggregated bases for each quarter.

Other disclosures include train transit times and cancellation, major reportable safety incidents, temporary speed restrictions, billing performance and complaints by access seekers of breach by QR Network of its traffic management decision making matrix.

Quarterly reports include comparative data for the four preceding quarters so trends in performance, if any, can be observed.

As part of its greater accountability under UT3, QR Network will increase the range and effectiveness of its public quarterly reports by disaggregating data down to individual coal systems. Quarterly reports provided to the QCA will include further disclosures by individual above rail operator.

An example of the current reporting framework is outlined in Table 2 – Quarterly Network Performance Reporting.

Annual reports

Under the Access Undertaking annual financial reports must be prepared and independently audited. As part of QR Network’s functional separation of the above and below rail businesses separate audited financial statements for the below rail business must be prepared in accordance with the Costing Manual approved by the QCA.

Detailed annual performance reports must be prepared in relation to QR Network’s performance of its access obligations. These reports are based on prescribed Performance Measures which are imposed under the Access Undertaking. They are as set out below and are independently audited. Maintenance cost reports are prepared showing actual expenditure against forecast.

An example of the current Annual reporting framework is outlined in Table 1 – QR Network Annual Performance Reporting.

---

3 Some changes are proposed to this indicator in UT3.
4 These indicators are proposed to be reported annually under UT3.
5 These indicators are proposed to be reported annually under UT3.
6 It should be noted that the updated reporting framework will not be finalised until UT3 is approved.
7 The updated reporting framework will not be finalised until UT3 is approved.
Table 2. QR Network Annual Performance Reporting

<table>
<thead>
<tr>
<th>Request for Preliminary Information¹</th>
<th>Number</th>
<th>%</th>
<th>Average Delay (Days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Preliminary Information provided by QR Network within the applicable timeframe</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Preliminary Information not provided by QR Network within the applicable timeframe</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Access Applications</th>
<th>Number</th>
<th>%</th>
<th>Average Delay (Days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Access Applications acknowledged within the applicable timeframe</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Access Applications not acknowledged within the applicable timeframe</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Indicative Access Proposals</th>
<th>Number</th>
<th>%</th>
<th>Average Delay (Days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Indicative Access Proposals provided within the applicable timeframe</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Instances where an extension of time was sought for the provision of an Indicative Access Proposal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Indicative Access Proposals not provided within the applicable timeframe</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Non-Ringfencing Related Issues</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>8. Non-Ringfencing related issues referred to Dispute Resolution</td>
<td></td>
</tr>
<tr>
<td>9. Non-Ringfencing breaches where QR Network has been found to be in breach of the Access Undertaking</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Complaints Received from a non-QR Party</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>10. Complaints from a non-QR party that QR Network has breached its obligations in relation to the non-QR party’s confidential information</td>
<td></td>
</tr>
<tr>
<td>11. Complaints from a non-QR party that QR Network has breached its obligations in relation to the non-QR party’s confidential information that have been substantiated</td>
<td></td>
</tr>
<tr>
<td>12. Instances where an access holder has made a complaint that has been substantiated in relation to an incorrectly calculated QR bill</td>
<td></td>
</tr>
<tr>
<td>13. Complaints from Access Holders that QR Network Train Control has made a decision in breach of QR Network’s traffic management decision making matrix</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Negotiation Period Commenced in Accordance with the Undertaking</th>
<th>Average Length of Negotiation Period (Days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>14. Access Applications that have resulted in a Coal Access Agreement being executed or varied</td>
<td></td>
</tr>
<tr>
<td>15. Access Applications that have ceased for a reason other than a Coal Access Agreement being executed or varied</td>
<td></td>
</tr>
<tr>
<td>16. Access Applications that have resulted in a Coal Access Agreement being executed or varied</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Track Quality Index²</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>17. Central Queensland Coal Region</td>
<td></td>
</tr>
<tr>
<td>18. Remainder of the network, with the exception of: Metropolitan Region, and Standard Gauge Rail Infrastructure</td>
<td></td>
</tr>
</tbody>
</table>

¹ QR Network has proposed in UT3 to report number of requests received and the average time taken to provide preliminary information. QR Network would no longer provide information on the average delay in providing preliminary information as this information is now available electronically on request.

