



# Queensland Competition Authority Amendment Bill 2018

**Report No. 2, 56<sup>th</sup> Parliament**  
**Economics and Governance Committee**  
**March 2018**

## Economics and Governance Committee

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### Acknowledgements

The committee acknowledges the assistance provided by Queensland Treasury.

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## Abbreviations

Aurizon Network	Aurizon Network Pty Ltd
Bill	Queensland Competition Authority Amendment Bill 2018
committee	Economics and Governance Committee
CQCN	Aurizon Network's Central Queensland Coal Network
DBCT	Dalrymple Bay Coal Terminal
DBCT User Group	Dalrymple Bay Coal Terminal User Group
LS Act	<i>Legislative Standards Act 1992</i>
QCA	Queensland Competition Authority
QCA Act	<i>Queensland Competition Authority Act 1997</i>
QRC	Queensland Resources Council

## Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the Queensland Competition Authority Amendment Bill 2018.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

On behalf of the committee, I thank those organisations who made written submissions and appeared at the committee's public hearing. I also thank our Parliamentary Service staff and Queensland Treasury for their assistance.

I commend this report to the House.



Linus Power MP  
**Chair**

## Recommendations

### Recommendation 1

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The committee recommends the Queensland Competition Authority Amendment Bill 2018 be passed.

## 1 Introduction

### 1.1 Role of the committee

The Economics and Governance Committee (the committee) is a portfolio committee of the Legislative Assembly.<sup>1</sup> The committee's areas of portfolio responsibility are:

- Premier and Cabinet, and Trade
- Treasury, and Aboriginal and Torres Strait Islander Partnerships
- Local Government, Racing and Multicultural Affairs.<sup>2</sup>

The committee is responsible for examining each Bill in its portfolio areas to consider the policy to be given effect by the legislation and the application of fundamental legislative principles.<sup>3</sup>

### 1.2 Inquiry process

The Queensland Competition Authority Amendment Bill 2018 (the Bill) was introduced into the Legislative Assembly and referred to the committee on 15 February 2018. The committee was required to report to the Legislative Assembly by 15 March 2018.

During its examination of the Bill, the committee:

- invited written submissions from the public, identified stakeholders and subscribers; a list of the four submissions received and accepted by the committee is at **Appendix A**
- received a public briefing from Queensland Treasury and held a public hearing on 5 March 2018; a list of witnesses who appeared at the briefing and hearing is at **Appendix B**
- requested and received written advice from Queensland Treasury on the Bill and issues raised in submissions.

Copies of the material published in relation to the committee's inquiry, including submissions, correspondence from Queensland Treasury and transcripts are available on the committee's webpage.

### 1.3 Policy objectives of the Bill

The primary objective of the Bill is to amend the criteria prescribed under the *Queensland Competition Authority Act 1997* (QCA Act) for determining whether services provided by significant infrastructure facilities, such as rail tracks and port terminals and channels, may be declared under Queensland's third party access regime.<sup>4</sup>

### 1.4 Government consultation on the Bill

The explanatory notes state that key stakeholders who are expected to be affected by the Bill were consulted with comments taken into account in finalising the drafting of the Bill. The stakeholders consulted were Aurizon Network, DBCT Management, Pacific National, Queensland Rail, the Queensland Resources Council (the QRC) and the Queensland Competition Authority (the QCA).

Broader public consultation was also undertaken through the Queensland Government's 'Get Involved' website with a consultation paper and draft Bill released for public comment.<sup>5</sup>

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<sup>1</sup> The committee was established on 15 February 2018 under the *Parliament of Queensland Act 2001* (POQA) section 88 and the Standing Rules and Orders of the Legislative Assembly (Standing Orders) SO 194.

<sup>2</sup> POQA, s 88; Standing Orders, SO 194 and sch 6.

<sup>3</sup> POQA, s 93(1).

<sup>4</sup> Explanatory notes, p 1.

<sup>5</sup> Explanatory notes, p 4.

## **1.5 Should the Bill be passed?**

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill, including the policy objectives it is intended to achieve, and consideration of the information provided by Queensland Treasury, submitters and witnesses, the committee recommends that the Bill be passed.

### **Recommendation 1**

The committee recommends the Queensland Competition Authority Amendment Bill 2018 be passed.

