

**QR 2020 Draft Access Undertaking  
Submission in Response to QCA  
Draft Decision**

**11 July 2019**



## 1 Introduction

This submission is made on behalf of Yancoal Australia Limited (**Yancoal**), in its capacity as operator of the Cameby Downs mine, located on Queensland Rail's (**QR**), West Moreton rail network.

It responds to the Queensland Competition Authority (**QCA**) April 2019 Draft Decision (**Draft Decision**) on the draft access undertaking submitted by QR (the **2020 DAU**), but also refers to Yancoal's prior submissions of 17 October 2018 (**1<sup>st</sup> Yancoal Submission**) and 16 November 2018 (**2<sup>nd</sup> Yancoal Submission**).

Yancoal generally supports the Draft Decision, including the conclusion that it is not appropriate to approve the 2020 DAU in accordance with section 138 of the *Queensland Competition Authority Act 1997* (Qld).

This submission is principally concerned with the West Moreton reference tariffs. Yancoal considers that the Draft Decision goes some way to correcting issues with QR's proposals in relation to those tariffs, but considers that some further changes that would lead to an additional reduction in the West Moreton tariff are warranted. In particular, Yancoal considers:

- (a) the weighted average cost of capital proposed in the Draft Decision remains too high due to adopting a higher asset beta and market risk premium and weaker credit rating than is warranted; and
- (b) the cost allowances should be reduced further to reflect the QCA's 87 path volume forecast rather than QR's 9.1 mtpa volume forecast which the QCA's consultant analysed the cost allowances on the basis of.

At a time where there is some volume uncertainty, it is more critical than ever that West Moreton coal tariffs are not set at an artificially high level, when that risks deterring efficient increases in coal production and incentivising inefficient capital investment.

The submission also provides commentary on each of the matters raised in the Draft Decision regarding the terms of the Access Undertaking and Standard Access Agreement. In that regard, Yancoal notes for completeness that on 9 July 2019 it received proposed drafting amendments from QR in relation to Standard Access Agreement matters and an indication that QR would shortly be providing further proposals on non-Standard Access Agreement matters. Yancoal welcomes QR's proposed consultation and will address all such proposals in the period for collaborative submissions.

## 2 Reference tariff approach

### 2.1 Tariff structure and approach

Subject to its comments on the 'low-volume' scenario, Yancoal supports the Draft Decision to retain the same general structure of the West Moreton reference tariff, including:

- (a) a price cap based on a building blocks derived total revenue requirement;
- (b) a common network regulatory asset base for the entirety of the West Moreton system, which is then allocated between coal and non-coal services for the purposes of the building blocks model;
- (c) the price being expressed as a two-part reference tariff, with train path and gtk components (effectively incorporating a distance taper);
- (d) a 100 per cent take or pay position; and
- (e) the annual ceiling revenue limit.

Yancoal also continues to support the Metropolitan reference tariff being based on the proxy approach of escalating 2016 tariffs via CPI.

Yancoal's comments on the specific issues it considers particularly important or contentious are set out below.

## **2.2 Volume forecasts**

While the summary table (page 6 Draft Decision) appears to suggest the reference tariffs were calculated on the basis of QR's 'high volume' forecast of 9.1 mtpa, Yancoal assumes that, consistent with the later discussion about coal path constraints (page 7 and 46 Draft Decision) the tariffs have actually been derived based on a volume forecast of 87 paths – reflecting the constraints previously found to exist on contracting paths for coal services.

While Yancoal acknowledges there is continuing uncertainty around future West Moreton network coal volumes, it considers that based on current information calculating tariffs on the basis of 87 paths is an appropriate position to take.

As discussed in section 2.3 below, there is no certainty that all formal and/or informal constraints against contracting over 87 coal paths have been removed, and the enduring 'hang-over' impacts of the previous constraints are part of the reason higher volumes do not currently exist. It is therefore clearly not appropriate to force the West Moreton coal producers to underwrite 97 paths of capacity.

In relation to whether the forecast should be lower, Yancoal notes that, since the Draft Decision, Yancoal has received approval for an environment amendment to increase its ROM coal production to 3.5 mtpa (approximately 2.8 mtpa of product coal to be railed) and understands that New Hope has received environmental approvals for its 7.5 mtpa New Acland Stage 3 Project. Those developments enhance the prospects of higher volumes than are currently being experienced eventuating during the 2020 DAU term.