² This indicator is proposed to be provided quarterly in UT3.
### Table 3. Network Quarterly Performance Reporting

<table>
<thead>
<tr>
<th>Measure</th>
<th>Bulk Coal and Minerals*</th>
</tr>
</thead>
</table>

#### 1. Healthy Train Services
- That reach their destination within the Allotted Time Threshold: 
  - Number
  - %
- That do not reach their destination within the Agreed Exit Threshold:
  - Attributable solely to QR Network as Railway Manager: 
    - Number
    - %
  - Not solely attributable to QR Network as Railway Manager: 
    - Number
    - %
- Total number of Healthy Train Services: 
  - Number

#### 2. Unhealthy Train Services (a)
- That do not deteriorate further, beyond the Agreed Deterioration Threshold:
  - Number
  - %
- That deteriorate beyond the Agreed Deterioration Threshold:
  - Delays attributable solely to QR Network as Railway Manager: 
    - Number
    - %
  - Delays attributable solely to the Access Holder or an unallocated reason: 
    - Number
    - %
  - Not solely attributable: 
    - Number
- Total number of Unhealthy Train Services: 
  - Number
- That do not reach their destination within the Allotted Time Threshold: 
  - Number
  - %

#### 3. Transit Times
- The average Above Rail delays: 
  - Minutes/100 train KMs
- The average Below Rail delays
- The average Unallocated delays

#### 4. Cancellations
- Attributable to QR Network as Railway Manager: 
  - Number
  - %
- Attributable to the Access Holder: 
  - Number
  - %
- Not clearly assignable as attributable to QR Network or Access Holder: 
  - Number
  - %

#### 5. Major Reportable Safety Incidents
- Major reportable safety incidents reported to the Safety Regulator: 
  - Number

#### 6. Temporary Speed Restrictions
- Average % of track under temporary speed restrictions: 
  - Central Queensland
  - Other (b)
- Average kilometres of track under temporary speed restrictions: 
  - Central Queensland
  - Other (b)
## 7. Billing Performance

Instances where an access holder has made a complaint that has been substantiated in relation to an incorrectly calculated QR bill

<table>
<thead>
<tr>
<th>Measure</th>
<th>Bulk Coal and Minerals*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## 8. Track Quality

Measure of track quality for the network measure by a quality index with component measures including gauge, top, twist and versine

Number

## 9. Treatment of Train Services

Complaints from Access Holders that QR Network Train Control has made a decision in breach of QR Network’s traffic management decision making matrix

<table>
<thead>
<tr>
<th>Complaints received by QR Network</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints received by QR Network which are currently being assessed</td>
<td>Number</td>
</tr>
<tr>
<td>Complaints received by QR Network that were verified</td>
<td>Number</td>
</tr>
<tr>
<td>3rd Party Complaints per 100 train paths</td>
<td>Number</td>
</tr>
<tr>
<td>QR Complaints per 100 train paths</td>
<td>Number</td>
</tr>
</tbody>
</table>

## 10. Central Queensland Coal Region – by Individual Coal System

The average Above Rail delays

Minutes/100 train KMs

The average Below Rail delays

The average Unallocated delays

### 4. Cancellations

Aggregate gtk, nt, ntk and egtk

<table>
<thead>
<tr>
<th>Transit Times</th>
<th>Average actual Below Rail Transit Time</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Percentage of services where the agreed Maximum Transit Time has been exceeded</td>
</tr>
</tbody>
</table>

Aggregate Train Paths used by the relevant Train Services

Aggregate Train Paths contracted for the relevant Train Services

Percentage of agreed paths which QR Network, as Railway Manager, does not make available to coal carrying services in Central Queensland Coal Region

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* In accordance with the QCA’s Draft Decision, QR Network has proposed in UT3 to report quarterly performance variables by individual coal system.

* QR Network has proposed in UT3 that, in conjunction with the public release of a quarterly report, it provides a supplementary quarterly report to the QCA that presents information in the public report (except in relation to speed restrictions and track quality) for each railway operator.

* QR Network has proposed in UT3 to replace this measure of healthy/unhealthy trains with reports on train services which reach their destination within an allotted time.

* QR Network has proposed in UT3 that network service quality information be reported for each individual coal system.

* This indicator is proposed to be reported annually in UT3.

* QR Network has proposed report this indicator quarterly (instead of annually) as part of UT3.

* This indicator is proposed to be reported annually in UT3.

* QR Network has proposed to report these indicators as part of UT3.

* This measure is proposed to be excluded from UT3.

* This measure is proposed to be excluded from UT3.
3.5.13 Ensuring compliance
QR is required under the Access Undertaking to appoint an independent auditor who must prepare an Audit Plan. Both the auditor and the Plan are approved by the QCA.

Under UT3 it is proposed that all regulatory reports provided by QR Network to the QCA will be independently audited. Those reports include the Quarterly Network Performance Report, the Annual Financial Report (prepared in accordance with the QCA prescribed Costing Manual), the Annual Performance Report, the Annual Maintenance Cost Report, the Annual Capital Expenditure Report and Regulatory Asset Base Roll Forward Report.

