



**Asciano Submission to the
Queensland Competition Authority
in relation to its Draft Decision on
QR Network's Proposed Standard
Rail Connection Agreement**

August 2012

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1 INTRODUCTION AND BACKGROUND

Asciano welcomes the opportunity to make a submission to the Queensland Competition Authority (QCA) on its Draft Decision on the QR Network proposed Standard Rail Connection Agreement (SCRA) for customer specific branch lines in accordance with clause 8.4 of the 2010 Access Undertaking. This agreement is intended to govern the connection of QR Network rail systems to third party rail infrastructure.

Asciano has made a previous submission on this issue to the QCA in September 2011.

Asciano welcomes the QCA Draft Decision and believes that the Draft Decision goes a considerable way to addressing the concerns raised by Asciano in its previous submission. In addition Asciano believes that the QCA amendments to the Draft of the Standard Rail Connection Agreement attached to the Draft Decision results in a substantially improved connection agreement which clarifies certain issues and is more even handed in its treatment of all parties.

Asciano's main remaining concern is that the confidentiality clause 24 allows information to be transferred between QR Network and a related body corporate. Asciano believes that a specific clause dealing with the transfer of information between QR Network and QR National above rail should be included to further strengthen the confidentiality and ring fencing processes.

This submission is public.

2 ASCIANO'S SUBMISSION ON QR NETWORK'S ORIGINALLY PROPOSED STANDARD CONNECTION AGREEMENT AND THE RESPONSE OF THE QCA DRAFT DECISION

In its previous submission of September 2011 Asciano raised numerous concerns with the QR Network proposed Standard rail Connection Agreement. Some of these concerns are shown in the table below. In addition the table also shows Asciano's understanding of the QCA response to the Asciano concern as outlined in the Draft Decision document package.

Table 1 Asciano Concerns and the Draft Decision Position

Asciano Concern	QCA Draft Decision Position
<p>General – the connection agreement should be broadened to include non-coal service connections.</p>	<p>The Draft Decision 3.1 addresses this issue.</p>
<p>Clauses 3, 14 and Schedule 5 - the nature, derivation and level of the QR Network connection charges (and the underlying costs) that should be reasonably recovered by the user should be more clearly defined and justified.</p> <p>In particular dollar values of charges should be included in schedule 5.</p>	<p>The Decision 3.2 addresses this issue. In particular the changes to clause 3 and the deletion of clause 14 and schedule 5 in the amended SCRA largely address this issue.</p>
<p>Clause 6, particularly 6.5 and 6.6 – the standard to which the connection will be maintained should be clearly defined and the agreement should include safeguards to ensure that any replacements or modifications required are not due to the failure of QR Network to maintain the connection. Furthermore the agreement should include a mechanism for users to dispute the costs of upgrades, replacements or modifications</p> <p>In addition safety and non-safety related infrastructure requirements are conflated when ideally they should be separated.</p>	<p>Draft Decision 2.1 and changes to clause 6 address these issues by clarifying the standards to which the connection will be maintained and by allowing private infrastructure owners to have increased input into the replacement or modification of connecting infrastructure. In addition improved dispute resolution is provided in relation to the replacement or modification of connecting infrastructure</p> <p>Draft Decision 2.1 and changes to clause 6 address this issue by limiting the involvement of QR Network in the standards of private infrastructure to issues that impact QR network infrastructure (such as safety).</p>
<p>Clause 10, particularly clause 10.9 - the powers of QR Network to investigate incidents occurring on private infrastructure should be limited.</p>	<p>Draft decision 2.4 addresses this issue. Asciano notes that the QCA is seeking to link investigations to appropriate thresholds in terms of dollar value and</p>