## 2 Background to the Bill

### 2.1 Queensland's third party access regime

Queensland's third party access regime, administered by the QCA, provides an avenue for persons to seek access to services provided by significant infrastructure facilities owned or controlled by others that cannot be economically duplicated. Services include the use of infrastructure such as rail tracks and port terminals and channels.<sup>6</sup>

The purpose of the regime is to 'ensure that competitive forces are not unduly stifled in industries which rely upon a natural monopoly at some stage in the production process'.<sup>7</sup>

*In cases of natural monopoly, one facility meets all of a market's demand more efficiently than a number of smaller and more specialised facilities. Accordingly, it is not social desirable that the infrastructure comprising a natural monopoly be duplicated. At the same time, the absence of competition enables a natural monopoly infrastructure owner to extract excessive profits through exercising market power.*<sup>8</sup>

The regime aims to address a persistent lack of effective competition resulting from a natural monopoly by enabling third parties to use significant infrastructure, on commercial terms, where access is required to compete effectively.<sup>9</sup>

Third party access under the regime involves a two-step process; the declaration of a significant infrastructure service and the negotiation of access conditions. Declaration is dependent on the infrastructure service satisfying a range of prescribed declaration access criteria. Declaration does not provide a right for third parties to access infrastructure, it provides a right to negotiate access with the operator, and to seek dispute resolution if a negotiated agreement cannot be reached.<sup>10</sup>

Three services are currently declared under the regime:

- rail transport services provided by Aurizon Network's Central Queensland Coal Network (CQCN)
- coal handling services at Dalrymple Bay Coal Terminal (DBCT)
- rail transport services provided by Queensland Rail's intrastate passenger and freight network.<sup>11</sup>

### 2.2 National access regime

Queensland's third party access regime is comparable to the national access regime, a similar regulatory framework through which third parties may seek access to nationally significant infrastructure services.<sup>12</sup>

The national regime was recently reviewed by the Productivity Commission, which made a range of recommendations in its report *Productivity Commission Inquiry Report: National Access Regime*. The Australian Government accepted the recommendations of the Productivity Commission and progressed amendments to the national access regime.

The Bill 'reflects and corresponds to the amendments that have already been made by the Commonwealth Government to the national access regime'.<sup>13</sup>

<sup>6</sup> QCA Act, ss 70, 72; QCAA Bill explanatory notes, p 1; QCA, *Third Party Access*, [www.qca.org.au/What-we-do/Third-Party-Access/Third-Party-Access](http://www.qca.org.au/What-we-do/Third-Party-Access/Third-Party-Access), last accessed 5 March 2017.

<sup>7</sup> Queensland Competition Authority Bill 1997 explanatory notes, pp 3-4.

<sup>8</sup> Queensland Competition Authority Bill 1997 explanatory notes, p 4.

<sup>9</sup> QCA, *Third Party Access*, [www.qca.org.au/What-we-do/Third-Party-Access/Third-Party-Access](http://www.qca.org.au/What-we-do/Third-Party-Access/Third-Party-Access).

<sup>10</sup> Queensland Competition Authority Bill 1997 explanatory notes, p 4; QCA, *Third Party Access*, [www.qca.org.au/What-we-do/Third-Party-Access/Third-Party-Access](http://www.qca.org.au/What-we-do/Third-Party-Access/Third-Party-Access).

<sup>11</sup> QCA Act, s 250; QCAA Bill explanatory notes p 1; QCA, *Third Party Access*, [www.qca.org.au/What-we-do/Third-Party-Access/Third-Party-Access](http://www.qca.org.au/What-we-do/Third-Party-Access/Third-Party-Access).

<sup>12</sup> Productivity Commission, *Productivity Commission Inquiry Report: National Access Regime*, Report No. 66 (October 2013) p 4.

<sup>13</sup> Hon Jackie Trad MP, Deputy Premier, Treasurer, Minister for Aboriginal and Torres Strait Islander Partnerships, Record of Proceedings, 15 February 2018, p 80.