Additional reporting obligations which will be audited include new performance indicators in the quarterly performance reports which will allow stakeholders to determine the proportion of contracted train paths that are actually being met.

Additional quarterly and annual performance reporting of operator or end customer specific information will inform the QCA’s decision making regarding the areas of the annual audit plan it wishes to target.

Apart from auditing the reports, and the data that goes into the reports, separate audits can be requested by the QCA. Audits therefore include, for example:

- financial statements
- compliance with Costing Manual
- investment decisions, if an audit is required by the QCA
- train control and train scheduling (as part of the Quarterly Network Performance Report)
- management of access applications (as part of the Annual Report)
- decisions about capacity allocation, if required by the QCA
- compliance with ringfencing requirements
- handling of complaints about ringfencing.

3.5.14 Enforcement and penalties
The QCA has extensive powers to seek information from QR to investigate alleged breaches of the Access Undertaking. The QCA and third parties operating under the Access Undertaking can seek orders from the Supreme Court, for example:

- section 153 allows the court to grant an injunction, or order compensation to be paid if an access provider is found to be preventing or hindering access
- in the event an access provider breaches an approved Access Undertaking, section 158A allows the court to direct an access provider to comply with an undertaking, or provide compensation for loss associated with a breach of an Access Undertaking.

If the QCA believes there may be evidence that QR Network is preventing or hindering a user’s access to the declared service (including on access charges, the nature and quality of the service provided or proposed to be provided), it has powers of investigation.

For example, sections 105 and 126 (Requirement to give information about access) of the QCA Act gives the QCA the power to require information about the arrangements under which the access provider provides, or proposes to provide, access to the service to itself or a related body corporate; breach of which is a criminal offence.

If an access seeker or user disputes any action taken by QR Network, the Access Undertaking allows that person to trigger the dispute resolution provisions in the undertaking. These provisions require that the dispute be resolved at CEO level in the first instance and if that is not achieved then the matter is referred to the QCA.

The enforcement provisions have not been utilised to date by users of the access regime.
Section 4
Preparing for privatisation. Building an even stronger regulatory system
4.1 New legislation to strengthen the Central Queensland Coal Network Access Regime

While there are strong existing protections in the Queensland third party access regime in relation to anti-competitive behaviour by a vertically-integrated access provider, the Government will be making amendments to the regulatory framework governing access to the rail network.

The Government will be making the following legislative changes to the Queensland Competition Authority Act 1997:

4.1.1 Preventing anti-competitive behaviour

1) Non-discrimination obligation - A new explicit requirement that vertically-integrated access providers must not unfairly discriminate between access seekers in negotiating with access seekers, or under an Access Undertaking, between access holders in providing access; and

2) a requirement that Access Undertakings of vertically-integrated access providers set access charges to only recover those costs reasonably attributable to the access service to prevent anti-competitive cost-shifting, cross-subsidies and margin squeezing.

These changes – relating to the ability of an access provider to favour its own above rail related business – supplement existing legislative protections including sections 104 (Preventing or hindering access) in relation to access agreements and 125 (Preventing or hindering access) in relation to access determinations. These two sections provide that:

“an access provider or user of a declared service, or a related body corporate of the access provider or use, must not engage in conduct for the purpose of preventing or hindering a user’s access to the declared service …”

The sections specify that in relation to a vertically-integrated provider such conduct includes granting more favourable access terms (including fees, tariffs or other payments, and the nature and quality of service provided) to a related entity compared with a competitor of the access provider.

4.1.2 Additional QCA powers

New powers will be given to the QCA to supplement existing powers of investigation and to improve the timeliness of regulatory processes:

- as a supplement to existing powers of investigation, the QCA Act will be amended to give the QCA enhanced power to require an access provider to give information to enable the QCA to assess whether the access provider is complying with an approved Access Undertaking

- the QCA Act will be amended to strengthen the ability of the QCA to impose financial penalties on an access provider in the event of a failure to provide information requested by the QCA

- to improve the timeliness of regulatory processes, the QCA Act will specifically provide that the QCA is able to make decisions based on the information available to it. This includes situations where an access provider or other party has not provided information requested within a specified period. This won't mean that the QCA is not required to apply the principles of procedural fairness in its assessments, but it will clarify that if the QCA has provided a party a reasonable amount of time to provide all necessary information to the regulator, then it is reasonable for the QCA to make a decision once that reasonable period of time has elapsed. This prevents companies seeking to frustrate and prolong decision making processes

- to improve timeliness, the Act will be amended to allow the QCA to prepare an Access Undertaking itself when an access provider of a declared service has not prepared a compliant voluntary Access Undertaking. The QCA will be able to prepare the undertaking without restarting the process, as it currently must, by way of issuing an undertaking notice.

