

QRN Reference: WA/Brookfield/TPPTMG_20120606
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Dear Leonie

Brookfield Rail's Proposed Train Path Policy and Train Management Guidelines

Thank you for the opportunity to provide a public submission on Brookfield Rail's (Brookfield) proposed Train Path Policy (TPP) and Train Management Guidelines (TMG).

QR National (QRN) is Australia's largest rail freight company with services operating across five states. In 2010/11, QRN transported more than 240 million tonnes of freight, including coal, iron ore, other minerals, agricultural products and general freight. It also operates and manages the 2300 kilometre Central Queensland coal network that links mines to coal ports at Bowen, Mackay and Gladstone.

In Western Australia (WA), QRN delivers products to the ports of Geraldton, Fremantle, Kwinana, Bunbury, Albany and Esperance. QRN is the largest rail operator using the rail infrastructure leased and managed by Brookfield. QRN has total committed investment in excess of \$350 million underway in WA in new trains and new facilities to support the growth of its customers and its business.

QRN has reviewed the proposed amendments to Brookfield's TPP and TMG and has provided detailed comments in attachments 1 and 2 to this submission. QRN provides the following general comments in relation to both the TPP and TMG:

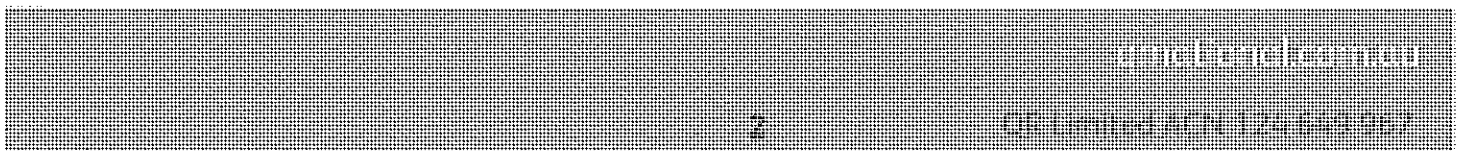
- In the draft determination of the Application for certification of the WA Rail Access Regime (WARAR)¹ the National Competition Council (NCC) noted an effective regime

¹ The WARAR is established by the *Railways (Access) Act 1998* (the Act) and the *Railways (Access) Code 2000* (the Code).

provides “an appropriate balance between commercial negotiations and regulatory intervention to facilitate access negotiations” and “addresses information asymmetries, so that access seekers can enter into meaningful access negotiations”.² Where the parties are incentivised to do so, the negotiation of arrangements outside of the WARAR provides for market based rather than regulated outcomes. The WARAR provides a safety net where the parties are unable to resolve disputes.

- In line with the comments of the NCC, QRN would argue that the information requirements of the WARAR, including the Part 5 instruments, facilitate negotiations both inside and outside of the WARAR. The TMG and TPP approved in 2009, provided access seekers with certainty on how capacity would be allocated and managed and provided information regarding the minimum terms and conditions that would apply in relation to the allocation and management of capacity.
- It is QRN’s view that the overriding principles for capacity allocation and management are to:
 - provide access seekers with certainty regarding the process and criteria for the allocation and management of capacity;
 - maximise the efficient use of the network; and
 - ensure that all access seekers are treated fairly and in a non-discriminatory way.
- In WA, a significant number of access arrangements are negotiated outside of the Code. By changing their policy of applying the TPP and TMG to all agreements whether negotiated under the Code or not, Brookfield have created uncertainty as to how capacity will be allocated and managed between parties operating pursuant to agreements negotiated inside or outside of the Code.
- Brookfield have removed a number of provisions from both the TMG and TPP that provided transparency in the process and/ or minimum terms and conditions to apply that are directly related to the allocation and management of capacity. For example the process for the permanent variation of train paths, either by Brookfield or the operator is an important element of capacity allocation, as is the process and timeframes associated with possession management. Provisions that are directly related to the allocation and management of capacity are necessary in order to assess capacity rights and should be included in the TPP or TMG as applicable.
- In addition, the approved TPP and TMG included provisions that have a less direct relationship with capacity allocation and management. For example, the infrastructure