## 3 Examination of the Bill

### 3.1 Access criteria

#### 3.1.1 Current requirements

Under the current requirements of the QCA Act, the QCA may only recommend the declaration of a service, and the Minister may only declare a service, if the following five access criteria are met:

- (a) access, or increased access, to the service would promote a material increase in competition in at least one market, other than the market for the service
- (b) it would be uneconomical to duplicate the infrastructure for the service
- (c) the infrastructure for the service is significant, having regard to its size or importance to Queensland's economy
- (d) access, or increased access, to the service can be provided safely
- (e) access, or increased access, to the service would not be contrary to the public interest.<sup>14</sup>

In considering criteria (e), the public interest test, the QCA and Minister must have regard to:

- the regime's objective to promote effective competition by promoting the economically efficient operation, use and investment in significant infrastructure
- legislation and government policies relating to ecologically sustainable development, occupational health and safety, and industrial relations
- social welfare and equity considerations
- economic and regional development issues
- the interests of consumers
- the efficient allocation of resources
- the need to promote competition
- if the infrastructure extends outside Queensland, whether access is regulated by another jurisdiction and the desirability of consistency in regulating access across jurisdictions.<sup>15</sup>

#### 3.1.2 Overview of proposed changes

The Bill proposes to amend criteria (a), (b) and (e), to remove criteria (d) and to change the range of matters the QCA and Minister must have regard to in relation to criteria (e).

##### ***Amendment to criteria (a) – competition criteria***

The Bill proposes to amend criteria (a), the competition criteria, by reframing it to consider whether declaration rather than access, or increased access, would promote competition. The amendment will reflect 'a comparison of competition with and without access on reasonable terms and conditions as a result of declaration'.<sup>16</sup>

The amendment follows a judicial decision that the Productivity Commission found 'lowered the hurdle for declaration by requiring a comparison of the state of competition without access (even though access was already provided...) and the state of competition with access'.<sup>17</sup>

The Productivity Commission determined that a 'declaration-focussed competition test is the most effective way to target the economic problem that the regime is intended to address'.<sup>18</sup>

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<sup>14</sup> QCA Act, s 76(1), (2).

<sup>15</sup> QCA Act, s 76(3).

<sup>16</sup> QCAA Bill 2018 explanatory notes, p 3.

<sup>17</sup> Productivity Commission, *Productivity Commission Inquiry Report: National Access Regime*, Report No. 66 (October 2013) p 17.

<sup>18</sup> Productivity Commission, *Productivity Commission Inquiry Report: National Access Regime*, Report No. 66 (October 2013) p 173.

**Amendment to criteria (b) – uneconomical to duplicate criteria**

The Bill proposes to amend criteria (b) to ‘confirm’ the test as an assessment of whether the infrastructure could meet the total foreseeable market demand at least cost compared to two or more infrastructure services.<sup>19</sup>

The interpretation of the criteria has been ‘controversial’ and the criteria has in the past been applied by decision makers in three different ways:

- *Net social benefit test*<sup>20</sup> – that it would be uneconomical to develop another infrastructure service if for reasonably foreseeable demand it would be more efficient in terms of costs and benefits to the community as a whole for one infrastructure to provide the service.
- *Natural monopoly test*<sup>21</sup> – that it would be uneconomical to develop another infrastructure service if existing infrastructure could provide society’s reasonably foreseeable demand at a lower total cost than two or more facilities.
- *Private profitability test*<sup>22</sup> – that it would be uneconomical to develop another infrastructure service if there is not anyone for whom it would be profitable to develop additional infrastructure.<sup>23</sup>

In reviewing the national regime, the Productivity Commission determined that the uneconomical to duplicate criteria should ‘direct decision makers to test whether a facility can meet total foreseeable market demand ... at least cost’.<sup>24</sup>

The proposed amendment will restore a natural monopoly test for access declaration criteria (b), which was the ‘Queensland Government’s original intention and remains its preference’.<sup>25</sup>

**Amendment to criteria (e) – public interest criteria**

The Bill proposes to amend criteria (e) by reframing the public interest criteria in the affirmative; requiring that access must promote the public interest rather than not be contrary to it. In reviewing the national regime, the Productivity Commission found that the purpose of the public interest test should be ‘to require that the community as a whole is likely to be better off as a result of declaration’.<sup>26</sup>

The proposed amendment also requires that access on reasonable terms and conditions as a result of the declaration be assessed rather than the effect of access, or increased access, consistent with the amendment to criteria (a). The Productivity Commission found that ‘greater certainty and clarity’ regarding concerns about the public interest of a declaration would be achieved by focusing on the implications of ‘access on reasonable terms and conditions through declaration’ rather than on access, or increased access, to the service.<sup>27</sup>

<sup>19</sup> QCAA Bill 2018 explanatory notes, p 3.