4.1.3 Corporate governance

To complement these changes to the access regime, the Government will also be legislating protections which are specific to QR National's corporate governance framework – to address stakeholder concerns about the internal corporate governance of QR Network:

1) a requirement that the majority of directors of QR Network's Board must be independent of the executive management of the QR Group

2) a requirement that access agreements between QR Network and its related entities be approved in advance by the QR Network Board

3) that directors must not approve an access agreement with QR National unless the directors are reasonably satisfied the agreement is on arm's length terms.
4.2 Coverage

In anticipation of the privatisation of QR’s commercial freight operations (which includes the privatisation of the CQCN), the current declaration of coverage of the access regime is being revised.

It is intended the new declaration for the CQCN will be asset-based (as opposed to the current ownership-based declaration). This will ensure all critical rail infrastructure in Queensland, including the four CQCN systems, are covered by the open access regime.

Importantly, while augmentations, duplications, expansions and the replacement of existing network infrastructure that forms part of the declared network will automatically be declared, it will not automatically include large ‘greenfields’ projects. Such ‘greenfield’ projects will include the development of a new rail line to a coal basin not currently serviced by existing infrastructure.

As ‘greenfield’ projects will be developed in a contestable market, in which mine developers and network builders and operators compete, it is not appropriate to automatically ‘declare’ these projects for open access coverage.

Allowing for the exclusion of ‘greenfield’ projects is intended to provide incentive for private sector investment in major new mining projects, while providing protection for users in terms of incremental expansions to the existing network. This will support investment choice in rail construction and operations. Miners will have a choice as to who will build and who will operate their new railways.

Nevertheless ‘greenfield’ projects will be within the scope of the regulatory regime. An access seeker will have the ability to make an application to the QCA to have the rail assets declared, and should they meet the access criteria in section 76 of the QCA Act, they will be subject to regulation.
4.3 QR’s proposed Access Undertaking 3

Queensland’s regulatory regime continues to be enhanced through the process of finalising each Access Undertaking. The Access Undertaking for the next four year period, known as UT3, is currently being considered by the QCA.

Stakeholders are actively engaged in the process, which culminates with the QCA accepting the final form after extensive submissions and public consultation.

Section 4.3 has been provided by QR Limited. It details QR Network’s proposed enhancements from UT2 (the existing Access Undertaking), to improve the open access regime, noting that they are yet to be finally approved by the QCA. QR’s proposed enhancements, as submitted in April 2010, include:

**Reduction in complexity**
- Simplified price structures within an individual coal system.
- Simplified capacity transfer and relinquishment rules.
- Aligning transfer fee calculations with access charge differences to allow stakeholders to determine fees prior to formally approaching QR Network in relation to a transfer.

**Increase in certainty**
- Introduction of cross system pricing rules which provide for an access seeker to determine the likely access charge payable when operating train services across multiple systems.
- Ability for access holders to nominate an access seeker to transfer access rights, facilitating trading among industry participants.
- Annual escalation of operating and maintenance costs in line with movements in the consumer price index as well as a specific maintenance cost index that is more aligned to actual underlying cost drivers.
- Reference tariffs to be reset annually based on revised volume forecasts, reducing the magnitude of revenue cap adjustments and therefore annual price variations.
- Additional pricing mechanisms to allow for the recovery or return of amounts payable arising from regulatory determinations which have retrospective effect.

**Increased flexibility**
- System Rules for Individual Coal Systems, to be applied specifically to meet the operational needs of the relevant supply chains.
- The ability of an access holder to seek to redirect underutilised capacity entitlements to another origin or destination.
- Capping of Take-or-Pay commitments from a single origin to destination pair across multiple access agreements.
- Waiver of transfer fees for periods less than two years to remove contractual and financial barriers to transfers.
- Review of maintenance costs where a significant change in maintenance scope has occurred.
- Introduction of direct contracting by coal companies with QR Network for capacity entitlements, to provide choice of direct management of access rights.
- Extended timeframes for preparing an Indicative Access Proposal to allow for improvements in the quality of the information in the Indicative Access Proposal.

**Alignment with objectives of supply chain partners**
- Access seekers to demonstrate ongoing port capacity and sustainable use of contracted capacity to promote supply chain alignment and reduce capacity hoarding.
- Introduction of principles and processes to guide cooperation with all elements of coal supply chains on an annualised basis including developing common operating assumptions with service providers and participating in the development of supply chain master plans.
- Introduction of a process involving supply chain participants to develop a financial incentive mechanism for QR Network to promote alignment of objectives between QR Network and its customers.
- Access seekers may be placed on the Capacity Notification Register if the capacity they require is not immediately available. This provides a transparent overview, for all users, of the demand for capacity across the rail network.