² NCC, *Application for Certification of Western Australian Rail Access Regime Draft Recommendation*, 17 August 2010, p20

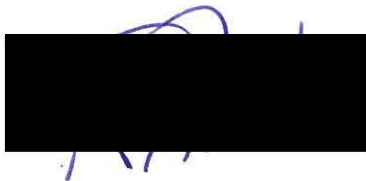


standard provision. Whilst the indirect relationship of these provisions may lead to their removal from the TPP and TMG and to be dealt with in the commercial agreements, the assessment of whether they should be included or not should be based on a cost versus benefit assessment. QRN does not believe the inclusion of these provisions creates a material regulatory burden on Brookfield or limits Brookfield's ability to negotiate different commercial positions in line with the cost and risk associated with the specific project. As such, the transparency benefit to access seekers, in QRN's view, outweighs the cost to Brookfield, particularly where a standard access agreement is not published.

- Some changes to the TPP and TMG will have adverse implications on existing contractual obligations where both Brookfield and the operator have an obligation to comply with the TPP and TMG. In QRN's opinion, it is unreasonable, as a result of changes to the regulatory instruments, that the terms and conditions on which access has been negotiated change. Where existing agreements rely on the current clauses of the TPP or TMG, those provisions should be reinstated.
- The assessment of the impact of the proposed changes to regulatory instruments is often facilitated by the provision of information regarding the rationale supporting the changes. Without this information, QRN has made assumptions which may result in some concerns raised by QRN being able to be resolved via clarification from Brookfield as to why the changes were made. As such, QRN looks forward to discussing the matters raised with both Brookfield and the Economic Regulatory Authority.

Attachments 1 and 2 to this submission provide further commentary together with suggested resolutions on specific issues identified by QRN in the proposed TPP and TMG.

Should you wish to discuss any aspect of this submission, please do not hesitate to contact either David Hamblyn on (07) 3235 3929 or Rachel Martin on (07) 3235 5476.

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Andrew MacDonald
Senior Vice President – Commercial and Planning
QR National

Attachment 1: Train Path Policy

Item	Issue	Reference	Description	Suggested Resolution
1	Application of TPP to Brookfield's Network	Clause 1	There appears to be an inconsistency between clauses 1 and 2. Clause 1 refers to the application of TPP to the railway Network that Brookfield owns and clause 2, as well as the definition of network, refers to the routes listed in Schedule 2 of the Code that Brookfield controls and has the right to grant Access to. Whilst part of the network may be owned by Brookfield, a significant part of the Network is leased from the State Government. Clause 2 therefore more correctly reflects the 'ownership' status of the Network.	Clause 1 is amended to be consistent with clause 2 and recognise Brookfield's management rights in relation to its arrangements with the State.
2	Application of TPP to Access Rights Negotiated Under the Code	Clauses 3 & 12	<p>In the event there are competing requests for capacity, one negotiated inside the Code and another outside the Code, the approved TPP provides transparency in the manner in which the requests would be dealt. The approved TPP includes an acknowledgement from Brookfield that the TPP will apply to allocated train paths regardless of whether access applications are inside or outside the Code.</p> <p>Under the proposed TPP, Brookfield has removed this commitment creating uncertainty regarding the allocation of competing train paths under these circumstances.</p>	Brookfield to clarify how competing requests for capacity negotiated inside or outside the Code will be treated.
3	Goals of Train Path Policy	Clause 4	<p>The purpose of a "goal" clause is to capture the intent of the policy in order to avoid unintended outcomes when interpreting.</p> <p>The overriding principle for capacity allocation is to provide access seekers with certainty regarding the process and criteria for the allocation of capacity, and ensure that all access seekers are treated fairly and in a non-discriminatory way. In addition the guidelines or principles regarding capacity management are an important component of network efficiency as the provisions affect the extent to which the network is used.</p> <p>It is QRN's view, that the goal of the TPP should reflect the three objectives of efficiency, transparency or certainty of process and non-discrimination and should align with the obligations under the WARAR.</p>	<p>Clause 4 be amended to:</p> <ul style="list-style-type: none"> include a certainty objective together with the requirement that the allocation of capacity will take into consideration the contractual rights and obligations of all parties; reflect a goal of fairness to all operator's regardless of whether negotiated inside or outside the Code; and reflect the safety and efficiency components of capacity allocation in 4(b) in order to define what is to be achieved rather than what will be allocated.

