

## Executive Summary

Queensland Rail (QR) welcomes the opportunity to make a submission in response to the Economic Regulation Authority's Issues Paper, *Review of the Western Australian Railways (Access) Code (2000)*.

Whilst a reasonable period has elapsed since the Code commenced, it has been difficult to fully test the regime's effectiveness given the absence of access applications under the Code.

That said, given the developments and collective experience in rail access regimes across Australia that has been gained since 2000, sufficient time has elapsed to identify improvements in the Western Australian rail access regime, particularly the Code.

If effective, the code will facilitate efficient entry in above rail markets and provide sufficient incentives for the infrastructure owner to expand the network. On both these criteria, QR is aware of problems which relate to the current approach of the Code.

From QR's perspective, there are six key areas in which improvement in the Code is required:

- the key role of the Code is to provide confidence in the integrity of the above rail market to all participants (end customers, above rail operators, their financiers and so on). Delivering confidence in the integrity of the above rail market needs to become the focus of the review process;
- the coverage arrangements under the Act require attention. The Act should cover all necessary infrastructure required to deliver a declared service. Accordingly, it is possible that the declaration should be able to be extended to include sidings and other infrastructure in appropriate cases based on the application of a threshold test;
- a realistic approach to harmonisation of the regime with those heavy haul oriented regimes applying in other jurisdictions should be adopted as the vast majority of the rail task involves intrastate heavy haul operations which are largely independent of the interstate rail network;
- access to prime train paths is critical to achieving the objectives of the Competition Principles Agreement (CPA). The current arrangements allow contracts to be negotiated inside and outside the regime, raising concerns as to the approach to allocation of train paths. QR notes that Train Management Guidelines (TMG) and Train Path Policies (TPP) are to be applied equitably to all users under WestNet company policy. However, this should not be left to WestNet policy- it should be

applied to all access agreements under the Code so that the principle of non-discrimination has legislative force;

- the framework for determining tariffs, which requires negotiation between an upper and lower bound, is not as effective (with the overpayment rules also ineffective as a fallback mechanism). Reference tariffs should be introduced for reference services which are priced at or near the ceiling and published tariffs should apply for other traffics that are expected to be highly contestable. Overpayment rules are not effective, at least for traffics that can be expected to be priced at or near the ceiling;
- QR is concerned that the absence of a regulator endorsed standard agreement, developed in a consultative environment, is an impediment to third party access. QR believes that in terms of providing the reliability of information to third party operators the regulator should approve the standard access agreement offered by WNR.

## Introduction

Queensland Rail (QR) welcomes the opportunity to make a submission in response to the Economic Regulation Authority's Issues Paper, *Review of the Western Australian Railways (Access) Code (2000)*.

The following comments and observations are made as part of QR's commitment to contributing to the establishment of effective third party access arrangements across Australia. As such, the submission draws on QR's experience in Queensland and elsewhere in Australia.

The implementation of third party access regimes in Australia has highlighted the interdependent yet independent role of the rail infrastructure provider. Third party access regimes have facilitated the clearer definition of a track manager's objective which is to maximise the sustainable commercial yield of the asset (whilst recognising the competitive constraints which operate). To accomplish this objective requires that the rail infrastructure provider must have a clear sense of its role in the value chain.

There is no doubt that the focus that has been thrown onto the management of below rail capacity has substantially enhanced the operation of rail networks in Australia. In QR's experience, a key to unlocking these benefits involves clearly differentiating the role of the regulator from the commercial below rail service provider. In QR's view, access regimes (and regulators) operate best where they adhere to the following principles:

- focusing on regulating the right things;
- protecting the integrity of the above rail market;
- reducing transaction costs;
- efficiently allocating risk and reward.

With these principles in mind, we turn to a consideration of the key issues to emerge from the Issues Paper. From QR's perspective, there are six key areas in which improvement in the Code is required:

- the key role of the Code is to create a regulatory environment which provides market participants with confidence in the competitive integrity of the above rail market;
- the coverage arrangements under the Act should apply to all necessary infrastructure required to deliver a declared service with declaration of services based on the application of a threshold test;

- a realistic approach to harmonisation of the regime with those applying in other jurisdictions should be adopted;
- guarantees of equal access to prime train paths irrespective of above rail operator is critical and should be recognised in the Code itself;
- reference tariffs should be introduced for defined reference services (mainly for traffics that can be expected to be priced at or near the ceiling). For other traffics which are expected to be highly contestable, tariffs should be published and be subject to dispute resolution; and
- a regulator endorsed standard agreement needs to be developed in a consultative environment.