The extent of the New Acland Stage 3 Project volume which exists at the commencement of the 2020 DAU term is highly likely to be dependent on whether the mining leases New Hope are seeking for that project are granted in the near term. Accordingly, Yancoal's suggestion is that the tariffs continue to be developed based on a 87 coal path forecast. If it becomes evident at the time of the final decision that the actual tonnage during the term of the 2020 DAU is likely to be significantly lower, the tariff structure could either be amended to deal with that scenario (with Yancoal's submissions on the issue of 'low-volume' scenario tariffs set out in section 5 below) or the undertaking could include a process for consideration of a variation to the tariff if volume has not reached a certain level within a specified period of the 2020 DAU term commencing.

## **2.3 Allocation to coal**

Yancoal strongly supports the Draft Decision approach of allocating to coal services the proportion of network costs reflecting 87 paths, at least until a higher volume of paths are contracted for long term coal services.

It is only at that point that it will become clear whether there are formal or informal constraints imposed by QR, the Department of Transport and Main Roads or through required Ministerial approvals for QR's entry into major access agreements.

As expressed in earlier submissions, and as noted in the Draft Decision, QR's nearly exclusive focus on whether the constraints exist at the current point in time, also ignores the enduring impact on current contracted volumes that the previous bar on further coal paths has caused and the uncertainties that appear to exist about whether such a constraint will be (re)imposed in the future.

In addition, as the Draft Decision notes, the existing 87 path approach already involves allocating to coal services a higher proportion of infrastructure costs than the proportion of capacity currently utilised by coal services. In that regard, Yancoal notes the network (or even those 87 paths) are not reserved for coal services and the network was not originally constructed, designed or optimised for coal services.

For all the reasons set out above and in the Draft Decision, it would be inappropriate to increase the proportion of infrastructure costs allocated to West Moreton coal services beyond the 87 path basis proposed in the Draft Decision.

## **2.4 Two-part tariffs and the distance taper**

Yancoal strongly supports the continuation of the two part tariff and, as an inherent part of that, the 'distance taper'.

As the Draft Decision recognises, the distance taper fosters development along the West Moreton line by way of half of the revenue being recovered on a per path basis. Given the uncertainties which exist in relation to the timing and volumes from the closer mine (New Acland) it is more important than ever to continue to incentivise and facilitate investment in development or expansion of mines further west.

Yancoal particularly notes that increasing the allocation of the costs of the QR West Moreton service to more distant mines relative to other users of that service (through, for example, removal of the distance taper), would directly adversely impact on the economics of proceeding with the Cameby Downs expansion. However, the issue is wider than just the impact on a future expansion of Cameby Downs, but the impact on any potential for a restart of Wilkie Creek and the future potential development of the numerous undeveloped coal deposits in the Clarence-Moreton and Surat Basins, west of Dalby.

Yancoal also notes that the principle of a distance taper has long been accepted as appropriate in respect of the central Queensland coal region network as well as the QR network.

As the Draft Decision recognises, while that may not result in perfect cost reflectivity, it is appropriate due to the need to balance other issues like encouraging economic development in more western regions and addressing the opportunity costs that would otherwise exist for QR of contracting shorter paths.

## **2.5 Additional path pricing and endorsed variation event**

The Draft Decision suggests setting 5% higher prices for additional paths as an alternative mechanism to the existing endorsed variation event which is triggered by additional volumes being contracted.

Yancoal strongly considers that is not appropriate. In an environment where QR is concerned about lower volumes, it is critical that the incremental price for additional paths not be increased. It is important not to provide any disincentive for existing producers railing additional volume when coal market opportunities exist – the tariff structure should, if anything, incentivise such additional volume. Yancoal is concerned that any premium that is sufficiently large so as to theoretically provide meaningful assistance in QR recovering revenue, will actually be so high as to be a counterproductive disincentive, and is more likely to reduce total volumes further.

Yancoal also considers it particularly unreasonable in terms of the premiums impact on Cameby Downs. The premium on additional paths effectively punishes Cameby Downs for not contracting 100% of its volume on a 100% take or pay basis where contracting long term take or pay paths at this point means assuming risks that future tariffs for that additional volume will be based on a 'low volume scenario' tariff (due to the uncertainty about New Acland Stage 3 Project). Given

those risks, Yancoal considers that a premium of the type proposed being imposed on additional paths is also unlikely to result in additional volume being contracted.