**Promoting competition**
- Further obligations on QR Network not to unfairly discriminate between access seekers when negotiating access or between access holders in providing access unless it complies with a provision of the Access Undertaking or the terms of the access agreement (e.g. distance based pricing).
- Formal QR Network complaint lodgement process on alleged discrimination; the QCA and the complainant will be informed of the complaint to QR Network and the outcomes from the investigation; if the complainant is not satisfied with QR Network’s investigation the complaint handling may be independently audited.
- QR Network will be required to procure from the QR National Board a commitment that it will take actions necessary for QR Network to comply with its obligations in relation to the supply of electricity, access to land, and transfer of rail transport infrastructure.
- The QR National Board will provide a commitment that all QR Business groups will comply with the ringfencing obligations in the Undertaking.

**Increased transparency**
- Reporting improvements to improve the consistency, relevancy, transparency and effectiveness of QR Network’s public reports.
- Quarterly performance reports to include a range of increased reporting requirements and disaggregation of performance data down to individual coal systems.
• Quarterly performance reports and annual reports provided to QCA to report information on the basis of QR and third party operators, with individual operators being provided details as they relate to that party.

**Increased accountability**

• Reporting of breaches will include a requirement to inform the affected party of the breach at the same time as reporting to the QCA, where that breach directly and adversely affects the interests of the access seeker or access holder.

• All reports provided to the QCA will be subject to an independent audit.

• The QCA may also request that QR Network undertake an audit of any decision or conduct by QR Network for compliance with the Access Undertaking where it has reasonable grounds for seeking that audit.

• The auditor must be independent and the QCA may require appointment of a new auditor if that auditor has conducted the previous five annual audits.

**Timely Network expansion**

• A commitment by QR Network to undertake capacity expansions less than $300 million at the regulatory approved cost of capital.

• A structured negotiation process to facilitate the timely and commercial development of significant rail infrastructure enhancements (i.e projects worth more than $300 million). Specifically, the framework:
  – provides greater transparency of process on timing and cost of project delivery;
  – includes obligations on QR Network in relation to acting reasonably in establishing negotiating timeframes;
  – allows for alignment in the timing of project delivery across elements of the supply chain;
  – includes specified triggers which allow an access seeker to directly fund infrastructure enhancements and expedite negotiation;
  – provides coal companies with more choice in how a project is funded;
  – permits user construction and funding of extensions to connect to the main line network to promote competition in the market for rail construction and railway management;
  – provides for direct user input into the design, procurement and construction of the project which facilitates timely investment and prudence of costs; and
  – allows for referral to expert determination to avoid protracted dispute resolution.

• The framework for connectivity of private rail infrastructure to the existing network has been clarified in relation to QR Network’s obligations to facilitate those connections.

### 4.4 Improving coordination of network capital expenditure

Under its UT3 proposal, QR Network has committed to improving the coordination and planning of capital expenditure across the network.

A Coal Rail Infrastructure Master Plan Planning Forum has been formed for coal supply chain stakeholders (mining organisations, rail operators and port operators) to function as a consultative body in the development of the Coal Rail Infrastructure Master Plan.

The Master Plan will cover each individual coal system and will detail:

• operating assumptions
• aggregated contracted train paths
• capacity planning assumptions
• proposed asset replacement expenditure
• expansion capital expenditure to satisfy the capacity planning scenarios.

Through the Planning Forum, coal companies and other stakeholders will receive detailed Master Plan information on scope, standard and preliminary costs of proposed expansion capital expenditure.

Under UT3, QR Network will be under an obligation to seek to align the overall Coal Rail Infrastructure Master Plan with each individual coal system plan when it is reasonable to do so, and, in the case of material differences between the overall plan and an individual plan, to explain the differences.

### 4.5 Certification of Queensland’s access regime with the National Competition Council

The National Competition Council’s (NCC) role is to recommend on the regulation of third party access for services provided by monopoly infrastructure, under the national access regime in Part IIIA of the *Trade Practices Act 1974*. The NCC undertakes a ‘certification’ process, through which State Government access regimes can be endorsed and operate instead of the national access regime.

Certification provides access seekers, infrastructure operators and other parties with certainty about how access will be regulated.

Meeting its commitment to deliver a transparent and robust access regime for the central Queensland coal network, the Queensland Government will seek certification of the coal network regime by application to the NCC in the third quarter of 2010.

This will provide certainty moving forward for access seekers that the QCA will continue to be the regulator for rail infrastructure in Queensland.
Section 5
The Queensland coal industry in profile
5.1 Recent growth of the Queensland coal industry

In 1996-97, approximately 90 million tonnes of coal was railed. In 2008-09, more than 170 million tonnes was railed. This is an increase of 80 million tonnes, almost doubling the coal railed over the past decade.