<sup>20</sup> Applied by the Australian Competition Tribunal in *In the matter of Fortescue Metals Group Limited* [2010] ACompT 2.

<sup>21</sup> Applied by the Australian Competition Tribunal in *Sydney International Airport* [2000] ACompT 1 and *Application by Services Sydney Pty Limited* [2005] ACompT 7.

<sup>22</sup> Applied by the Federal Court in *Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal* [2011] FCAFC 58 and the High Court in *The Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal* [2012] HCA 36.

<sup>23</sup> Productivity Commission, *Productivity Commission Inquiry Report: National Access Regime*, Report No. 66 (October 2013) pp 151-152.

<sup>24</sup> Productivity Commission, *Productivity Commission Inquiry Report: National Access Regime*, Report No. 66 (October 2013) p 161.

<sup>25</sup> Queensland Treasury, *Briefing Note for Economics and Governance Committee: Inquiry into the Queensland Competition Authority Amendment Bill 2018* (5 March 2018) p 1.

<sup>26</sup> Productivity Commission, *Productivity Commission Inquiry Report: National Access Regime*, Report No. 66 (October 2013) p 176.

<sup>27</sup> Productivity Commission, *Productivity Commission Inquiry Report: National Access Regime*, Report No. 66 (October 2013) p 181.

**Removal of criteria (d)**

The Bill proposes to omit criteria (d), which requires that access, or increased access, can be provided safely, as ‘this is a matter that can be considered under the public interest test’.<sup>28</sup>

The equivalent provision in the national regime was repealed in 2010, as it was considered to be ‘misplaced’ given that safety issues are managed by other regulation irrespective of whether third party access to the service is available.<sup>29</sup>

**Matters considered for the public interest test**

The Bill proposes to reduce the range of matters the QCA and Minister must have regard to when considering whether access, or increased access, to a service would promote the public interest.<sup>30</sup> The proposed new subsection provides that the QCA and Minister must have regard to:

- the effect declaring the service would have on investment in infrastructure and markets dependent on access to the service
- the administrative and compliance costs that would be incurred by the service provider if the service were declared
- if the infrastructure extends outside Queensland, whether is it regulated by another jurisdiction and the desirability of consistency in regulating access across jurisdictions
- any other matter the QCA or Minister considers relevant.<sup>31</sup>

Under the proposed new simplified subsection the QCA and Minister can have regard to any of the matters they currently must have regard to, if the matters are considered relevant.<sup>32</sup>

The proposed new subsection reflects the findings of the Productivity Commission, which determined that a ‘having regard to’ clause should require consideration, of ‘the effect of a declaration in investment in infrastructure services and dependent markets and the administrative and compliance costs that are incurred once a service is declared’.<sup>33</sup>

**3.1.3 Stakeholder views and department’s response**

There was general support from submitters and witnesses for the changes to the access declaration criteria. For example, Aurizon Network submitted that it ‘supports the sets of amendments proposed in the Bill in relation to changes for the declaration criteria’.<sup>34</sup>

Comparably, Andrew Barger, Policy Directory, Economic and Infrastructure from the QRC stated:

*The QRC’s position is that we support the QCA [Act] amendments. We understand the imperative to have the competition criteria aligned with the national criteria.*<sup>35</sup>

However, some submitters and witnesses raised concerns regarding the application of the new access criteria in the upcoming reviews of declarations due to expire in 2020. Andrew Barger from the QRC stated:

*We fully support the role of the regulator and completely understand the need to update the competition criteria and align those criteria with the national criteria, but changing those criteria and dropping them into a review process creates quite a protracted period of uncertainty...*<sup>36</sup>

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<sup>28</sup> QCAA Bill 2018 explanatory notes, p 3.

<sup>29</sup> Trade Practices Amendment (Infrastructure Access) Bill 2009 explanatory memorandum, p 72.

<sup>30</sup> QCAA Bill 2018 explanatory notes, p 6.

<sup>31</sup> QCAA Bill 2018, cl 4.

<sup>32</sup> QCAA Bill 2018 explanatory notes, p 6.

<sup>33</sup> Productivity Commission, *Productivity Commission Inquiry Report: National Access Regime*, Report No. 66 (October 2013) pp 181-182.