	train services. This is addressed below in section 3.
Clause 14 the provision of commercially sensitive information (such as a train service plan) which may be required by the connection agreement should be protected by ring fencing and confidentiality provisions.	<p>This has been partially addressed by the deletion of Clause 14 and the inclusion of a more comprehensive confidentiality clause at clause 24; however this clause allows information to be transferred between QR Network and a related body corporate. Any such information transfer between QR Network and QR National above rail should not be permitted.</p> <p>Asciano believes that while the confidentiality clause addresses the general transfer of information a specific ring fencing clause dealing with the transfer of information between QR Network and its related parties should be included to further strengthen the confidentiality and ring fencing processes.</p>
Clause 18.1 and 18.2 - the nature of the termination rights should be even handed and more clearly defined	Draft Decision 2.2 addresses this issue by addressing concerns relating to time frames and termination during a dispute
Clause 21.3 – the value of the liability cap should be made explicit	Draft Decision 2.6 addresses this issue by including an explicit liability cap at item 5 of Schedule 1. Asciano notes that the QCA is seeking further input on an appropriate liability cap. This is addressed below in section 3
Schedule 7 - This coal loss schedule and related provisions do not necessarily seem directly related to the connection of infrastructure per se and these issues may be better dealt with in other processes.	The Draft Decision 4.1 addresses this issue. Schedule 7 has been deleted.

In addition to the above changes Asciano generally supports the other QCA positions in the Draft Decision and the QCA amendments to the Draft of the Standard Rail Connection Agreement, including amendments not necessarily proposed by Asciano but proposed by other users.

Overall Asciano remains concerned about information transfer under clause 24, which allows information to be transferred between QR Network and a related body corporate. Asciano believes that a specific clause dealing with the transfer of information between QR Network and QR National above rail should be included in the agreement. Asciano believes that connection negotiations between third parties and QR Network may include information relating to mine developments, other end user developments and developments proposed by third party operators (for example storage or provisioning facilities). If this information were made available by QR Network to its related above rail operator this related operator may then gain an advantage not available to other third party operators.

3 AREAS WHERE THE QCA IS SEEKING EXPLICIT COMMENT FROM STAKEHOLDERS

In the QCA amendments to the Draft of the Standard Rail Connection Agreement, QCA sought input from stakeholders on several issues including:

- Clause 11.8 – the QCA sought input on the threshold level of train services impacted or dollar value impact to QR Network before QR Network could conduct the investigation. Asciano’s position is that QR Network should only be involved when QR Network is materially impacted. Asciano believes that the following threshold levels are appropriate:
 - any incident that is preventing trains on the QR Network main line from operating and will take greater than 24 hours to rectify;
 - any incident which impacts on more than 25 train services;
 - any incident that results in estimated damage to QR Network infrastructure of greater than \$100,000; or
 - any incident that may result in potential claims against QR Network of more than \$1 million.

- Clause 20.2 – the QCA seeks input on appropriate time frames, rates and indexation methods linked to security. Asciano believes that comment on this issue is best left to industry bodies or owners who are likely to be impacted by this clause. Asciano would believe that to the extent that it is relevant the treatment of security under the access undertaking provides a previously approved template as to how security could be treated;
- Schedule 1 Item 5 – the QCA seeks further input on an appropriate level for a liability cap. Asciano believes that there should be no liability cap for death or personal injury. In relation to caps on liability between the owner of the connecting infrastructure and QR Network, Asciano assumes that damage is likely to be lower than typical main line operations as trains passing over the connection point will typically not be travelling at high speed. Given this it may be that there should not be any liability cap provided that any consequential and indirect losses are excluded.
- Schedule 3 – the QCA seeks input on the types and amounts of insurances that the owner and QR Network should be required to obtain. Asciano believes that the level of insurance for a connection does not need to be as high as for main line running because the chances of significant damage is not as great (as outlined in the point above). For example \$50 million public liability insurance may be appropriate with other insurances being set at the level in QR Network access agreements.

4 CONCLUSION

Overall Asciano supports the positions in the QCA Draft Decision and believes that the Draft Decision goes a considerable way to addressing the concerns raised by Asciano in its previous submission. In addition Asciano believes that the QCA amendments to the Draft of the Standard Rail Connection Agreement attached to the Draft Decision result in a substantially improved connection agreement.

Asciano's main remaining concern is that the confidentiality clause 24 allows information to be transferred between QR Network and a related body corporate. Asciano believes that a specific clause dealing with the transfer of information between QR Network and QR National above rail should be included to further strengthen the confidentiality and ring fencing processes.