Item	Issue	Reference	Description	Suggested Resolution
			<p>To reflect that the efficiency objective is what is to be achieved rather than what is to be allocated, the goal of the TPP should not be the “safe and efficient” allocation of capacity to maximise use, but rather the allocation of capacity that encourages and facilitates the “safe and efficient” use of the network. In addition, to align better with the Code, QRN believes the safety and efficiency components used in clause 4 should be clarified to reflect “economic efficiency” and “safe and reliable operations.”</p> <p>The proposed TPP does not explicitly include a certainty objective. It is QRN’s position that this should be included, together with the requirement that any allocation of capacity will take into consideration the contractual rights and obligations of all parties.</p> <p>Under Part 5 of the Act, both the Railway Manager and access seekers have obligations to not engage in any conduct that is aimed at preventing or hindering access to the network. To reflect this and to align with the non-discrimination objective mentioned above, clause 4(a) of the TPP should look to the fairness of treatment between operators or access seekers regardless of whether the access is negotiated inside or outside the Code.</p>	
4	Master train plan and the process for allocation of train paths as part of the negotiation process for access		<p>Brookfield has removed the commitment to maintain a Master Control Diagram and the reference to the Master Train Control Diagram when determining if paths are available. Under Schedule 2 of the Code, the preliminary information that Brookfield is to make available includes available capacity. The inclusion of the Master Control Diagram in the TPP provides an indication of the form and methodology for providing available capacity information. QRN does not understand why this has been removed.</p>	<p>Brookfield to provide information as to why references to the Master Control Diagram have been removed and provide a suitable alternative to the existing arrangements. If none can be provided then the existing wording regarding the commitment to maintain a Master Control Diagram be retained.</p>
5	Competing access requests	Clause 12	<p>This clause outlines the basis on which Brookfield will allocate capacity where there is competing demand and the items that will be considered. Brookfield have removed the first in first served basis of allocation and replaced it with the more subjective criteria of:</p> <p>(a) fair, given competing demand;</p> <p>(b) maximising the use of the Network; and</p>	<p>QRN proposes the following amendments in relation to the allocation of capacity where there are competing access requests.</p> <p>The references in clause 12 to competing demand are changed to competing access requests.</p> <p>Brookfield includes a “first come first served” criteria</p>

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			<p>(c) satisfies Brookfield Rail's commercial objectives.</p> <p>It should be clarified that the competing demand referred to in clause 12 is in relation to competing requests for access and does not include contracted demand.</p> <p>In QRN's view, criteria (a) that the allocation "is fair, given the competing demand for limited Network Capacity" does not meet the certainty of process criteria discussed in Item 3 above. QRN agrees it is appropriate to include a fairness obligation for the benefit of access seekers. However, further clarity is required in line with discussions below.</p> <p>Competing requests for capacity may exist:</p> <ol style="list-style-type: none"> 1. where two operators are competing to provide services to the same end user or producer; or 2. where two operators are seeking access for different end-users or producers to similar parts of the network (either in whole or part) to transport their commodity, which may or may not be the same; and 3. may involve one party renegotiating an expiring contract <p>Criteria (b) and (c), as discussed below, provide some certainty as to how these competing requests will be dealt with. However further information is required in the circumstances where (b) and (c) do not materially differentiate the requests. Under these conditions it would be appropriate for the decision to be based on the first come first served criteria.</p> <p>With regard to criteria (b), QRN would argue the relevant criteria is maximising the "safe and efficient" use of the Network in line with comments in Item 3 above and the general obligations of the Railway Manager under the Code.</p> <p>QRN acknowledges that there is precedent for the railway manager to include commercial return criteria when allocating scarce capacity. However, criteria (c) as proposed does not provide access seekers with clarity as to what may constitute</p>	<p>where criteria (b) and (c) do not materially differentiate between competing access requests.</p> <p>Include the safety and efficiency components as discussed in Item 3 in criteria (b).</p> <p>Change criteria (c) to <i>"provide Brookfield with the highest present value of future returns after considering all risks associated with the Access Agreement"</i> and include that the assessment of returns will be in accordance with Schedule 4 of the Code.</p> <p>Include a requirement to notify access seekers of competing access requests (including where the request is for a path that is currently contracted but will be available on the expiration of the contract).</p> <p>Include an obligation for Brookfield to not conduct parallel negotiations for competing access requests.</p>