<sup>34</sup> Submission 2, p 5.

<sup>35</sup> Public hearing transcript, Brisbane, 5 March 2018, p 2.

<sup>36</sup> Public hearing transcript, Brisbane, 5 March 2018, p 2.

Similarly, the Dalrymple Bay Coal Terminal (DBCT) User Group submitted that the criteria are ‘new and largely untested’ and ‘creates a significant risk in requiring the QCA to carry out the proposed review process with little to no guidance, and has already caused investment uncertainty’.<sup>37</sup>

These submitters suggested there should be a legislated extension to the declaration of the CQCN and DBCT.<sup>38</sup> For example, the DBCT User Group submitted:

*...the Bill should be amended to include an extension to the existing declaration of both access to Aurizon’s network and the coal handling services at the Terminal [DBCT].*<sup>39</sup>

In response to the concerns raised by the QRC and DBCT User Group, Queensland Treasury advised that the QCA’s review of the declarations:

*...are an important element of the Queensland Government’s commitment to regulatory best practice by ensuring that the impacts of regulatory intervention, such as the declaration, are transparently assessed.*<sup>40</sup>

Queensland Treasury further advised that it considers ‘there is no practical benefit to extending the declarations by legislative mechanism’ as extending the declarations in this way would:

*...require a regulatory impact statement (RIS) process that would involve a similar amount of time, expense and assessment as will be required to conduct the QCA’s review of the declaration.*<sup>41</sup>

Queensland Treasury also advised:

*A legislative extension of the declaration may not provide the regulatory certainty the proponents seek given there is a declaration revocation process set out under the QCA Act which allows access providers to seek revocation of a declaration at any time.*<sup>42</sup>

## 3.2 Pricing principles for accessing a declared service

### 3.2.1 Current requirements

The QCA Act establishes pricing principles for the price of accessing a declared service. Under the pricing principles the price should:

- generate expected revenue at least sufficient to meet the costs of providing access to the service and a return on investment commensurate with the regulatory and commercial risks
- allow for multi-part pricing and price discrimination when it aids efficiency
- not allow a related service operator to set conditions that discriminate in favour of the service operator’s downstream operations, or a related entity, except as justified by a higher cost of access for other persons
- provide incentives to reduce costs or improve productivity.<sup>43</sup>

The QCA must consider the pricing principles when making an access determination, and may only approve a draft access undertaking if it is considered appropriate, having regard to the pricing principles among other things, to approve it.<sup>44</sup>

<sup>37</sup> Submission 4, p 2.

<sup>38</sup> Submissions 3 and 4.

<sup>39</sup> Submission 4, p 2.

<sup>40</sup> Queensland Treasury, *Briefing on submission received from Queensland Resources Council*, p 1; Queensland Treasury, *Briefing on submission received from Dalrymple Bay Coal Terminal User Group*, p 1.

<sup>41</sup> Queensland Treasury, *Briefing on submission received from Queensland Resources Council*, p 1; Queensland Treasury, *Briefing on submission received from Dalrymple Bay Coal Terminal User Group*, p 1.

<sup>42</sup> Queensland Treasury, *Briefing on submission received from Queensland Resources Council*, p 1; Queensland Treasury, *Briefing on submission received from Dalrymple Bay Coal Terminal User Group*, p 1.

<sup>43</sup> QCA Act, s 168A.

<sup>44</sup> QCA Act, ss 120, 138.

The pricing principles are also referenced in the context of differential treatment for service users and those seeking access. The QCA Act provides that while an approved access undertaking may require or permit a service operator to treat users differently in providing access and those seeking access differently in negotiating access agreements, this does not authorise an undertaking to require or permit the service operator to do anything inconsistent with the pricing principles.<sup>45</sup>

A service operator is permitted to differentiate between service users to the extent expressly required or permitted by an access code, approved access undertaking or access agreement, however this does not authorise the service provider to prevent or hinder a user's access to the service under an access agreement or access determination, or to do anything inconsistent with the pricing principles.<sup>46</sup>

Similarly, a service operator may treat those seeking access differently in negotiating access agreements if the differential treatment is reasonably justified, or is expressly required or permitted by an access code, approved access undertaking or access determination. Permitting differential treatment in these circumstances does not authorise the service operator to engage in conduct to prevent or hinder a user's access to the service or to propose a price for access that is inconsistent with the pricing principles.<sup>47</sup>

### 3.2.2 Overview of proposed changes

The Bill proposes to remove the references to the pricing principles from the provisions dealing with differential treatment of service users and those seeking access (sections 100, 138A and 168C of the QCA Act). The Bill does not amend the provisions requiring the QCA to consider the pricing principles when making an access determination or approving a draft access undertaking (sections 120 and 138 of the QCA Act).