Over the same period total coal exports increased from 79.5 million tonnes to a record coal export figure of 159.5 million tonnes in 2008–09, an increase of over 100 per cent.

In 2009–10, coal exports are on track to achieve new records driven by continuing strong demand from China and India, as well as the return of demand from traditional markets.

5.2 Future growth of the Queensland coal industry

Despite the recent global financial crisis, demand for Queensland coal continues to increase.

Steel mills predominantly use hard and soft coking coal in their manufacturing process - and in 2008-09 Queensland exported 31.06 million tonnes of soft coking coal and 82.72 million tonnes of hard coking coal (with a total of 113.78 million tonnes). This accounts for around 71% of Queensland’s total coal exports.

Queensland’s coal industry will continue to grow with the world’s demand for coal. The State’s coal reserves are amongst the largest in the world, with an estimated production potential of up to 340 million tonnes per annum.

Queensland currently sources the vast majority of its coal from the Bowen Basin. There are two largely untapped coal ‘basins’ – the Surat Basin in southern central Queensland and the Galilee Basin inland from the Bowen Basin. Connecting these coal basins with mine-to-port rail networks remains the single largest challenge for the burgeoning coal industry.

Source: Queensland Department of Transport and Main Roads
5.3 Mine, rail, port – how our coal gets from mines to the world

Queensland currently has 55 operating coal mines, producing some 190 million tonnes per annum. Mined coal is predominately transported via rail for two primary purposes; for use by domestic users (such as power stations); and to ports for export around the world.

In 2008-09 159.5 million tonnes of coal were transported to Queensland’s coal ports, loaded onto coal ships and exported via sea to some 38 countries. In addition to these export tonnes, around 10.7 million tonnes were railed for domestic use.

To give some perspective to the scale of the logistics associated with transporting 170 million tonnes of coal via rail, it is equivalent to filling 1.7 million coal wagons. End-to-end this number of wagons would stretch some 30,000 kilometres (long enough to stretch around the entire coastline of Australia).

Queensland’s coal mines export coal through six coal terminals located at the Ports of Brisbane (1 terminal), Gladstone (2 terminals), Hay Point (2 terminals) and Abbot Point (1 terminal). Further coal terminals are planned for Wiggins Island (near Gladstone) and at Abbot Point (north of Bowen), which have the potential to provide an additional 60 million tonnes per annum in export capacity (see table 4 – Queensland’s existing and proposed coal export terminals).

### Table 4. Queensland Coal Export Terminals

<table>
<thead>
<tr>
<th>Port</th>
<th>Terminal</th>
<th>Owner</th>
<th>Operator</th>
<th>Access</th>
<th>Terminal Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abbot Point</td>
<td>Abbot Point Coal x50 terminal</td>
<td>Currently being privatised via Lease from North Queensland Bulk Ports</td>
<td>Abbot Point Bulk Coal Pty Ltd (Xstrata)</td>
<td>Multi user</td>
<td>Operating</td>
</tr>
<tr>
<td>Abbot Point</td>
<td>Abbot Point Coal Terminal (x80, x110 expansions)</td>
<td>Private Proponents via Lease from North Queensland Bulk Ports</td>
<td>Preferred developers BHP Billiton &amp; Hancock Coal</td>
<td>Single user</td>
<td>Proposed</td>
</tr>
<tr>
<td>Hay Point</td>
<td>Hay Point Services Coal Terminal</td>
<td>BHP Billiton Mitsubishi Alliance</td>
<td>BMA</td>
<td>Single user</td>
<td>Operating</td>
</tr>
<tr>
<td>Hay Point</td>
<td>Dalrymple Bay Coal Terminal (DBCT)</td>
<td>Prime Infrastructure (under long term lease from Queensland Government entity, DBCT Holdings P/L)</td>
<td>DBCT Pty Ltd (user group)</td>
<td>Multi user</td>
<td>Operating</td>
</tr>
<tr>
<td>Gladstone</td>
<td>RG Tanna Coal Terminal</td>
<td>Gladstone Ports Corporation</td>
<td>CQPA</td>
<td>Multi user</td>
<td>Operating</td>
</tr>
<tr>
<td>Gladstone</td>
<td>Barney Point Coal Terminal</td>
<td>Gladstone Ports Corporation</td>
<td>CQPA</td>
<td>Multi user</td>
<td>Operating</td>
</tr>
<tr>
<td>Brisbane</td>
<td>Brisbane Coal Terminal</td>
<td>Queensland Bulk Handling (QBH) on site leased form Port of Brisbane Corporation (PBC)</td>
<td>QBH</td>
<td>Multi user</td>
<td>Operating</td>
</tr>
<tr>
<td>Gladstone</td>
<td>Wiggins Island Coal Terminal</td>
<td>WICET Consortium via Lease from Gladstone Ports Corporation</td>
<td>GPC</td>
<td>Multi user</td>
<td>Proposed</td>
</tr>
</tbody>
</table>

### Recent growth in Queensland mines

Over the five years to 2008-09 the number of coal mines operating in Queensland increased from 43 to 55, a 28 per cent increase which clearly represents the industry’s commitment to investing in the future of Queensland.