It follows from the reasoning above that Yancoal also considers that the endorsed variation event should be retained. In addition, Yancoal considers its retention is appropriate because a full scale New Acland Stage 3 Project (of up to 7.5 mtpa based on the approvals New Hope are seeking) and incrementally expanded Cameby Downs (of up to 2.8 mtpa based on the approvals Yancoal has) would result in higher volumes than the assumed volume forecasts. In addition, while it has not been demonstrated, QR is claiming that access would be granted above the previous 87 coal paths constraints.

Accordingly, to the extent that there is long term contracting above the assumed volume forecast of 87 coal paths, it is appropriate for there to continue to be a mechanism to recalculate the applicable tariffs.

## **2.6 Variations from reference tariffs based on cost or risk**

Yancoal strongly supports the Draft Decision that it is not appropriate to provide QR with an ability to impose varied access charges to reflect QR's assessment of differences in cost or risk.

Yancoal is concerned that QR's proposal may open up the potential for QR to seek to impose additional charges on Cameby Downs or New Acland based on a perceived additional risk– and it is clearly not appropriate that such changes could potentially be used to seek to justify different charges for services to those existing mines.

In addition, it undermines the very certainty of appropriate and reasonable pricing that the reference tariffs seek to provide.

Tariffs should only be varied from the reference tariffs where those are negotiated (which would presumably only occur where a user is receiving some benefit or terms in return for any higher price). Unilaterally imposed variations have significant potential to give rise to monopoly pricing of the very sort that regulated pricing seeks to prevent.

## **2.7 Other pricing matters**

In relation to the 'other tariff matters' referred to in Part 2 of the Draft Decision:

- (a) **Capital expenditure reviews:** Yancoal considers an annual capital expenditure review process (as QR itself proposed) would remain more appropriate. While Yancoal appreciates the QCA's view that a single five-year review might slightly reduce regulatory costs, given the potential volume uncertainty, and the questions that have been identified in relation to the prudence and efficiency of capital and operating costs and potential trade-offs being capital investment and maintenance expenditure in the Systra Scott Lister review, more (not less) timely insight and assessment of the prudence and efficient of capital expenditure decisions is appropriate.
- (b) **Requirements for QCA reasons in capital expenditure determination:** Yancoal supports the Draft Decision that it is not appropriate to be overly prescriptive about what needs to be set out in the QCA's decision. As the Draft Decision notes, the QCA already provides reasons, and it has not been demonstrated those existing reasons are in any way insufficient. Given the circumstances which exist in relation to the capital expenditure under review will vary with each assessment, it is appropriate for the QCA to retain flexibility in relation to the content of the reasons it provides.
- (c) **Capital expenditure prudence criteria:** Yancoal supports the Draft Decision that QR's proposed amendments to the criteria applied when assessing the prudence of capital expenditure should be rejected. Yancoal considers the factors listed in the existing

access undertaking remain appropriate, and that QR's amendments (which QR evidently believes will lower the threshold for prudency) remain inappropriate, including through a mandatory requirement for the QCA to consider, without any qualification, all further information provided by QR.

- (d) **Carryover account:** Yancoal supports the Draft Decision's proposed amendments to the capital expenditure carryover account, which are consistent with the original intention of the carryover account.
- (e) **Adjustment charges approval process:** Yancoal prefers the position QR proposed, namely that (as is the case under the current access undertaking), the QCA approves adjustment charges. While Yancoal appreciates it is notionally a mechanical process, verification by users may not be as simple for users as the Draft Decision anticipates, and if it is truly mechanical then presumably there is limited costs involved in having the QCA approve the calculation.
- (f) **Adjustment Amount process:** Yancoal supports QR's proposal and the Draft Decision to remove the adjustment amount process provided the new undertaking is approved prior to the existing undertaking terminating. Yancoal agrees that in those circumstances it is redundant.

### 3 Rate of Return and WACC

Yancoal supports the conclusions in the Draft Decision that the weighted average cost of capital (**WACC**) proposed by QR is inappropriate, both due to the scope of regulatory and commercial risks that the return provided by the West Moreton reference tariff should reflect and due to issues in relation to QR's assessment of individual WACC parameters.