The explanatory notes state the amendments to sections 100, 138A and 168C of the QCA Act are necessary because of a perceived inconsistency in the references to the principles for making an access determination or approving a draft access undertaking, and the references in relation to differential treatment, which has resulted in uncertainty among stakeholders as to how the QCA should apply the pricing principles.<sup>48</sup>

### 3.2.3 Stakeholder views and department's response

Aurizon Network raised concerns with the proposed changes to the pricing principles, suggesting that:

*QCA is seeking to ensure it has an enshrined discretion to drive the price for access below what would give access providers at least their efficient costs of providing the service and a return.*<sup>49</sup>

David Collins, Acting Group Executive Network from Aurizon Network stated:

*The removal of these provisions, together with the accompanying explanatory notes which state that each principle need not be satisfied in every instance, means that the pricing principles will no longer be as central to the scheme of regulation and that access providers, such as us, cannot be sure that they will recover their efficient costs of providing the declared service and the legislated rate of return on that investment.*

...

*We believe that these proposed changes have been made without sufficient assessment of the regulatory risks or impacts involved.*<sup>50</sup>

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<sup>45</sup> QCA Act, s 138A.

<sup>46</sup> QCA Act, s 168C.

Sections 104 and 125 of the QCA Act outline obligations regarding not engaging in conduct for the purpose of preventing or hindering access to a declared service.

<sup>47</sup> QCA Act, s 100.

<sup>48</sup> QCAA Bill explanatory notes, pp 3-4.

<sup>49</sup> Submission 2, p 4.

<sup>50</sup> Public hearing transcript, Brisbane, 5 March 2018, p 4.

In responding to Aurizon Network's concerns Queensland Treasury stated:

*The pricing principles are included as part of the list of matters to which the QCA must have regard when making an access determination and deciding whether to approve a draft access undertaking (sections 120 and 138 of the QCA Act). Treasury understands the QCA considers the pricing principles to be an important consideration, however, this does not mean that they have an elevated status or primacy over the other factors the legislation requires it to have regard to, such as the legitimate business interests of the access provider, the interests of users of the service and the broader public interest.<sup>51</sup>*

Queensland Treasury advised that there are 'diverging views amongst stakeholders on how the legislation requires the Queensland Competition Authority (QCA) to apply the pricing principles in its decision on whether to approve a draft access undertaking' and stated:

*Given the diverging stakeholder views, Treasury considers that in an already complicated regulatory process, the Bill, by removing references to the pricing principles in sections 100, 138A and 168C of the QCA Act, makes an important clarification for stakeholders in the application of the pricing principles.<sup>52</sup>*

### 3.3 Promoting timely processes

#### 3.3.1 Current requirements

The QCA Act currently provides that the QCA must use its best endeavours to take certain actions within a six month period. The QCA must:

- recommend to the Minister whether a service be declared in whole or in part,<sup>53</sup> within six months of receiving a request for the recommendation<sup>54</sup>
- decide whether to approve or refuse a draft access undertaking within six months of receiving the draft (or from the last day for making a submission if an investigation is conducted)<sup>55</sup>
- make an access determination for an access dispute referred to the QCA for arbitration within six months of receiving the access dispute notice.<sup>56</sup>

If the QCA fails to make the recommendation, decision or determination within six months it must provide written notice of the reasons for failing to meet the timeframe to the Minister and the applicant for the recommendation, the service operator, or the parties to a dispute.<sup>57</sup>

Queensland Treasury advised that since the six month timeframe was introduced in 2008, 91 percent of recommendations, decisions or determinations have been made by the QCA within six months.<sup>58</sup>

#### 3.3.2 Overview of proposed changes

The Bill proposes to strengthen the QCA's obligations where it fails to make a recommendation, decision or determination within six months by requiring details of the actions it proposes to take to meet its obligations be included in the notice. In relation to a request for a recommendation about a declaration or a decision about a draft access undertaking, the QCA must also publish the notice on its website.<sup>59</sup>

<sup>51</sup> Queensland Treasury, *Briefing on submission received from Queensland Resources Council*, p 1; Queensland Treasury, *Briefing on submission received from Aurizon Network*, p 1.