The submission does not seek to address every question raised in the issues paper, although in addressing the above key points QR believes it addresses the substantive issues raised in the Issues paper.

## Scope of the Review

Given the nature of the structural and ownership changes that have taken place in Western Australia, the relevant reference point for the review should be Clause 6 of the Competition Policy Agreement (CPA).

## Objectives and performance

The key themes of Section 6 of the CPA are to ensure access seekers are not disadvantaged in negotiating access arrangements and to preserve the commercial nature of the access process. The best way to achieve this, in QR's view, is to ensure the information advantage of the incumbent is overcome without prejudicing legitimate commercial interests.

The Issues Paper has posed a question whether the Code has been effective in ensuring consideration of the public interest. In this regard, the public interest is best served by ensuring the regime delivers economically efficient outcomes in the short and long term.

This raises an important issue on the appropriate guidance in the Code for a regulator in access arrangements. In this regard, the concept of 'public interest' as used in the Code and the CPA is too vague to use as a benchmark. QR is not aware of any requirement in the CPA to apply Clause 1(3) to deliberations for access regimes. In fact, Clause 6 provides its own guidance which is anchored more firmly in economic efficiency and commercial interests than broader considerations of public interest. It is QR's view that the Code should direct the regulator's role to be promoting competition

and investment in rail where it is efficient from a social perspective.<sup>1</sup> This mirrors section 2A of the Act.

In turn, this highlights a key consideration for the current review – namely, the success of the regime in creating an environment in which parties can have the confidence to take risks to create a competitive above rail market. In this regard, QR notes the views expressed by the Australian Logistics Council:<sup>2</sup>

The willingness of prospective entrants to take the risk associated with entry is essential for the successful introduction of competition. However, by itself it is not sufficient, as the emergence of competition also requires risk taking by others, including the financiers of entrants and customers. In securing the services of a competing supplier in a vertically integrated environment, customers potentially take on a delivery risk.

The key point is that this risk taking can only really occur where all relevant parties have confidence in the regime. A lack of confidence in the regime effectively adds a significant cost to new entrants, and in turn will enhance the incumbent's financial position.

The key point is that the success or otherwise of the regulatory regime must be judged in terms of the success in creating a climate that is conducive to the emergence of above rail competition.

It is this robust competition that delivers to customers the benefits of dynamism and innovation in service delivery. For example, rail competition in the haulage sector can only be driven by rail operators – regulators can only ever provide a climate that is conducive to this competition emerging. Accordingly, the most important consideration in developing any access regime is to provide a climate that is conducive to competition flourishing in the potentially competitive components of service delivery.

With this in mind, we turn to a consideration of the performance of the regime.

## **Performance of the regime**

Whilst a reasonable period has elapsed since the Code commenced, it has been difficult to fully test the regime's effectiveness given the absence of access applications under the Code. As a consequence of the lack of practical experience with the regime, there is

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<sup>1</sup> Noting the need for a commercial rail infrastructure provider to be able to earn a commercial return on its investment.

<sup>2</sup> Australian Logistics Council (2003), *Principles for an Effective Access Regime*, p5

merit in having some flexibility on the next scheduled review – that is once there has been some practical experience with its operation.

That said, given the developments and collective experience in rail access that has been gained since 2000, sufficient time has elapsed to at least identify some shortcomings in the Code. If effective, the Code will facilitate efficient entry in above rail markets and provide sufficient incentives for the infrastructure owner to expand the network. On both these criteria, QR is aware of problems which relate to the current approach of the Code.

For example, the mainline south of Perth is currently congested. It is important to realise that congestion creates a potentially significant barrier to entry for a new entrant. This barrier to entry arises because customers will be naturally more concerned about the quality of service that they may be able to secure with a third party operator on a congested network as opposed to a network which has ample capacity.

It is therefore imperative that customers have confidence that a timely upgrade undertaken in a least cost manner as and when it is required will occur. Any risk of capacity shortfall is likely to advantage the incumbent above rail operator. Sophisticated customers are aware of this and the risks they face in changing operator. The Code's current approach does not provide sufficient guidance on how expansions would be priced.