#### 3.1 Scope of services/risk to be reflected in the WACC

Yancoal strongly supports the Draft Decision recommendation that the WACC utilised to calculate the West Moreton reference tariff should be based on the risks relating to the provision of the West Moreton coal access service only – not other services provided by QR.

When the pricing principles in section 168A of the QCA Act refer to the price of access to a service generating expected revenue that includes a return on investment '*commensurate with the regulatory and commercial risks involved*', they are clearly referring to the risks involved in providing the relevant service. As has been analysed in detail in the declaration review, it is evident that QR actually provides a number of distinct services, and the regulatory and commercial risks QR faces vary materially across its diverse network.

As the risks appear to be materially higher for other parts of the network, QR's approach erroneously results in proposing a return for the West Moreton service set at an in-efficiently high level – which would have detrimental flow-on consequences.

As the Draft Decision notes:

*A WACC that reflects an average of all disparate risks incentivises capital expenditure above an efficient level in West Moreton, where the allowed WACC is higher than the required WACC. ... if a WACC for the entire Queensland Rail network is used, this would result in inefficient pricing ... which would lead to inefficient use of the network.*

Such an outcome would clearly not be appropriate.

As the Draft Decision notes, a WACC commensurate with the commercial and regulatory risks of providing access for coal traffic on the West Moreton system is also consistent with the approach adopted by the QCA in setting reference tariffs in the current access undertaking.

It obviously follows from all of that analysis, that much of the Frontier Economics analysis on which QR's approach to the WACC relies, proceeds on a flawed basis and should be given little weight.

### **3.2 WACC Parameters – Asset Beta**

Yancoal supports the Draft Decision's conclusion based on the QCA's first principles analysis, and the expert report provided by Incenta Economic Consulting (**Incenta**), that the asset beta for West Moreton coal services is likely to be:

- (a) less than the asset beta for toll roads (which Incenta assesses as having an average asset beta of 0.51); but
- (b) greater than the asset beta of regulated energy and water businesses (which Incenta assesses as having an average asset beta of 0.38).

However, by proposing an asset beta of 0.5 the QCA is effectively suggesting the commercial and regulatory risks faced by QR in respect of West Moreton coal services are at the very top of that range. Yet Yancoal considers that something a few points lower would be more appropriate and commensurate with the risks QR actually faces.

In particular, consistent with the 1<sup>st</sup> Yancoal Submission, Yancoal continues to consider that the most relevant comparator is Australian coal supply chain businesses with similar customers with exposure to coal commodity prices and similar regulatory arrangements, such as Aurizon Network (in respect of its central Queensland coal region network) and ARTC (in respect of its Hunter Valley rail network). The past assessments of those coal rail access providers is helpful in determining where, within the range identified by Incenta, the appropriate estimate lies.

In that regard, the QCA has determined for the purposes of UT5 an asset beta for Aurizon Network of 0.42. The ACCC proposed an asset beta of 0.45 for ARTC in respect of its Hunter Valley rail network

While Yancoal accepts that there may be differences in respect of the West Moreton service (such as greater volume risks arising from exposure to thermal coal instead of principally metallurgical coal, and a smaller number of customers), it is important those differences are not overstated.

As the graph from Incenta's report below demonstrates, the volumes from Cameby Downs and New Acland have remained relatively stable despite volatility in thermal coal prices. As the Draft Decision notes, both have demonstrated an ability to continue operating through tariffs and thermal coal prices that Wilkie Creek could not. ARTC's service is also principally provided in relation to thermal coal.

Figure 2.1: QR-Coal – Export volumes vs Thermal coal price



In addition, Yancoal disputes the Draft Decision's assessment that the regulatory settings in respect of the central Queensland coal network and Hunter Valley coal networks are significantly stronger in terms of protecting the infrastructure provider from risks than the regulatory settings that apply to QR.

