

# DECLARATIONS EXTENDED FOR CQCN, QUEENSLAND RAIL AND DBCT SERVICES

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Legal Briefings - By **Jay Leary, Ben Gibbons, Hannah Whitton**

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The Queensland Treasurer and Minister for Infrastructure and Planning on 31 May 2020 declared Central Queensland Coal Network services (**CQCN services**), parts of the Queensland Rail service (**QR service**) and Dalrymple Bay Coal Terminal services (**DBCT services**) as services under sections 84-87 of the *Queensland Competition Authority Act 1997 (QCA Act)*.

These declarations extend existing arrangements and will commence on 9 September 2020 for a period of 20 years for CQCN services, 15 years for QR service and 10 years for DBCT services.

The Minister accepted the Queensland Competition Authority's (**QCA**) recommendations in relation to CQCN and declared that 'the use of a coal system for providing transportation by rail' by CQCN is a service under the QCA Act. In his reasoning, the Minister accepted the QCA's recommendation that Aurizon would, in the absence of a declaration, have commercial incentives to exert market power by favouring its related entity above-rail service provider and would not be constrained by the power of mining companies or above-rail haulage users.

The Minister also adopted the QCA's recommendation in relation to QR services in his decision to declare only part of the QR service as a service. The declared services are the West Moreton, North Coast, Mount Isa, Central West, Western, and South Western route services. The Tablelands system was not declared a service, as a declaration would not promote a material increase in competition in the above-rail passenger market.

In declaring that ‘the handling of coal at DBCT by the terminal operator’ is a service, the Minister departed from the QCA’s position. The QCA had recommended that a service not be declared as the service would not promote competition or be in the public interest. The Minister instead found that a declaration would promote competition and investment in facilities as, without a declaration, new users would be discouraged from entering the development stage tenements markets. That conclusion rested on the Minister’s view that new users would face considerable uncertainty surrounding the pricing regime to which they would be subject after the expiry of the Deed Poll and Access Framework in 2030, as DBCT Management Pty Ltd would be incentivised to maximise its profits by not renewing the Deed Poll and Access Framework or renewing them in an amended version that imposed a greater price difference cap.

In the reasoning for each declaration, the Minister considered whether the declaration would be compatible with the *Human Rights Act 2019* (Qld). That reasoning included whether the facilitation of emissions that contribute to climate change could impact the right to life, the right to equality, the right of non-discrimination on the basis of intergenerational equity, and the right of children to protection in their best interest. In each declaration, the Minister decided that no human right potentially relating to climate change would be affected as each declaration would not have a material effect on the volume of coal exported and consumed overseas. Instead, the Minister stated, coal consumption would primarily depend on market factors such as demand and price.

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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