In terms of assessing the performance of the code, QR believes this is a broader exercise for the ERA in terms of monitoring competition in downstream markets (particularly the confidence of end users to tender for above rail services), the performance of the infrastructure in terms of allocating current capacity and efficiently augmenting capacity and the relationship of WNR returns to competitive outcomes.

For example, under the Queensland regime, at least 50 million tonnes of coal per annum has already been the subject of competitive above rail tender. This in turn demonstrates the very high levels of confidence exhibited by mine owners in the intensity of the competitive environment afforded by the regime. Pacific National is already operating trains on QR's network along the North Coast Line as well as on the standard gauge infrastructure in South East Queensland. The market arrangements connected with the third party access framework in Queensland are therefore clearly working.

## Coverage of the Code

### Definition of the declared service

Currently, the Act establishes the scope of the declaration and the infrastructure that is subject to the access regime. There is a need to more clearly define the nature of the declared service and the infrastructure necessary to deliver this. All of the necessary infrastructure should be capable of being declared as part of the declared service through the application of a threshold test (based on the Competition Principles Agreement or the TPA), rather than the approach that is currently taken which limits the scope of the infrastructure potentially capable of providing a declared service. This in turn requires detailed consideration of the scope of the service to be declared.

Part 2 of QR's Access Undertaking specifies the types of activities that are included in its scope:<sup>3</sup>

(b) Activities that an Access Seeker may seek to undertake on the Rail Infrastructure as part of the operation of a Train Service include:

(i) mainline running of a Train from its origin to destination, including:

- the use of passing loops to facilitate mainline running of the Train; and
- Train queuing and staging required to facilitate the running of a Train Service from its origin to its destination, including before and after loading and unloading of a Train;

(ii) loading and unloading of a Train at facilities other than Other Rail Infrastructure;

(iii) Train marshalling and shunting at the following times:

- in preparation for running of the Train Service;
- before or after loading or unloading of the Train; and
- before or after maintenance and provisioning of the Train; and

(iv) Train stowage in the following circumstances:

- as required for crew changes, meal breaks and on Track maintenance and provisioning of the Train; and
- where an Access Holder cannot operate its Train Service in accordance with its Train Service Entitlement as a result of a breakdown or other

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<sup>3</sup> Queensland Rail Network Access (2001), QR Access Undertaking, p.5.

temporary outage of the Access Holder, the loading facility or the unloading facility, and/or the unavailability of the Rail Infrastructure.

(c) Access will include, in addition to the use of the Rail Infrastructure, the benefit of other Below Rail Services essential to the use of the Rail Infrastructure such as signaling, Train Control Services and associated communications and ... if the Train services require electric energy for traction, the provision of such electric energy.

QR considered this issue in some depth in its submission to the Victorian Department of Infrastructure's paper *Options for Reform of the Victorian Rail Access Regime* (the Discussion Paper). With respect to the issue of access to yards, sidings and terminals raised in the Issues Paper, a "blanket declaration" exclusion under the Act of the services ignores the reality that they possess different attributes and functionalities in relation to:

- links to other rail services;
- links to other transport options (especially road and port infrastructure); and
- land, space, capacity and economic duplication issues.

For example, the utilisation of sidings for some purposes will not form part of the declared service (for example, long-term train maintenance), and users may be required to construct their own facilities. However, in other circumstances they might form part of the declared service, such as for short-term lodging of 'unhealthy' trains or trains waiting for a train path or between cycles.

A case by case assessment of each rail terminal and associated facility is necessary for determining whether the services provided by the relevant infrastructure should be subject to third party access.

QR considers that the current approach of providing a "blanket" declaration of those services which are expected to unambiguously meet the threshold criterion (normally dealing with access to the track and associated infrastructure), needs to be complemented with the capacity for other services (such as those provided by terminals) to be made subject to access where a threshold test is met.

The approach adopted in the Queensland declaration framework is to define the declared service according to "rail transport infrastructure for providing transportation by rail" that remains a "public facility" (refer Section 4 of the *Queensland Competition Authority Regulation 1997*).

The effect of this approach is that it declares uncontentional services upfront, with a wide range of services able to be declared on a case by case basis as necessary through the application of a threshold test. In this way, the Queensland regime allows terminals to be subject to declaration applications whilst minimising the risk of declaring them

when there is no economic case for doing so. This approach to declaration provides a useful model for the Western Australian legislation.