In particular:

- (a) West Moreton services involve 100% take or pay (higher than both other coal networks) – which, as the Draft Decision notes, largely mitigate the short-term volume risk associated with a price cap, with relinquishment fees payable for any surrender of train service entitlements;
- (b) the proportion of the costs of the multi-use network which are allocated to coal services is effectively underwriting more volume than is currently being utilised for coal services;
- (c) the standard access agreement provides for security requirements;
- (d) the longer term volume risk is effectively mitigated given the way the price cap is calculated by reference to forecast volumes – such that the closure of Wilkie Creek resulted in Yancoal and New Hope paying more, not QR being exposed to volume risk;
- (e) when the volume risk has, due to regulatory approvals for a new customer development being delayed, reached a point where altering the forecast volumes does not provide a complete solution, the QCA is willing to propose loss capitalisation and tariff premiums as mechanisms for mitigating the risks of under-recoveries rather than pursuing optimisation; and
- (f) numerous other mechanisms noted in the Draft Decision including the right to submit drafting amending access undertakings, express limits on the circumstances where asset optimisation can be applied and expansion funding arrangements.



Further, an asset beta of 0.5 relative to Incenta's estimate of the average toll-road asset beta of 0.51, suggests commercial and regulatory risks that are nearly equivalent to those of toll roads. However, toll roads typically involve far more significant volume risks as shown in the comparison below:

| <b>QR West Moreton / Metropolitan coal services</b>  | <b>Toll road services</b>   |
|--|---|
| Monopoly position derived from: <ul style="list-style-type: none"> <li>• freight advantages for transportation of bulk commodities over significant distances; and</li> <li>• conditions of QBH terminal lease requiring delivery of coal by road</li> </ul> | Users can switch to utilising other roads   |
| Long term take or pay contracts  | No advance contracting. Users only pay for utilisation  |
| Ceasing utilisation triggers significant costs – high sunk capital costs stranded, relinquishment fees, take or pay on haulage and port agreements   | Ceasing utilisation does not result in any liability tail of that nature. No switching costs. |

With that in mind, Yancoal considers that such a close alignment between the proposed asset beta and that of toll-roads is evidently not appropriate.

Consequently, Yancoal considers the appropriate asset beta for QR's West Moreton service should be marginally above the ARTC level – but less than the QCA's proposed 0.5.

### **3.3 WACC Parameters – Capital Structure and Credit Rating**

Yancoal agrees with the Draft Decision assessment that the capital structure of a 28% gearing level as suggested by QR and Frontier Economics is inappropriate.

It follows from Yancoal's analysis above that Yancoal acknowledges that QR has a slightly higher risk profile than Aurizon Network, such that it should have a lower estimated gearing than the 55% the QCA has adopted for Aurizon Network.

Yancoal is willing to accept the analysis of the QCA and Incenta suggesting 40% represents an appropriate level of gearing.

Yancoal does, however, find it anomalous the QCA is proposing a credit rating that is weaker than QR is proposing for itself, and suggests that the credit rating of BBB+ QR itself proposed would be a more appropriate estimate.

### **3.4 WACC Parameters – Risk free rate**

Yancoal is willing to support the change to measuring risk free rate on the basis of 10 year Commonwealth government bond rates (consistent with the QCA's approach in respect of UT5), subject to consideration of the MRP resulting in a corresponding reduction on that basis.

Yancoal would be willing to support a longer averaging period (as the QCA has indicated it would be open to) with a view of reducing volatility of tariff outcomes. It remains important that the averaging period is from a future period prior to the final decision such that the period selected cannot be subject to upward bias.

### **3.5 WACC Parameters – Debt risk premium**

Yancoal supports the QCA methodology for determining the debt risk premium, as described in the Draft Decision. As discussed above, Yancoal suggests that QR should have a higher estimated credit rating than proposed in the Draft Decision, and Yancoal anticipates that should reduce the debt risk premium.

It is acknowledged that the final decision debt risk premium will be different based on the outcomes during the averaging period closer to the final decision timing.

### **3.6 WACC Parameters – Market risk premium**

Yancoal considers that a market risk premium (**MRP**) of 6.0-6.1 would be more appropriate.

While Yancoal appreciates that the Draft Decision estimate of the appropriate MRP of 6.5% is consistent with recent QCA decisions, it considers that position is out of step with the estimates of other regulators, for what should be a generally applicable market parameter.

As Yancoal noted in the 1<sup>st</sup> Yancoal Submission, precedents from leading regulators are actually now more settled on a materially lower MRP than the QCA has previously adopted. In particular, the final AER Rate of Return instrument from December 2018 proposed a MRP of 6.1%, and the ACCC's decision in relation to ARTC's Interstate Rail Access Undertaking was 6.0%.