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			<p>Brookfield's commercial objectives.</p> <p>QRN would argue that expressing the criteria in a similar manner to the ARTC Interstate Access Undertaking, for example <i>"provide Brookfield with the highest present value of future returns after considering all risks associated with the Access Agreement"</i>, would better serve the interests of access seekers. This together with confirmation that any assessment of returns would be in compliance with the pricing principles under Schedule 4 of the Code, would provide a greater level of certainty regarding the basis of allocation of capacity.</p> <p>To inform the risks to their project, access seekers need to understand the cost and likelihood of contracting capacity to the rail network. To manage this risk appropriately, access seekers need to be notified in the event there are mutually exclusive access requests. Likewise it is appropriate that once negotiations have commenced, access seekers have certainty that a competing request will not be accepted prior to a decision to either execute an agreement or cease negotiations.</p>	
6	Types of train paths	Clause 13 and definition of Train Paths	<p>Brookfield has removed reference to the Scheduled Train Paths, Flexible Scheduled Train Paths and Conditional Paths. This has been replaced with a generic definition of train paths that includes ad-hoc, irregular or eccentric train paths.</p> <p>In order to meet the clarity objective, it is QRN's position that Train Paths should be differentiated between Scheduled Train Paths and Adhoc Train Paths.</p> <p>The TPP should then be reviewed to assess the applicability of clauses to either scheduled or adhoc services. For example, the clauses relating to the removal of underutilised Train Paths should not apply to Adhoc Train Paths as generally these are scheduled on an as required basis providing they do not impact on other scheduled services.</p> <p>QRN acknowledges that the change in the definition of a Train Path to include the day of the week is in line with the definition of Scheduled Train Paths in other jurisdictions. QRN has assumed that an eccentric or irregular path is a Scheduled Train Path but may be either seasonal or required on a weekly basis but on different days.</p> <p>QRN does not object to the removal of a Flexible Scheduled Train Path, provided the</p>	<p>Train Path definition and the TPP reviewed to differentiate between Scheduled Train Paths and Ad Hoc Train Paths.</p> <p>The definition of Scheduled Train Paths to include "eccentric" and "irregular" with some clarification on the meaning.</p> <p>include the ability for operator's to temporarily vary scheduled services subject to availability.</p>

