

Productivity Commission Inquiry: National Access Regime

QUEENSLAND TREASURY AND TRADE

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KEY POINTS

This inquiry is important to Queensland's economic future. Queensland is a fast growing state and will need much new economic infrastructure over the next decade. Access regulation will be a key factor in some investment decisions and the efficient use and pricing of the infrastructure.

The Queensland Government will provide a comprehensive response to the Commission's Draft Report. At this stage Queensland Treasury and Trade (QTT) would like to offer some preliminary observations, suggest options worth consideration and ask questions. The purpose of this submission is to highlight issues of special importance to the Queensland economy rather than to be a formal statement of Queensland Government policy.

QTT suggests that the Commission undertake serious consideration of:

1. The basic intent of access regulation. A clear statement of the policy intent of access regulation – agreed by all parties – with flow through in legislation, regulation and regulatory practice - could resolve much of the current uncertainty.
2. The role of the National Access Regime in Australia's system of access regulation. The Australian system has evolved into a tripartite structure of State access regulation, industry regimes and the National Access Regime. The Commission should consider whether this structure is best and review the benefits and costs of overlapping regulation.
3. Several practical reforms to the National Access Regime should be investigated and evaluated: revised declaration criteria; reforms to promote greenfield infrastructure; improved timeliness of regulatory decision-making; improved effectiveness of the access undertaking path; and more effective competitive tendering arrangements.
4. Quantitative assessment of the benefits and costs of access regulation (in general and of the National Access Regime specifically) should occur.

1. REVIEW OF THE INTENT AND SCOPE OF ACCESS REGULATION

1.1 Intent

The concept of providing third party access to essential infrastructure was one of the major elements of the Hilmer Review in 1993 and become one of the major policy developments included in the *Competition Principles Agreement 1995*.

In Queensland, the legislative framework for third party access was built on the view that:

In case 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 socially 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.

This is especially the case where the business which operates the natural monopoly also has a commercial interest in upstream or downstream markets (for example a rail operator who also owns the track). Such a business may discriminate against its upstream or downstream competitors by offering access on more favourable terms and conditions than is offered to competitors. In this way, an owner of a natural monopoly is able to stifle competition in upstream or downstream markets.

The purpose of third party access is therefore to provide a legislated right to use another person's infrastructure. This should prevent owners of natural monopolies charging excessive prices. It should also encourage the entry of new firms into the potentially competitive upstream and downstream markets which rely on a natural monopoly infrastructure in the production process, and thereby enable greater competition in those markets. This in turn would

promote more efficient production and lower prices to consumers. (*Explanatory Notes, Queensland Competition Authority Bill 1997*)

In many ways the original intent of third party access holds now as it did when the legislation was first introduced. However, from QTT's perspective, the circumstances surrounding the provision of access have changed, making access regulation more challenging.

Specifically, when access regulation was first formally introduced both nationally, and in Queensland, regulation applied predominantly to the services provided by publicly owned infrastructure. In many cases, access regulation was applied to public monopoly infrastructure as one of the major reform tools to transform the delivery of Government dominated monopoly services.

However, a decade and a half later, natural monopoly infrastructure is now more likely to be owned by the private sector, with the private sector also more likely to be the developer of new greenfield facilities. The increasing prevalence of large private sector companies in the provision of natural monopoly infrastructure is challenging; sometimes there is a balance to be struck between the private interests of a company making a significant investment in infrastructure and what is economically and socially desirable to the economic development of the State.

A key task of the Inquiry should be to help clarify the policy intent for access regulation.

QTT considers that economic efficiency should be the main goal of access regulation and that this should be clearly stated and applied in policy statements, legislation, regulation and regulatory practice. Access regulation should also aim to promote competition in related markets.

1.2 Scope

The scope of access regulation should be considered.

QTT considers that access regulation should be applied sparingly, focusing on significant economic problems. This view is based on: practicality and the need to minimise regulatory costs. The Commission should consider the case for an explicit focus in legislation on regulation of significant natural monopoly services; for example an object that states access regulation seeks to:

(to) promote the economically efficient operation of, use of and investment in the infrastructure by which *significant monopoly* services are provided, thereby promoting effective competition in upstream and downstream markets

A further challenge for access regulation arises out of the regulation of private sector businesses, and striking the difficult balance between supporting business to achieve a negotiated outcome with regulation only where necessary; allowing access to infrastructure on commercial terms; and having regulatory decisions occur in a timely manner so as to not stifle legitimate business developments.