In addition, Yancoal considers it is a material increase to round the QCA's point estimate of 6.35% to 6.5% simply for the point of rounding to the nearest half per cent, when there is no reason to suspect that the QCA's estimate contained any downward bias.

Given other parameters are being altered from the position the QCA adopted for Aurizon Network, Yancoal considers the MRP should also be considered afresh in light of more recent regulatory estimates.

### **3.7 WACC Parameters - Gamma**

Yancoal is willing to support the QCA's conclusion on 0.484 gamma, appreciating that that outcome is consistent with the UT5 final decision, and merely reflects the application of the previously applied QCA methodology to reflect changes to the estimated distribution and utilisation rates based on more recent data.

## **4 Tariff Building Blocks**

The return on investment components of the building blocks methodology are discussed in section 3 of this submission above, such that the submissions below concern the maintenance, operating and capital cost elements.

### **4.1 Forecast maintenance costs**

As noted in the 1<sup>st</sup> Yancoal Submission, Yancoal has concerns that the maintenance allowance claimed by QR is inefficient given:

- (a) the high level of those maintenance costs; and
- (b) how little the maintenance costs were proposed to change between the 'high volume' and 'low volume' scenarios.

Yancoal notes the comments of the expert consultant engaged by the QCA (SYSTRA Scott Lister (**Systra**)) recommending it would be more efficient to reduce resurfacing and track lowering works, with part of QR's proposed budget for those works reallocated instead to rebuilding formations (to avoid the need for multiple resurfacing deployments to parts of the network).

In that regard, Yancoal is willing to support as an appropriate estimate the reduced maintenance allowance proposed by the QCA in the Draft Decision, taking into account the analysis of QCA's consultant Systra's comments – subject to that review being refreshed for the slightly lower volume forecast being relied on for the tariffs (of 87 paths rather than the 9.1 mtpa Systra's analysis assumed).

Yancoal also supports the methodology for the allocation of maintenance costs to coal described in the Draft Decision.

Finally, Yancoal notes Systra's recommendations that in a low-volume scenario maintenance and capital expenditure (including on bridges) may be able to be deferred through a strategic use of speed restrictions – and considers that should be taken into account in reducing the maintenance allowance that applies in calculating low-volume tariffs.

#### **4.2 Forecast operating costs**

As noted in the 1st Yancoal Submission, Yancoal has clear concerns that the operating costs allowance claimed by QR is inefficient (again partly because of the level of those costs and because of how little they were said to vary between the high and low tonnage scenarios).

We note the comments in the Draft Decision that some aspects of QR's operating cost proposal are excessive, including on-costs.

Yancoal is willing to support as an appropriate estimate the reduced operating costs allowance proposed by the QCA in the Draft Decision, taking into account the analysis of QCA's consultant Systra's comments – subject to that review being refreshed for the slightly lower volume forecast being relied on for the tariffs (of 87 paths rather than the 9.1 mtpa Systra assumed).

Yancoal also supports the methodology for the allocation of operating costs to coal described in the Draft Decision.

Finally, Yancoal notes Systra's recommendations that in a low-volume scenario train control expenditure and administration and overhead costs should be further reduced.

#### **4.3 Opening asset base**

Yancoal supports the methodology for calculation of the opening asset base described in the Draft Decision, noting that the QCA's assessment of QR's current capital expenditure claim is ongoing.

#### **4.4 Forecast capital expenditure**

As noted in the 1st Yancoal Submission, Yancoal has clear concerns that the forecast capital expenditure is inefficient (again partly because of the level of those costs and because of how little they were said to vary between the high and low tonnage scenarios).

There is something highly anomalous about QR proposing continuing high levels of capital expenditure in the context of claiming there is uncertainty of volume and future utilisation of such assets. But for the regulatory arrangements that effectively provide QR with a high degree of confidence about obtaining a return on such investments, it is questionable whether the same extent of capital investment would be proposed.

In that regard, Yancoal notes the comments of Systra:

- (a) recommending it would be more efficient to defer certain capital works (including bridge replacements and culvert replacement) and extend the operating life of existing assets, until certainty of Inland Rail and New Acland coal production is established; and

- (b) recommending QR develop a medium term formation rebuild strategy (with a view of lower total expenditure by negating the need for track lowering works and reducing rail resurfacing works).