*Source: Queensland Department of Employment, Economic Development and Innovation*
5.4 The hauliers who carry the coal

There are two rail hauliers of coal in Queensland:

- QR National – the Government-owned coal haulage business, which is being privatised via a public float and is proposed to be publicly listed on the Australian Securities Exchange in late 2010
- Pacific National – a subsidiary of the publicly listed Asciano Limited.

The open access regime provides the framework for these two companies to compete in Queensland's above rail coal haulage market.

5.4.1 QR National

QR National is Australia's largest haulier of coal. The business currently has approximately 83 per cent of Queensland's coal haulage market and around 15 per cent of the New South Wales Hunter Valley coal haulage market.

The business operates over 390 locomotives, having in excess of 8,700 coal wagons. In 2008-09 QR National hauled approximately 185 million tonnes of coal.

5.4.2 Pacific National

Pacific National (PN) is currently Australia's largest privately operated freight railway. PN is Australia's second largest haulier of coal. The business currently has around 85\(^a\) per cent of the New South Wales Hunter Valley coal haulage market and around 17\(^b\) per cent of Queensland's coal haulage market. PN also provides domestic-use coal haulage services in South Australia.

PN currently hauls around 95 million tonnes of coal per annum, using more than 100 locomotives and 2350 wagons.\(^c\)

5.5 QR National: A new era to deliver a common goal; more trains, more tracks, more coal

The success, efficiency and growth of Queensland's coal export chain are critically important for all coal industry participants, the Queensland economy and continuing employment growth. The coal companies, the coal hauliers and the Government all have a common goal, to export more coal.

The Government's decision to privatise Queensland's rail freight operator, by publicly listing QR National on the Australian Securities Exchange, is central to the Government's strategy to enhance the State's mine to port export chain. Privatisation will facilitate private sector investment in the expansion of the coal systems and promote competition to improve the efficiencies and performance in the haulage of coal from mine to port.

The current structure, where a Government-owned coal haulage business is entrenched in a commercial coal supply chain, does not optimise the future potential of the mine to port supply chain. Hauling coal is a job best left to the private sector.

The public listing of QR National will complete a privatised mine to port coal supply chain where the mines, the coal network (the tracks or commonly called the ‘below rail’) and the coal trains (the ‘above rail’) are operated by commercial organisations competing vigorously in a commercial marketplace.

This will lead to improved export drivers and improve the effectiveness of Queensland's export chain across three key areas – greater competition; greater performance of the supply chain; and more opportunities for network expansion.

The coal companies, the coal hauliers and the Government all have a common goal; to export more coal.

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\(^a\) Source: Asciano investor briefing 13 May 2010 (basis for market share calculation not disclosed)
\(^b\) Source: Asciano investor briefing 13 May 2010 (basis for market share calculation not disclosed)
\(^c\) Source: Pacific National website as at 12 May 2010
5.5.1 Greater competition

Queensland has the most developed open access regime for rail freight in Australia (discussed in detail in Section 3.5). The open access regime is the regulatory framework that facilitates competition in the above rail haulage market.

Across all industries competition has long been the leading driver of improved operational performance and efficiency. Vigorous competition requires operators to strive continuously to improve their performance and their service levels for customers.

There are currently two companies, QR National and Pacific National, which operate coal trains in Queensland. The proposed significant expansions of the existing network as well as major extensions of the network in connecting new mines in the Surat Basin and Galilee Basin to ports will provide these companies with substantial opportunities to grow their tonnages. Competition for these tonnages is expected to be intense. This competition will be central to the supply chain's future success.

5.5.2 Greater performance of the supply chain

There are a large number of coal companies (22) operating in Queensland. Each customer has different haulage requirements for its mines. These customers and the collective mining industry have long called for more customised service delivery by the coal hauliers. Greater competition will foster improved service delivery and choice for customers as they seek to maximise tonnages railed to port.

A more competitive above rail marketplace will lead to greater on-time train performance, greater investment in above rail infrastructure (more trains) and improved train cycles (i.e. the total time a train takes to go through the cycle of depot – to mine – load coal – to port – unload coal – return to depot – service train – ready for next cycle times).