2. ROLE OF THE NATIONAL ACCESS REGIME IN ACCESS REGULATION

2.1 Structure of Australian Access Regulation

A further key task should be to consider the role of the National Access Regime in Australian access regulation – and roles and responsibilities more generally.

From QTT's perspective the current Australian system has evolved into a tripartite system of State access regulation, industry regimes and the National Access Regime. Of the three, the National Access Regime has been least used in practice, with only three declarations in the last decade. Its main impact has been through certification of State access regimes. Its design has been the least dynamic in responding to changes in industry and market structure. QTT also recognises the argument that the National Access Regime has been of some practical impact through the 'threat of declaration' being an incentive to agree in commercial negotiations.

The Commission should consider whether this structure is the best in terms of the policy intent of access regulation i.e. economic efficiency. Questions that QTT asks the Commission to consider are:

- What are the 'national' characteristics which justify a national regime (given State responsibility for economic infrastructure) and the scope of that regime?
- Is the current system consistent with best practice regulation which usually avoids overlapping regulators? If not, how might the system be reformed to provide more regulatory certainty and lower regulatory costs?
- Does the Commission accept anecdotal evidence from stakeholders that the National Access Regime has not evolved over time to provide a workable system?
- Is the 'threat of declaration' argument valid and if so what are its benefits and costs?

2.2 State Access Regulation

QTT considers that there is a strong ongoing role for State access regimes. State regimes are more responsive to local conditions than a national regime. They have arguably been shown to be a more vibrant and innovative form of regulation than the National Access Regime in responding to economic changes such as the greater prevalence of privately developed and owned infrastructure.

The following section provides an overview of Queensland's third party access regime and approach to using other policy instruments (such as access conditions in project approvals) as a means of facilitating third party access.

The Queensland Government considers appropriate access arrangements for significant infrastructure facilities on a case by case basis, having regard to the characteristics of each facility and relevant markets. In line with this practical approach, the Queensland Government prefers commercially negotiated access arrangements and it considers that formal access regulation is best suited to situations where commercial negotiations fail or are impractical.

An outline of the access arrangements in Queensland is provided in the Attachment. Commercially negotiated access arrangements are the most common but other forms of access arrangements based on the State's third party access regime and on other State Government powers such as project approvals are also significant. No Queensland infrastructure has been declared under the National Access Regime.

2.3 The Queensland Access Regime

Queensland's third party access regime is established under Part 5 of the *Queensland Competition Authority Act 1997* (QCA Act) (the Queensland Access Regime). The regime is administered by Queensland's independent economic regulator, the Queensland Competition Authority (QCA).

The regime is broadly modelled on the National Access Regime in that it is a generic regime which could be applied to declared services across a number of different industries.

Services may be declared through the legislated declaration process. Under this process, a person can apply to the QCA for a recommendation that a particular service be declared for third party access by the relevant Ministers responsible for the QCA Act. Once the QCA makes a recommendation about declaration to the Ministers, the Ministers must make a decision to declare or not to declare the service (or part of the service).

In order for the QCA to recommend that a service be declared, and for the Ministers to make a declaration, the service must satisfy the access criteria set out under section 76 of the QCA Act. The access criteria are broadly similar to the declaration criteria set out under the National Access Regime.

Previously, services may also have been declared by regulation made under the QCA Act. However, the ability to make regulation-based declarations was removed from the Queensland Access Regime as part of a number of amendments made to update and enhance the regime in 2010.

Three services are currently declared for third party access under the Queensland Access Regime:

- coal handling services at Dalrymple Bay Coal Terminal (DBCT);
- rail transport services provided by the Central Queensland Coal Network (operated by Aurizon Network Pty Ltd); and
- rail transport services provided by Queensland Rail Limited's intrastate passenger and freight network.

These declarations were previously made by regulation and are now set out under section 250 of the QCA Act with a 10 year expiry date.

Declaration under the Queensland Access Regime establishes a right for any party to negotiate terms and conditions of access with the access provider of a declared service, with compulsory dispute resolution available in the event of an access dispute.