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			operator has the ability to temporarily vary the Scheduled Train Path subject to the varied service not impacting on other scheduled services in order to allow for short term production variability.	
7	Removal of train path for under-utilisation	Clauses 15-17	<p data-bbox="577 395 1507 416">Brookfield have proposed that in the event a Train Path is not utilised, Brookfield will:</p> <ol data-bbox="577 459 1507 847" style="list-style-type: none"> <li data-bbox="577 459 1507 485">1. Monitor the Train Path over a three month period (the Monitoring Period). <li data-bbox="577 523 1507 580">2. If the Train Path is not utilised at any time during the Monitoring Period the operator will be issued with a written notice identifying the Train Path as underutilised. <li data-bbox="577 619 1507 708">3. If the operator then fails to utilise the Train path more than 6 times in aggregate in a six month period from the date of the notice, the Train Path will be confirmed as underutilised. <li data-bbox="577 746 1507 847">4. Once the operator has been notified that a Train Path is confirmed as underutilised Brookfield may withdraw the contractual entitlement of the operator to utilise the Train Path. <p data-bbox="577 884 1507 1043">The removal of underutilised paths is intended to mitigate the risk of hoarding of paths by access seekers and preventing the efficient use of the network. The efficient use criteria require that there is an alternative use for those paths. As such, the application of this clause should only be required in the circumstances where there is competing demand for the underutilised path.</p> <p data-bbox="577 1082 1507 1241">QRN acknowledges that in assessing whether a train path is identified or confirmed as underutilised, Brookfield will take into consideration whether the path was not made available by Brookfield or was due to the consequences of an FM event. However, there are also circumstances where Brookfield may agree to a temporary variation or use of an alternative path in order to address short term production or supply variability.</p> <p data-bbox="577 1279 1507 1375">It is QRN's position that a train path should not be identified or confirmed as underutilised where Brookfield has agreed to the temporary variation or have made available an alternative path that is then used by the operator.</p> <p data-bbox="577 1414 1507 1441">QRN notes that in other jurisdictions it is accepted practice for the operator to retain a</p>	<p data-bbox="1536 395 2132 416">TPP amended to reflect:</p> <ol data-bbox="1536 459 2132 847" style="list-style-type: none"> <li data-bbox="1536 459 2132 549">1. That an underutilised path will not be resumed unless there is a competing request for the path; <li data-bbox="1536 587 2132 708">2. That if the operator is able to demonstrate there is reasonable demand for the underutilised path, the access rights are maintained; and <li data-bbox="1536 746 2132 847">3. The relativity of the number of paths contracted in the threshold for assessing whether a path is underutilised paths or not.

Item	Issue	Reference	Description	Suggested Resolution
			<p>train path identified as underutilised where they are able to reasonably demonstrate demand for the path. QRN considers this a reasonable position given the potentially adverse impact on both the operator and the operator's customer if contracted paths are resumed.</p> <p>QRN would argue that the threshold for confirming a train path as underutilised should be relative to the number of services rather than the current time based threshold. For instance the 6 times in 6 months threshold is a very low threshold if the train path recurs daily.</p>	
8	Permanent variation		<p>The approved TPP identifies the process to follow where there is a requirement to permanently vary a Train Path. This process has been removed from the proposed TPP and is to be included in the access agreement.</p> <p>QRN acknowledges that the ability to permanently vary train service appropriately sits in the access agreements, however QRN believes the inclusion of this provision in the TPP provides transparency on the minimum terms and conditions to apply. The permanent variation of a train path relates directly to the allocation and management of capacity and provides information regarding the efficiency of the network and is necessary in order to assess capacity rights. It is QRN's position that this clause should be reinstated in the TPP.</p>	Reinstate process to be followed for a permanent variation in the TMG
9	Cancellation of services using train paths		<p>Brookfield has deleted from the policy when an operator may have a right to cancel paths without penalty. This provision provides transparency on the minimum terms and conditions to apply and is directly related to the allocation and management of capacity. It provides information regarding the efficiency of the network and is necessary in order to assess capacity rights. It is QRN's position that this clause should be reinstated in the TPP.</p>	Reinstatement of the Cancellation of Services Using Train Paths clause in the TPP.
10	Compliance and review	Clause 20	<p>Brookfield have noted that the Regulator will monitor Brookfield's compliance with the TPP and where it believes there is reason to do so, the Regulator may request an audit into Brookfield's implementation of the TPP.</p> <p>Brookfield has proposed that if an audit is required, Brookfield will conduct an internal audit and provide the findings to the Regulator. If the Regulator is not satisfied with the internal audit, the Regulator may request that Brookfield engages an independent</p>	<p>The alternate models proposed by QRN be considered, that is:</p> <p>a) Brookfield is provided with the ability to waiver the two year independent audit on the basis that stakeholders are able to comment on the</p>