5.5.3 More opportunities for network expansion

The quantity of Queensland’s coal reserves exceeds the current capacity of the mine to port supply chain. Improved network efficiency will greatly assist in maximising tonnages through the supply chain, but as more coal is mined, more coal tracks are expanded and new coal ports will be required to meet the demand for export of Queensland’s coal.

As a publicly listed entity, QR National will have greater financial capacity and incentive to invest in network expansion. More tracks will ultimately mean more coal hauled and greater profits for all companies in the supply chain and their shareholders.

The open access regime has safeguards for coal companies to undertake their own expansions should they wish to interconnect their own extensions to the main network or to fund expansion of the existing network (discussed in further detail in Sections 3.5.9 and 4.3).

As discussed in Section 2.3 there are also significant opportunities for new mines in the Surat and Galilee basins, where coal companies have indicated an intention to build and operate their own rail network and haulage operations.

All of these expansion options have a single, common goal – to increase Queensland’s coal export capacity. This will be good for Queensland’s economy, good for the growth of the State’s royalties, good for the profits of coal companies and the companies that provide services to them, and good for jobs growth in the industry.
Section 6
Indicative timeline
6.1 Indicative timeline

- New coverage regulation in place: July 2010
- Legislative enhancements to the access regime: 3rd quarter 2010
- Application for NCC certification: 3rd quarter 2010
- New Access Undertaking approved: By August 2010
- QR National listed on Australian Securities Exchange: 4th Quarter 2010
Glossary

Access agreement
An agreement between QR Network (as the access provider) and an above rail operator (an access seeker) to provide the above rail operator with access to rail infrastructure (i.e. rail track) on terms and conditions set out in the agreement.

Access provider
QR Network is the access provider for rail services in the CQCN as it provides above rail operators with access to its rail infrastructure (rail tracks).

Access seeker
Above rail operators (coal haulage companies) that seek to use QR Network’s rail infrastructure are access seekers in the CQCN.

Access Undertaking
A written undertaking that sets out the terms and conditions on which an owner or operator of a service undertakes to provide access.

Certification
A determination made under the Trade Practices Act 1974, that a State or Territory third party access regime is effective. Services subject to a certified regime will continue to be regulated under that State or Territory regime.

CQCN
Central Queensland Coal Network - includes the rail track and associated below-rail infrastructure in the Newlands, Moura, Goonyella and Blackwater coal systems.

Cyclical traffic
Traffic whose underlying train service entitlement is defined in terms of a number of train services within a particular period of time, for example, a year, month or week. Coal traffic is an example of such traffic.

Declared service
A service declared for third party access under Part 5 of the Queensland Competition Authority Act 1997.

egtk
Electric gross tonne kilometre.

gtk
Gross tonne kilometre.

Indicative Access Proposal
A non-binding response from QR Network to an access application, prepared in writing and including information on the proposed elements of an access agreement including estimated access charges, capacity availability, rollingstock requirements and other operating terms and conditions

Initial Capacity Assessment
A non-binding assessment of available capacity

Capacity analysis
An assessment of whether there is sufficient capacity on the network for proposed access rights, or the infrastructure or capacity expansion required to meet the proposed access rights

NCC
National Competition Council

nt
Net tonne

ntk
Net tonnes kilometres

Open access
See third party access

QCA
Queensland Competition Authority

QCA Act
Queensland Competition Authority Act 1997

QR National
The Government-owned freight business, including coal haulage, which will be privatised as part of the Initial Public Offering (IPO) of QR National Limited.

QR National Limited
The proposed new name of the rail company that will be listed on the Australian Securities Exchange via an IPO. QR National Limited will include QR’s freight and coal haulage business and the CQCN.

QR Network
The Government-owned rail track business currently responsible for managing the CQCN. The CQCN will be separated from the non-coal freight and passenger systems and privatised as part of the IPO of QR National Limited.

Reference tariffs
Tariffs established to provide access seekers with certainty regarding prices for defined rail services across the term of an undertaking. Reference tariffs are in place for the Central Queensland and Western coal regions at present.

Third party access
The provision of access to infrastructure services to a person that is not the owner or operator of the relevant infrastructure.

Train Cycle Time
The total time a train takes to go through the cycle of depot – to mine – load coal – to port – unload coal – return to depot – service train – ready for next cycle.

Train path
Means the occupation of a specified portion of the network, which may include multiple sections in sequential order, for a specified time.

Train service entitlement
An entitlement held by an access holder under an access agreement, setting out the number and type of train services that can be operated within defined time periods and scheduling constraints.

UT3
QR’s third access undertaking covering the period 1 July 2009 to 30 June 2013, setting the terms and conditions of access to the central Queensland coal network, in addition to reference tariffs for the Central Queensland and Western coal regions.