The Queensland Access Regime enables the QCA to require an access provider of a declared service to submit a draft access undertaking which sets out the terms and conditions upon which the provider will negotiate access to the declared service. There is also provision for access providers of either declared services or services that have not been declared under the regime to submit a voluntary access undertaking to the QCA.

In 2011, the Queensland Rail Access Regime (covering both rail declarations) and the DBCT Access Regime were each certified as an effective access regime by the Commonwealth Minister for ten years.

2.4 Other policy instruments for facilitating third party access

Apart from the formal legislative frameworks for access regulation under the Queensland and National Access Regimes, government can facilitate third party access by access conditions imposed through other State powers such as project approval processes or lease conditions (e.g. requiring a facility to be operated on an open access basis).

The Queensland Government considers whether to establish such conditions on a case by case basis, taking into account the characteristics of the infrastructure and relevant markets.

Unless the State specifies the access requirements for specific infrastructure facilities, it remains at the discretion of infrastructure owners to determine if, and how, they will provide access to their services (and mitigate the risk of declaration being sought by an access seeker), including whether through commercial (unregulated) arrangements or through the Queensland or National Access Regimes.

3. PRACTICAL REFORMS TO THE NATIONAL ACCESS REGIME

Without prefiguring the results of any broader consideration of the National Access Regime's intent, scope and role, there are several practical reforms to the National Access Regime as-it-is which QTT thinks are worth further consideration.

3.1 Revised declaration criteria

Criterion (b)

The criterion of most controversy is criterion (b) which requires the designated Minister to be satisfied "that it would be uneconomical for anyone to develop another facility to provide the service".

The interpretation of declaration criterion (b) has recently been changed by the High Court's decision in relation to the Pilbara rail case (*The Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal* [2012] HCA 36 (14 September 2012)). The High Court held that criterion (b) should be applied as a private profitability test, essentially meaning that a service cannot be declared if it would be profitable for any person (such as an existing or future market participant) to develop another facility to provide the service.

A private profitability test has several arguments in its favour.

First, it is respectful of the High Court's judgement and expertise. The High Court investigated the legal (and economic) arguments in detail. Its finding must be given significant standing in policy terms as well as on its own terms as the definitive legal judgment on the interpretation of the present text of criterion (b).

Second, it has been argued that a private profitability test could be a more workable test than the former tests applied by regulators to assess criterion (b). The former tests have proven to be difficult to apply as demonstrated by the lengthy and costly proceedings in the Pilbara rail case. It is arguable that a workable test – even if imperfect – is better than tests that may attempt to measure monopoly more closely, but cannot be implemented in practice.

Third, it has been argued that a private profitability test could establish reliable regulatory precedents and certainty and so reduce regulatory costs and regulatory variability. This would limit the social costs of regulatory error – where error could be in the form of declaring a facility when it should not be declared or vice versa.

However, the private profitability test is still likely to face difficulties and uncertainties when applied in practice. It will involve an evaluation of a range of factors, such as likely demand, costs and pricing, as well as a determination of issues such as project risk and sufficient rates of return, which may be further complicated if the duplicated facility is considered as part of a larger project. While this is ascertainable, it is likely to create complexities and information burdens (and disputes).

The focus on the profitability for 'anyone' to develop another facility is also likely to be problematic. The fact that it would be profitable for one firm (including the incumbent service provider) to duplicate a

facility should not necessarily exclude all other firms from having a service declared for third party access.

Most fundamentally, a private profitability test does not link strictly to economic efficiency. It may be profitable for a person to develop another facility to provide a service, despite it being more economically efficient for an existing facility to provide the service (e.g. by utilising spare capacity at the existing facility or expanding that facility). Thus a private profitability test may not capture all instances of monopoly, leading to risks of unregulated monopoly pricing and denial of access.

QTT considers that the test that links most closely to economic efficiency is the preferable approach (given that the purpose of access regulation is to promote economic efficiency).

The question for the Commission is, what would be required to construct such a test (and what changes to the declaration criteria would be required). If a workable test linking directly to economic efficiency can be devised it will be superior to a private profitability test. If not, the Commission should outline what would be needed (eg in terms of legislative or regulatory guidance) to bring a private profitability test as close as it can be to a measure of economic efficiency.