## **Greenfields investments and expansions**

As the Issues Paper notes there are high levels of risk associated with investment in long-lived assets. It is important that the regulatory regime provide as much certainty as possible prior to investments being made. QR supports the current provisions of the Act, which reflects the intention of the CPA to regulate only those facilities where there is a clear economic case for doing so.

However, in the case of new lines it is likely the owner will seek to contract capacity prior to the construction to reduce risk. These contractual discussions are likely to occur well before a Ministerial declaration under the Act.

At the heart of the issue is an information asymmetry between the rail developer and potential users. Where there are no competition issues in respect of the infrastructure, it should not be regulated. In the absence of competition issues, commercial negotiations are most likely to deliver the best outcomes. However, the rail developer should have the capacity to gain an understanding of the status of its proposed rail infrastructure (in terms of declaration) and the nature of the regulation that would be applied to it, before the proposed rail infrastructure is developed.

A further issue with respect to expansions is the approach to pricing, in particular the potential for the incumbent operator to face a lower price after capacity is increased. This is discussed in the section dealing with the determination of tariffs.

## **Harmonisation between regimes**

QR considers that it is increasingly likely that the National Competition Council (NCC) will advocate the harmonisation of regulatory arrangements between State-based rail access regimes in the future (irrespective of the NCC's power to insist upon such outcomes under the Competition Principles Agreement). Harmonisation is desirable provided it results in an effective and relevant access arrangement. In respect of the ARTC access arrangements, it is important to note that heavy haul operations are largely independent of the interstate rail network which brings into question whether the ARTC is an appropriate harmonising benchmark.

This is all the more important when we see the distribution of freight traffic in Australia. The vast majority of rail traffic in Australia is intrastate heavy haul (coal, ores, other minerals and grain). For example, bulk traffics constitute:

- over 97% of the rail freight task in Australia based on net tonnes (99% of which was intrastate); and

- over 80% of the rail freight task in Australia based on net tonne kilometres (again, nearly all of which was intrastate).

Clearly, therefore, whilst harmonisation between regimes is desirable, it is important that the reality that heavy haul operations dominate the national rail task, and that this domination will continue in the future, should be taken into account in determining rail access policy. In turn, it would be a serious mistake to ignore the weight of the traffic task in Australia in developing access policy.

## Access to train paths

A level playing field in respect to train path allocation is critical to the achievement of the objectives of the CPA. This is because the competitive process is unforgiving and incentivises operators to take any advantage on offer to them, often subtly rather than overtly. The issue was well captured in the Australian Logistics Councils Discussion Paper, *Principles of an Effective Access Regime*.<sup>4</sup>

Distortions in above rail competition can happen in a variety of ways, perhaps the most obvious of which is through favourable pricing arrangements for the provision of the regulated service. However, many of the ways in which a natural monopoly provider can secure an unfair advantage to its affiliated entity in the competitive market are more subtle, and can be difficult to detect. For example, the elapsed time to complete an origin destination movement is not only a major cost in the provision of a haulage service but also significantly affects the quality of the service provided to the end customer, particularly for time sensitive traffics in freight forwarding markets. Consequently, the favourable allocation of train paths or priority by a rail infrastructure service provider to its affiliated above rail arm can adversely affect the integrity of the above rail market.

As noted in the Issues Paper, the incumbent operator has identified the paths which best meet customer needs and have the rights to retain such paths.

QR understands access contracts can be negotiated inside and outside of the regime. This will create concerns about the integrity of the regulatory framework in terms of delivering a true level playing field. For example, QR notes that suspicions as to the even handedness of arrangements will always arise where agreements are able to be negotiated outside of the Code – as the incentives are such that the arrangements are most likely to occur where it is to the incumbent’s advantage. For example, QR is concerned that a preparedness to enter an agreement outside of the Code could secure preferential treatment in terms of access to prime train paths. QR considers that all rail access matters should be addressed in a single regime.

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<sup>4</sup> Australian Logistics Council (2003), *Principles for an Effective Access Regime*, p4

QR emphasises that one of the most important considerations for the effective implementation of access are that holders of capacity entitlements must be defined with sufficient accuracy and certainty for above rail operators and customers to have confidence that there is no advantage with engaging the incumbent. They must also have absolute certainty that those entitlements will not be subsequently undermined. An arms-length approach to negotiating access is essential for ensuring successful outcomes so that no party should be able to acquire “special status” under the regime.