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			<p>auditor approved by the Regulator, with Brookfield managing and funding the audit.</p> <p>QRN assumes that the changes proposed by Brookfield are to minimise the cost of administrating regulatory compliance. QRN acknowledges that circumstances may not warrant the cost associated with a Regulator appointed independent audit of compliance with the TPP every two years as is included in the approved TPP.</p> <p>QRN believes the independence of the audit is a key element that provides access seekers with confidence that the TPP is being complied with. Rather than including an additional step prior to an independent audit, QRN would argue that a reasonable alternative is for the regulator appointed independent audit be conducted every two years unless it can be justified that it is not required.</p> <p>Where Brookfield seeks to waive the requirement for the independent audit, stakeholders should be provided with an opportunity to comment on the rationale provided by Brookfield. This alternative process would provide transparency around the decision making process, give stakeholders the opportunity to outline, on a collective basis, potential issues of compliance that may not be brought to the attention of the regulator on an individual basis and limit the regulatory burden.</p> <p>Alternatively, the obligations regarding the audit of performance reports in the ARTC Interstate Access Undertaking where the audit is part of the annual internal audit process and the internal audit is conducted by an independent entity would provide a reasonable compliance and review model for Brookfield. QRN believes this model allows for the provision of timely compliance information with a minimal incremental cost to existing internal audit processes whilst preserving the “independence” of the audit.</p>	<p>rationale for the waiver; or</p> <p>b) the audit of the TPP be included in the annual internal audit process of Brookfield, with the internal audit conducted by an independent entity.</p>
11	Non – discriminatory clause		<p>Brookfield have removed the clause that identified that Brookfield would not discriminate between operators in the application of the TPP and the application of Brookfield’s Network Rules.</p> <p>QRN believes this is a fundamental objective of the TPP as per item 3 above and that this clause should be reinstated.</p>	Reinstate the non discrimination clause in the TPP.

Attachment 2: Train Management Guidelines (TMG)

Item	Issue	Reference	Description	Suggested Resolution
1	Application of TMG to services negotiated outside of the code	Clause 1.1.4 and definition of Access Agreement	<p>In assessing the ARTC Interstate Access Undertaking, the ACCC in the Draft Determination said</p> <p><i>“The ACCC considers that reasonable network transit management provisions need to be clearly specified in advance, complete, capable of being understood by operators and applied by ARTC in a consistent and efficient manner. Subject to reasonable confidentiality, they should also be transparent. The ACCC considers that provided the particular rules meet these tests, then an operator would be able to structure its operations to maximise the utility they derive from access to the ARTC Network.”³</i></p> <p>In line with this it is QRN's view that the TMG should apply regardless of whether access is negotiated inside or outside the Code.</p>	Clause 1.1.4 is amended to reflect that the TMG will apply to all access agreements.
2	Best endeavours	Clause 2.1.1	<p>Brookfield have proposed at clause 2.1.1 that it will use best endeavours to ensure each service that presents for entry within 15 minutes of its scheduled departure time runs according to the relevant Train Path subject to a number of conditions. It is QRN's view that the change in clause 2.1.1, where Brookfield will use “best endeavours” rather than “ensure”, results in a significantly lower obligation on Brookfield. The conditions that the obligation is subject to, in QRN's view, sufficiently deals with circumstances that may reasonably impact on Brookfield's ability to meet the obligation without requiring the concept of best endeavours.</p> <p>In addition, the TMG applies to existing contracts as well as future agreements. The proposed change therefore impacts the risk position of existing contracts. QRN believes it is inappropriate to change the terms and conditions on which access was contracted and is contrary to the intent of the WARAR that the Access Agreement once negotiated takes precedent over the WARAR.</p>	Remove “best endeavours” from 2.1.1.
3	Notice of time for operator to notify ready for	Clause 2.1.1	The proposed TMG requires the operator to notify Brookfield that a service is ready to operate 15 minutes prior to the scheduled departure time. In the approved TMG the notification required was within 15 minutes. QRN believes this notification is separate	Clause 2.1.1 is amended to define the process for presenting a service for departure as described in steps 1 to 5.