Implications for the Queensland Access Regime

The uncertainty following the High Court decision has implications for Queensland. The declaration criteria under the National Access Regime are derived from the *Competition Principles Agreement* (CPA) which also forms the basis for State access regimes. The Queensland Access Regime contains similar declaration criteria to those set out under the National Access Regime (known as 'access criteria' and listed under section 76 of the QCA Act). The equivalent criterion (b) under the QCA Act is expressed as: "that it would be uneconomical to duplicate the facility for the service" (section 76(2) (b) of the QCA Act).

While the High Court's decision was made in respect of the declaration criteria under the National Access Regime, it is possible that the High Court's decision in relation to criterion (b) could be applied to the corresponding criterion under the Queensland Access Regime. However, it is important to note that there are differences in how criterion (b) under each regime is expressed. Further, the relevant explanatory notes for the QCA Act provide clear guidance that criterion (b) is intended to focus the application of the regime to natural monopoly infrastructure (see, for example, page 23 of the explanatory notes to the *Queensland Competition Authority Bill 1997*).

Nevertheless, given the similarities between the declaration criteria under each regime, and the fact that the criteria are ultimately derived from the CPA, the High Court's decision does create uncertainty about the proper interpretation of criterion (b) under state-based access regimes.

The application of a private profitability test to criterion (b) does not reflect Queensland's legislative intent for the application of criterion (b) under the Queensland Access Regime. While the Queensland Government is currently considering this issue in relation to the access criteria under the QCA Act, QTT considers that it would be preferable for a nationally consistent approach to be taken to clarifying the intent for this criterion.

Accordingly, the Commission should consider whether amendments to criterion (b) that it may recommend should be made to the National Access Regime in isolation or more broadly at a COAG level (i.e. amendment to the CPA).

Other declaration criteria

While criterion (b) is a central issue that the Commission must consider, the Inquiry is a timely opportunity to examine the other declaration criteria to assess whether these criteria remain effective and set an appropriate threshold for declaration.

For criterion (a), there has been argument over whether the threshold for declaration set out under this criterion (e.g. that access would promote a material increase in competition) is appropriate or whether it may risk regulatory overreach through inappropriate declarations. QTT notes that the prefix 'material' was added to this criterion following the Commission's previous review into the National Access Regime. The Commission should investigate whether this has had the intended effect or whether further change to the wording of the criterion is justified.

Criterion (c) (the national significance test) and criterion (e) (which ensures that services subject to a certified access regime cannot be declared under the National Access Regime) do not appear to raise any significant issues with regard to the threshold for declaration. It is also noted that criterion (d) (the health and safety criterion) has been repealed since the Commission's last review of the National Access Regime.

For criterion (f) (the public interest test), issues have been raised around whether this criterion gives sufficient recognition to the economy-wide impacts of declaration of a particular service e.g. in terms of the impact on measures such as industry and economic growth and productivity. Consideration should be given as to whether the criterion should give greater guidance on the matters that the decision maker should have regard to when deciding this criterion, particularly matters of economic impact (such as the economic benefits and costs of access) which underpin the object of the regime.

QTT also notes that there has also been some contention over whether the current application of the 'production process' exception from the definition of a 'service' may also be contributing to a slippage in the threshold for declaration.

Ultimately, the declaration criteria should collectively set a threshold for declaration that is stringent enough so that it minimises the potential for regulatory overreach (and the social costs this entails), while still enabling declaration where it is consistent with the economic efficiency objectives of access regulation.

3.2 Reforms to promote greenfield infrastructure projects

The development of greenfield infrastructure is important to Queensland's economy, particularly within the mining and resources sector where new infrastructure is necessary to support new mining projects.

Uncertainty over the regulatory arrangements that will apply to a proposed infrastructure facility can affect the financial viability of a greenfield project. As there is an increasing trend for these types of infrastructure to be developed by the private sector, the Queensland Government has a keen interest in policy proposals that will increase regulatory certainty for proponents of greenfield infrastructure projects.

QTT considers that the Commission should investigate measures that will provide greater certainty about the regulatory arrangements that will apply to proposed greenfield infrastructure projects.

In particular, QTT considers that measures to provide greater certainty over the application of access regulation to an infrastructure facility before it has been constructed and is operational are worthy of further consideration. This may include providing a specific process for the declaration of services to

be provided by facilities that have yet to be constructed and, in a similar vein, providing a specific process for the making of a draft access undertaking covering a yet to be constructed facility.