QR is aware however that for some traffics (such as grain) the nature of the capacity that is sought is unavoidably ad hoc. QR is concerned that in situations where it competes with an entity that is affiliated with the access provider, in a market characterised by ad hoc capacity arrangements, that the affiliate will secure preferential access to paths.

Accordingly, there is also the need for detailed capacity related information to be available to provide confidence to all interested parties in the integrity of the capacity allocation arrangements. In this regard, QR endorses the views of the Australian Logistics Council that:<sup>5</sup>

Transparency is critical to providing confidence as market participants will naturally be suspicious of any failure to reveal relevant information about the operation of the regime that is not legitimately confidential. Any lack of transparency in regulatory arrangements undermines perceptions of the integrity of the access regime and the confidence market participants have in those arrangements.

An access regime can require the rigorous provision of information to a regulator that provides for sufficient detail to establish transparency concerning:

- the definition of capacity;
- capacity availability for access seekers;
- daily train planning to meet contractual commitments;
- train control decisions made in real time; and
- longer-term planning processes with respect to capacity management.

QR notes that Train Management Guidelines (TMG) and Train Path Policies (TPP) are to be applied equitably to all users under WestNet company policy. However, this should not be left to WestNet policy- it should be applied to all access agreements under the Code so that the principle of non-discrimination has legislative force.

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<sup>5</sup> Australian Logistics Council (2003), *Principles for an Effective Access Regime*, p6

The concept of a capacity register has merit, although for it to be effective, capacity will probably need to be defined according to a reference service because of the number of factors that determine the actual capacity of rail network.

## Determination of tariffs

The floor and ceiling approach established in the Code needs to be reconsidered. The requirement to negotiate within upper and lower bounds does not necessarily work, especially for traffics which can be expected to operate at the ceiling or which are highly contestable such as with grain.

A critical issue to the efficacious implementation of an access regime involves providing a reasonably high degree of certainty and this extends to tariff arrangements. For below rail services which will be priced at or near the ceiling, there is little to be lost in terms of the access provider's commercial autonomy in setting reference tariffs. For traffics that are expected to be highly contestable, but not priced at or near the ceiling, QR believes that the access provider should be required to publish tariffs, with those tariffs subject to dispute resolution under the Code.

Failure to provide greater certainty on tariffs will only result in a relatively high level of disputation between access seekers and the access provider. This disputation creates expense and delay. Whilst the costs associated with disputes are relatively well-known, in QR's view it is the consequential delay that in practice can be most harmful to the competitiveness of the emerging above rail market.

A better solution would be to introduce reference tariffs for reference services (as applies in jurisdictions such as Queensland) and published tariffs for traffics that are expected to be highly contestable. Reference and published tariffs provide increased pricing transparency and thereby facilitate negotiation by providing a benchmark against which third-party operators can assess the reasonableness of WNR proposed access charges.

There is an issue in relation to which train services require the development of reference tariffs. In Queensland the regulator has flagged a case by case approach using a cost benefit approach. QR supports this approach and particularly the recognition shown by the regulator to limit its intrusions in operational issues.

...the establishment of further reference tariffs represents a form of price regulation of QR's below-rail business that could arise even though it produces access charges that do not exceed the stand-alone cost test in respect of the subject services. The Authority considers that the key consideration in the development of further reference tariffs is whether the benefit to the competitiveness of the above-rail

market from increased pricing transparency for a relatively homogenous set of train services justifies the intrusion into QR's operational autonomy.<sup>6</sup>

## **Overpayment Rules**

Section 47 of the Code provides for the development of Over-payment Rules which provide a mechanism for calculating where revenue has exceeded costs and to reimburse operators. The major problem with these rules, in the sense of achieving the objectives of the CPA, is that they operate *ex post* whereas the problem for third party operators is to secure customers on the basis of negotiated tariffs. It also further complicates customer contracts with regard to reimbursements.

## **Pricing new capacity**

A contentious issue which arises with new infrastructure is where it is priced at a higher rate than services operating in the same market which secured capacity before the capacity increase.

QR believes this approach allows for inefficient (and unfair) competitive advantage to the incumbent who will be expected to secure the vast majority of available capacity at marginal cost whereas subsequent entrants to the market will need to pay a higher access charge on account of the need for the rail infrastructure provider to recover the capital costs associated with expanding the facility. QR through a wholly owned subsidiary has had first hand experience with this issue. Westnet asserted that the proposed new rail operator would be expected to reimburse the full incremental cost of additional capacity purportedly required to accommodate an increase in the raiiling requirements of an existing mine seeking to expand production.