<sup>52</sup> Queensland Treasury, *Briefing on submission received from Queensland Resources Council*, p 1; Queensland Treasury, *Briefing on submission received from Aurizon Network*, p 1.

<sup>53</sup> If part of the service is itself a service the QCA can recommend that part of the service be declared.

<sup>54</sup> QCA Act, ss 79, 79A.

<sup>55</sup> QCA Act, ss 147A.

<sup>56</sup> QCA Act, ss 117, 117A.

<sup>57</sup> QCA Act, ss 79A, 117A, 147A.

<sup>58</sup> Queensland Treasury, *Responses to questions raised by the Economic and Governance Committee inquiry into the Queensland Competition Authority Amendment Bill 2018 at the hearing held on 5 March 2018*, p 1.

<sup>59</sup> QCAA Bill cls 5, 7, 9; QCAA Bill 2018 explanatory notes, p 3.

### 3.3.3 Stakeholder views

There was general support from submitters and witnesses for the proposed changes promoting the QCA making timely recommendations, decisions and determinations.<sup>60</sup> For example, Aurizon Network submitted that it 'supports the sets of amendments proposed in the Bill in relation to changes for ... the QCA timelines'.<sup>61</sup>

### 3.4 Administrative, technical and clarifying amendments

The Bill proposes a range of amendments that seek to improve the operation and administration of the legislation, clarify existing requirements or address a number of minor, technical drafting issues including:

- providing that the QCA must publish notices on its website rather than in the newspaper<sup>62</sup>
- correcting cross references<sup>63</sup>
- removing obsolete references to repealed provisions.<sup>64</sup>

The Bill also establishes transitional arrangements for the preparation and approval of draft access undertakings and draft amending access undertakings started but not completed at the commencement of the legislation.<sup>65</sup>

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<sup>60</sup> See submissions 2, 3 and 4.

<sup>61</sup> Submission 2, p 5.

<sup>62</sup> QCAA Bill 2018, cls 3, 12; QCAA Bill 2018 explanatory notes, pp 6-7.

<sup>63</sup> QCAA Bill 2018, cl 13; QCAA Bill 2018 explanatory notes, p7.

<sup>64</sup> QCAA Bill 2018, cls 11, 12, 14, 15, 16, 18; QCAA Bill 2018 explanatory notes, pp 7-8.

<sup>65</sup> QCAA Bill 2018, cl 17; QCAA Bill 2018 explanatory notes, p 8.

## **4 Compliance with the *Legislative Standards Act 1992***

### **4.1 Fundamental legislative principles**

Section 4 of the *Legislative Standards Act 1992* (LS Act) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to the rights and liberties of individuals, and the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill, and has identified no issues regarding consistency with fundamental legislative principles.

### **4.2 Explanatory notes**

Part 4 of the LS Act requires that explanatory notes be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information the explanatory notes should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are reasonably detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill’s aims and origins.

## Appendix A – Submitters

<b>Sub #</b>	<b>Submitter</b>
001	Queensland Law Society
002	Aurizon Network Pty Ltd
003	Queensland Resources Council
004	Dalrymple Bay Coal Terminal User Group

## Appendix B – Witnesses at public briefing and public hearing

### Public briefing

5 March 2018

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#### Queensland Treasury

- Robert Fleming, A/Deputy Under Treasurer, Commercial Group
- Dennis Molloy, Assistant Under Treasurer, Shareholder and Structural Policy Division
- Louise Dunne, Principal Treasury Analyst, Shareholder and Structural Policy Division

### Public hearing

5 March 2018

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#### Queensland Resources Council

- Ian Macfarlane, Chief Executive
- Andrew Barger, Policy Director, Economics and Infrastructure
- Tom Cunningham, Policy Manager, Economics and Local Content

#### Dalrymple Bay Coal Terminal User Group

- Ken Moore, Anglo American

#### Aurizon Network Pty Ltd

- David Collins, Acting Group Executive Network