QTT also notes that State regimes do not provide immunity from declaration as is the case in the National Access Regime (i.e. through 'ineligibility decisions'), as doing so continues to expose the facilities to declaration under the National Access Regime. Consideration could be given to recognising a State based immunity from declaration under the National Access Regime.

Another proposal that the Commission should explore is the merits of enabling 'immunity from declaration' to be granted for greenfield infrastructure facilities that would otherwise meet the declaration criteria (i.e. providing a 'regulatory holiday').

The Commission should also consider the merits of establishing specific pricing principles for greenfield infrastructure facilities to provide greater incentive/reward for developing these types of projects (for example, the pricing principles may provide higher than typical regulated rates of return).

While greenfield infrastructure investment is important to the Queensland economy, investment in brownfield infrastructure cannot be ignored. In practice it can be difficult to define exactly what 'greenfield infrastructure' is and how it differs economically from investments in 'brownfield infrastructure', which can involve large scale investments and can be just as economically significant as the development of greenfield infrastructure (e.g. major expansions of existing port facilities).

The Commission should consider the question of how promotion of greenfield infrastructure can be integrated with efficient investment in brownfields infrastructure.

3.3 Timeliness of regulatory decision making processes

Reforms have been made to the National Access Regime in the past to streamline decision making processes. The *Trade Practices Amendment (Infrastructure Access) Act 2010* amended the National Access Regime to, among other things, introduce measures such as time limits on regulatory decisions and to limit the information and material that may be considered by the Australian Competition Tribunal (the Tribunal) as part of a merits review of a decision.

The time limits introduced for decisions do appear to have improved the timeliness of decision making processes under the National Access Regime (to the extent they have been tested in practice). For example, Queensland found that the time taken for the recommendation/decision made by the National Competition Council and the Commonwealth Minister in relation to Queensland's certification applications in 2010-11 was within the timeframes and allowed for improved decision making.

However, the excessive delays in the declaration processes involved in the ongoing Pilbara rail case suggest further reform is needed. A central question is whether merits review is an appropriate or effective form of review for decisions made under the National Access Regime or whether relying on judicial review would be more appropriate and would promote more timely decision making under the regime.

Merits review leads to increased scrutiny of decision making. The availability of merits review can help prevent regulatory errors from being made and provide greater confidence to stakeholders (particularly investors in infrastructure projects) that the correct decision will ultimately be made. These benefits may be of special significance when declaration is being sought in areas that are not traditionally subject to economic regulation.

However, while merits review provides a thorough form of review, it can result in significant costs through lengthy legal proceedings and regulatory delays, which could unduly delay the provision of third party access or the introduction of regulatory arrangements (e.g. approval of access undertakings etc).

In addition to the increased time and costs that merits review can cause, the availability of merits review can also give rise to 'forum shopping' and other gaming behaviour which can create considerable uncertainty for stakeholders over a regulator's decisions.

As noted in the Issues Paper, merits review is not available under the Queensland Access Regime (and various other access regimes) with parties instead able to rely on judicial review to ensure that no errors of law are committed by the decision maker. It is also noted that merits review has also been removed from other regulatory regimes, such as the telecommunications access regime.

On balance QTT considers that judicial review has proven to be an appropriate form of review for access regulation, promoting a level of certainty and finality to decisions made under the regime, yet still allowing robust judicial scrutiny of decisions to ensure that decisions are lawfully made.

3.4 Effectiveness of undertakings path under the National Access Regime

The Commission should consider whether the undertakings path under the National Access Regime would be enhanced if the ACCC is provided with the power to require the service provider of a declared service to submit a draft access undertaking.

The National Access Regime currently provides for the making of access undertakings on a voluntary basis. That is, it is open for a provider of a service (whether declared or not) to voluntarily submit a draft access undertaking to the ACCC for approval.

In specific circumstances it may be mandatory for an access undertaking to be submitted to the ACCC due to a requirement contained in a separate agreement or Act. However, there is no avenue under the National Access Regime in which the ACCC can require a service provider to submit a draft access undertaking. Accordingly, unless a provider chooses to submit an undertaking voluntarily or a separate agreement or Act requires the submission of an undertaking, service providers and access seekers must solely rely on the negotiate-arbitrate framework to negotiate access or settle access disputes.