QR's solution to this problem is to insist that access charges include a component addressing an explicit capacity charge which *all* operators would face wherever capacity becomes constrained. The QR access regime provides for such a capacity charge which is based on cost reflective pricing.

If all market participants face such a charge, it is more likely that the operation of the regime will prevent discriminatory pricing by the access provider between third party access seekers and its related freight business.

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<sup>6</sup> Queensland Competition Authority (2000), *ibid*, p217.

## Access agreements and negotiation frameworks

As discussed above, forming a view on the effectiveness of this regime is difficult given that there are no examples of access agreements that have been concluded. However, the lack of prescription in the regime is likely to present a barrier to entry in practice. For example, QR considers, and has had first hand feedback from potential customers, that issues concerning the equitable allocation of train paths and the lack of reference or published tariffs limit the effectiveness of the current regime.

Potential customers of third party operators have also voiced concerns regarding adverse retaliatory action by the incumbent rail operator should they partially switch their transport task to a new operator (thus limiting third party operator opportunities to largely Greenfield developments) and during transition arrangements.

### Standard access agreement

Currently the Code places an obligation on the railway owner to prepare and make available for purchase a standard access agreement.

QR is concerned that the absence of a regulator endorsed standard agreement, developed in a consultative environment, is an impediment to third party access.

The development of such an agreement has several benefits:

- providing a vehicle for the regulator to impose reasonable terms and conditions on the access provider – particularly terms and conditions that have the purpose or effect of enhancing the integrity of the above rail market and the confidence market participants have in those arrangements. Examples of where standard terms and conditions can enhance this confidence include in the:
  - provision of information to the above rail operator during the course of the contract;
  - the development of KPIs;
  - the certainty of capacity entitlements;
- streamlining the access negotiation process – removing a potentially significant source of delay from the access negotiation process which in turn can require an above rail operator to compromise to a greater extent than is reasonable in order to secure access in a timely way.

### Availability of information

With respect to the provision of Access Information, QR Network Access (QRNA) has developed a number of “Information Packs”, consistent with, and in addition to, the information provision arrangements outlined in its Access Undertaking, that might

provide a useful template as to the nature and level of information that could reasonably and helpfully be developed to assist Access Seekers.<sup>7</sup>

The QRNA information packs provide potential railway operators with background infrastructure and operational information for various rail systems in Queensland. The information is of great assistance to a potential third party operator in the development of a conceptual operating plan. The packs indicate that railway operators are expected to liaise with QRNA to formulate detailed operating specifications as part of a full access agreement negotiation, with operational parameters outlined in the pack to be varied by mutual agreement of the parties.

The information packs provide a range of relevant information including: detailed descriptions of the system and tracks in question, operational information and constraints, information system and communication details, incident recovery information, running time data, interface details, and future infrastructure improvements.

QR believes provision of such Information Packs by Westnet would be of benefit to potential operators, particularly new operators, where practical first hand knowledge of the access process and operating parameters is unknown.

## **Arbitration**

If arbitration is required, it should involve someone who has an appropriate understanding of the industry rather than the current arrangements which are reliant upon parties with experience in conducting arbitrations who are unlikely to have the requisite specific experience and expertise in resolving rail access disputes.

## **Role of the regulator**

It would be dangerous for the ERA to become involved in access negotiations. QR has raised these concerns in respect of a similar suggestion for the Victorian access regime. In that case, it was suggested that an independent party - potentially the economic regulator - perform the role of managing an access application to protect the access seeker's confidential information. The regulator would rely on posted prices and have access to information on path availability.

QR sees no role whatsoever for the regulator in dealing with the day-to-day management of capacity and the negotiation of access agreements. Assigning commercial like functions to the regulator is likely to present very substantial legal, commercial and practical difficulties for all parties. For instance:

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<sup>7</sup> Refer to the following link for a listing of available information packs: [http://www.networkaccess.qr.com.au/downloads/information\\_packs/information\\_packs.asp](http://www.networkaccess.qr.com.au/downloads/information_packs/information_packs.asp).

- the regulator's subsequent determination of access disputes will be compromised ;
- the regulator will not be incentivised to pursue below rail opportunities;
- the regulator has no particular expertise in negotiating access agreements; and
- the proposal undermines the legitimate role of the infrastructure provider to negotiate access to its network.