³ ACCC, ARTC Interstate Access Undertaking Draft Determination, April 2008, P 226

Item	Issue	Reference	Description	Suggested Resolution
	departure		<p>from the provision of the Train Manifest which was required to be provided at least 15 minutes prior to scheduled departure. Reference to the Train Manifest has been removed from the proposed TMG.</p> <p>The process leading up to the notification that a service is ready for departure is as follows:</p> <ol style="list-style-type: none"> 1. The operator provides to the network controller a Train Manifest. 2. Train Manifest is checked by the network controller. 3. If the service as described in the Train Manifest complies with requirements no action is taken. 4. The train driver is then provided with and checks the information from the Train Manifest. 5. Once the checks are completed and the service is ready to operate, the train driver will present the service for departure and notification is provided by the train driver to the train controller. The network controller will confirm the train manifest with the train driver. <p>QRN believes clarification is required in the TMG regarding the process for presenting a service for departure. If the notification required at least 15 minutes prior to the scheduled departure, is as outlined in step 5 above, rather than the provision of the Train Manifest in step 1, the preparatory time of each service will increase. This will then have consequential impacts on resourcing and therefore the cost of operations without any justification of the benefit.</p>	
	Operator duty provide assistance	Clause 2.2.2	QRN believes the intent of this clause is to provide for cost recovery where an operator other than the operator whose train has failed provides assistance. The rearrangement of the wording of this clause makes it less than transparent in effect.	<p>Suggested rewording for clause 2.2.2:</p> <p>Provided agreement is reached with Brookfield Rail on how the costs and risks of providing assistance will be shared, an Operator, other than the Operator whose Train has failed, must provide reasonable assistance to Brookfield Rail to facilitate the clearing of a blockage of</p>

Item	Issue	Reference	Description	Suggested Resolution
				the Network caused by a failed Train.
4	Removal of issue of working timetables	Clause 3.1	<p>Brookfield has removed that the Train Path Schedule will be promulgated by issuing of a working timetable and will now only be promulgated by the issuing of an Instruction via RAMS. The working timetable was defined as:</p> <p><i>“the train timetable and operating data for all or part of the network issued as part of Brookfield’s Network Rules and as amended from time to time”</i></p> <p>The working timetables are used by operators for operational planning. As these documents relate to the network capacity and are dynamic in nature, Brookfield is best placed to maintain these in relation to the network and is considered a core function of train control.</p> <p>QRN is uncertain with the removal of the Master Control Diagram from the TPP how the operator will be able to monitor Brookfield’s compliance to the TPP and TMG.</p>	Brookfield clarify how the issuing of an Instruction via RAMS will meet the information requirements previously provided by the Working Timetable and the Master Control Diagram.
5	General principles for train management	Clause 3 and Table 1	<p>QRN generally agrees with the premise included in the TMG that healthy services should not be affected by the performance of unhealthy services. That being said, reliability is a key performance criteria in relation to the competitiveness of rail, as such QRN believes one of the objectives of Brookfield should be to give preference to trains that are unhealthy if that is consistent with the critical objectives of the train in question and will result in less aggregated consequential delays to other trains than would otherwise be the case.</p> <p>Any train management decisions involving conflicted trains operated by one operator should be subject to the rail operator’s preference for its own services as they are best placed to know the critical objectives of the services and impacts of any delays.</p> <p>Whilst QRN acknowledges the dispute mechanism and performance reporting sits in the access agreement, QRN believes there is a minimum requirement, not currently articulated, for the operator to have the ability to request information to enable the review of traffic management decisions and more generally Brookfield’s compliance with the TMG.</p>	<p>The General Principles for Train Management be amended to allow for traffic management decisions that take into consideration the critical objectives of the train, health of the wider network and rail operator’s preferences.</p> <p>Clause 3 amended to include the ability for the operator to request information regarding the basis for traffic management decisions.</p>