The Queensland Government has found that access undertakings can be a useful means of regulating access to certain services, particularly where a more direct regulatory approach than solely relying on the negotiate-arbitrate framework is warranted. This is particularly so for capacity constrained infrastructure or where there are multiple access seekers.

3.5 Competitive tendering process

One of the reforms which resulted from the *Competition and Infrastructure Agreement* (CIRA) was the establishment of a process that would enable immunity from declaration to be granted for government-owned infrastructure developed via a competitive tendering process approved by the ACCC.

The criteria for deciding whether immunity from declaration should be granted are contained under the *Competition and Consumer Regulations 2010* (Cth) (the Regulations).

The QCA Act also contains provision to prevent a service provided, or to be provided, by a facility that is the subject of a competitive tendering process approved by the ACCC from being declared under the Queensland Access Regime (section 72(2)(c) of the QCA Act).

The competitive tendering process exemption can provide a useful and less intrusive regulatory alternative to the existing third party access options available to access providers of government sponsored infrastructure.

The lack of use of this process may be a result of the increasing trend for new infrastructure facilities to be developed and owned by the private sector rather than government. However, the Commission should consider whether any amendments can be made to the competitive tendering process to increase the effectiveness and use of the process and in particular, whether the criteria for assessing competitive tendering schemes are too onerous for infrastructure proponents to satisfy.

4. QUANTITATIVE ASSESSMENT

As with other economic reforms review of the National Access Regime's benefits and costs should be informed by a credible quantitative assessment. As the Issues Paper notes, such an assessment may be difficult in terms of methodology and modelling technique. However, after a decade and a half of operation, QTT considers that review of the National Access Regime needs to move beyond theoretical considerations and case studies to include, at least, quantitative estimates of the impact on the economy and productivity.

ATTACHMENT

This attachment outlines the access arrangements in place for key Queensland ports and railway infrastructure.

Formal access regulation under the Queensland Access Regime

The Queensland Government considers the appropriateness of access arrangements for significant infrastructure facilities on a case by case basis, having regard to the characteristics of each facility and relevant markets.

As a principle, the Government prefers access arrangements to be commercially negotiated between parties without regulatory intervention.

If an access seeker is unable to negotiate commercial access to relevant infrastructure under the above arrangements, the access seeker is able to seek formal access regulation under either under the Queensland or National Access Regimes.

The following three services are currently declared under the Queensland Access Regime and subject to formal access regulation by the QCA:

- coal handling services at the Dalrymple Bay Coal Terminal (DBCT), which is located in the Port of Hay Point;
- rail transport services provided by the Central Queensland Coal Network (operated by Aurizon Network Pty Ltd); and
- rail transport services provided by Queensland Rail Limited's intrastate passenger and freight network.

Each of the above services is covered by an access undertaking that has been approved by the QCA, which sets out terms and conditions for the negotiation of access to the service.

The Queensland Rail Access Regime (covering both rail declarations) and the DBCT Access Regime were certified as effective regimes in 2011 for a period of ten years in accordance with the *Competition and Consumer Act 2010* (Cth).

Commercially agreed open access arrangements

Most of the significant ports in Queensland operate without formal access regulation under the Queensland Access Regime, including:

- Port of Brisbane – Queensland's largest multi-user general cargo and bulk commodity port.
- Port of Abbot Point – Australia's most northerly coal port, located approximately 25 kilometres north of Bowen. It consists of one coal terminal, the Abbot Point Coal Terminal.
- Port of Gladstone – Queensland's largest multi-cargo port and the fifth largest port in Australia. The industry owned and privately developed Wiggins Island Coal Export Terminal (WICET) is currently underway at this port.
- Port of Townsville – Queensland's third largest industrial port.
- Port of Mackay – Major cargo is bulk sugar.

Direct government actions to facilitate access to infrastructure facilities

The Queensland Government may set access conditions through lease agreements or project approval processes to facilitate third party access to particular significant infrastructure facilities. These conditions typically require the infrastructure to be operated on an open access basis and may include a requirement for an access provider to develop an access policy or other document.

For example, under a framework deed governing the lease of land from the Government for the development of the WICET facility at the Port of Gladstone, there must be an access policy for the facility to ensure future access seekers are not adversely impacted.