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Ms Leonie Browner Principal Regulatory Analyst Economic Regulation Authority PO Box 8469 PERTH BC WA 6849

Dear Ms Browner,

## Draft Determinations on Proposed Revised Train Management Guidelines and Train Path Policy

QR National (QRN) welcomes the opportunity to provide a public submission on the Economic Regulation Authority's (ERA) Draft Determinations on revisions to the Train Management Guidelines (TMG) and Train Path Policy (TPP) proposed by Brookfield Rail (Brookfield).

QRN substantially accepts the position proposed by the ERA in the Draft Determinations issued by the ERA on the 10 August 2012. QRN's remaining concerns relate to the application of the instruments to out-of-Code track access arrangements.

## Definition of access agreements

QRN supports the ERA's decision to remove the limitation of the TPP and TMG "only" applying to access agreements negotiated under the Code. To give effect to the ERA's decision QRN believes a consequential amendment is required to the definition of access agreements in the TPP and TMG to reflect the provisions in cl.4A(c) of the Code which also allows, where the parties agree, for the Part 5 instruments to apply to access agreements negotiated outside of the Code. The suggested drafting of the amended access agreement definition would be:

"an agreement in writing under the Code, or otherwise than under the Code but to the extent the parties agree that a Part 5 instrument will apply, between the railway owner and an entity for access by that entity."

This provides certainty to parties with access agreements that reference the TMG and TPP that the TMG and TPP will apply or continue to apply.

## Disadvantage created by compliance with the TPP or TMG

A further concern is the potential for parties negotiating under the Code (or parties in agreement that the Part 5 instruments will apply where the negotiation is outside of the Code) to be disadvantaged as a result of negotiations outside of the Code, this is particularly relevant to the General Principles of Train Management in the TMG. To date railway operators and their customers have been able to assess the risk of not achieving the scheduled departure or arrival times given the commitment by Brookfield to apply the TMG to all access arrangements (whether negotiated inside or outside the Code). The change in the commitment from Brookfield increases the risk (particularly as the number of services on the network increase) that an Operator's service will be set down in order to give priority to another service other than as per the General Principles for Train Management. Ultimately this risk will result in the increased cost of providing rail services (with the Railway Manager extracting higher returns for "priority services" and the Rail Operator increasing resources to manage the risk) or reduced service levels to customers where the risk that service levels will not be met are passed through to customers.

It is QRN's view that it is not the provision of priority services that is of concern, but the lack of transparency regarding the priority of train services where there is a conflict. Parties negotiating



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under the Code (or agreeing to comply with Part 5 instruments) require appropriate information disclosure to better manage this risk. As such, QRN recommends that the TMG (and TPP where appropriate) be amended to:

- Require Brookfield to notify Access Seekers or Access Holders (to whom the part 5
  instruments apply) of the circumstances where their rights under the TMG (or TPP) will be
  affected by agreements negotiated outside of the Code; and
- 2. Require Brookfield, on request, to provide information supporting traffic management decisions.

## Conclusion

The ERA have recommended that the TPP and TMG should reflect the provisions of cl.4A(c) which doesn't require Brookfield to extend the application of the TPP and the TMG to all track access arrangements but also doesn't limit the TPP and TMG from applying to access agreements negotiated outside the Code. For clarification, it is QRN's view that the TPP and TMG require a further amendment to the definition of access agreements to fully reflect this decision. In addition, the removal of the commitment from Brookfield to apply the TMG to all access agreements, whilst within the requirements of the legislation, gives rise to uncertainty where Access Seekers and Access Holders have agreed to comply with the TMG. It is QRN's view that it is in the interests of all persons holding contracts for the use of the railway infrastructure, for the TMG to require increased information disclosure by Brookfield that will allow the parties to appropriately manage the additional risk resulting from this proposed change.

For further information regarding this submission please contact Rachel Martin on (07) 3019 5476.

Mr Andrew MacDonald Senior Vice President Commercial and Marketing