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6	Repairs, maintenance and upgrading of the network	Clause 3.5	<p>QRN acknowledges the right of Brookfield to take possession of the Network without the consent of the User. However, in order to maximise the efficient use of the network and provide certainty regarding contracted capacity, it is QRN's view that there is an obligation on both the railway manager and operator to mitigate the impact of possessions. Given the railway manager's ability to control possessions of the network their obligations to mitigate should include:</p> <ul style="list-style-type: none"> (a) bona fide consultation together with reasonable notification where the circumstances warrant and allow. For instance, if an operator's services will not be impacted there is no obligation on the railway manager to consult. (b) where possible, align possessions with supply chain outages, for example mine major maintenance shutdowns or off peak/season periods. (c) provide alternative paths capable of being used by the operator, for example a path is not useable if the unloading facility is not available. <p>QRN believes that the previous clauses were reasonable, outlined the different circumstances that may lead to a possession of the network and their associated planning horizons and provided transparency regarding the obligations on Brookfield to mitigate the impact of possessions. QRN's position is that clause 3.5 should be reinstated. In addition QRN believes 3.5 should be amended to reflect (b) and (c) above.</p>	<p>Brookfield reinstates the Repairs, Maintenance and Upgrading of the Network clause from the approved TMG.</p> <p>The Repairs, Maintenance and Upgrading of the Network clause is amended to reflect the network efficiency benefits of aligning possessions with supply chain outages.</p> <p>The definition of alternative paths reflects the useability of the path by the operator or their customers.</p>
7	Infrastructure standard	Clause 3.5	<p>QRN acknowledges the obligations on Brookfield regarding the standard of infrastructure should be as per the access agreements. However, it is QRN's view that the inclusion of this clause in the TMG, given the relationship between capacity and standard of infrastructure, provides transparency to access seekers on Brookfield's base level of obligation. QRN does not believe the inclusion of this provision creates a material regulatory burden on Brookfield or limits Brookfield's ability to negotiate different commercial positions in line with the cost and risk associated with the specific project. As such the transparency benefit to access seekers, in QRN's view, outweighs the cost to Brookfield, particularly where a standard access agreement is not published</p>	

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			as is the case in other jurisdictions.	
8	Disputes and performance reporting		<p>Whilst QRN acknowledges the dispute mechanism and performance reporting sits in the access agreement, QRN believes there is a minimum requirement, not currently articulated, for the operator to have the ability to request information to enable the review of traffic management decisions and more generally Brookfield's compliance with the TMG.</p> <p>QRN believes inclusion of this step in the dispute process may reduce the reliance on formal dispute or complaint procedures.</p>	Brookfield include the ability of the operator to receive information on request from Brookfield regarding the basis for decisions in relation to the management of capacity.
9	Internal audit	Clause 4.1.2	Please refer to comments at item 10 in Attachment 1.	
10	Control and management of access to network		<p>The Control and Management of Access clause contained in the approved TMG contains details regarding the communications interface between Brookfield and operators. In particular it refers to the requirement of Brookfield to give reasonable notice and consult with the operator if a proposed change to the communications equipment will result in the operator having to replace or upgrade its communications equipment. The inclusion of requirements regarding communications equipment is related to the management of capacity and should be included in the TMG for transparency. Changes to these interfaces may adversely impact operators and as such should be taken into consideration when making a cost – benefit assessment of proposals.</p> <p>QR National recommends that a consultation process is required for any changes to the interfaces associated with the control and management of the network.</p>	In relation to the interface between Brookfield and the operator, in the event proposed changes to processes, standards, systems or equipment will result in consequential impacts on the operator, Brookfield should be required to undertake bona fide consultation with affected parties and provide reasonable notification.