Given the net outcome of Systra's estimate is a lower level of capital investment than proposed by QR, Yancoal queries why QR's allowance has not been reduced to reflect the Systra estimate.

#### **4.5 Allocation to coal of common network asset base**

For the reasons discussed in section 2.3 above, Yancoal strongly considers that an allocation above the QCA's proposed 87 paths is not appropriate.

Coal services are already underwriting capacity they are not utilising, and there is no justification for increasing that underwriting further irrespective of whether a constraint on coal services exists or not.

#### **4.6 Revenue requirement and reference tariffs**

It follows from the above analysis, that Yancoal considers that the appropriate West Moreton reference tariff is slightly less than that proposed by the QCA as a result of:

- (a) a lower asset beta;
- (b) a lower MRP;
- (c) a stronger credit rating; and
- (d) a potential reduction of costs arising from the slightly lower 87 paths volume being used as the volume forecast (compared to the 9.1 mtpa volume assumed by Systra).

### **5 Low volume tariffs**

#### **5.1 Context for low volume consideration**

Yancoal supports the Draft Decision's indicative position that the 'high-volume' tariff is likely to provide a sound basis for the price to apply at lower volumes (at least if the 'high-volume' tariff remains at the levels contemplated in the Draft Decision).

First, it is worth mentioning that, as discussed earlier in this submission in relation to appropriate volume forecasts, since the Draft Decision the prospects of QR's 'low volume' forecast of 2.1 mtpa eventuating has materially decreased. In particular:

- (a) Yancoal has received approval for an environment amendment to increase its ROM coal production to 3.5 mtpa (approximately 2.8 mtpa of product coal to be railed); and
- (b) New Hope has received environmental approvals for its 7.5 mtpa New Acland Stage 3 Project.

Consequently, the extent to which this is likely to occur for a material period during the 2020 DAU term has reduced.

Secondly, while revenue adequacy is important – it is just one of the pricing principles listed in section 168A, and in a low volume scenario is likely to run counter to other matters the QCA is required to have regard to, including the public interest and the interests of persons seeking access to the service. If the tariff is set above West Moreton coal user's ability to pay, then the West Moreton coal industry will effectively be forced to cease production, causing a significant loss of economic activity, employment and royalties and stranding investments of not just QR, but other stakeholders including Yancoal, New Hope, QBH and Aurizon. Therefore, in weighing up the appropriate pricing settings to adopt in a low-volume scenario, it is critical that in an overly

narrow pursuit of a revenue adequacy ideal, the reference tariffs are not set at a level that will not be economically unviable and result in all stakeholders investments being stranded.

Yancoal strongly agrees with the Draft Decision conclusion that '*it is not reasonable to expect the current customers to have an unlimited obligation to underwrite what is, in effect, Queensland Rail's long-term business development plan*'.

## 5.2 Willingness to pay

[REDACTED]

[REDACTED] Yancoal cannot really comment on the economics of non-Yancoal operations.

[REDACTED]

## 5.3 Loss capitalisation

Yancoal is, in principle, willing to support some degree of loss capitalisation.

However, Yancoal remains concerned that an inappropriate loss capitalisation methodology has the potential to result in deterring new entry.

As the Draft Decision accurately states:

*unfettered loss capitalisation where volumes remain low could produce an onerous barrier to entry for future access seekers, should the price required for Queensland Rail to recoup a large accumulated loss be more than they are willing to pay ... loss capitalisation, if it was to be used for West Moreton, would need to be appropriately constructed to suit the nature of the asset and the market for access.*

Accordingly, Yancoal is supportive of the QCA's proposal for a limited life capitalisation as an appropriate method of balancing the competing interests of revenue adequacy in the short term and long term facilitation of increase volume, and ensuring that if volumes do not return the capitalised losses are effectively written off.

## 5.4 Loss recovery premiums – contracted paths

Yancoal is opposed to the proposed 15% premium applying to all contracted paths if volumes fall to a point where losses are being capitalised.

In the most likely scenario where volumes are initially lower due to delays in approvals for New Acland Stage 3, such that Cameby Downs is the only coal producer riling – the recovery premium would only apply to the Cameby Downs as the operator that is actually keeping the system viable.

Such a price increase:

- (a) is completely inconsistent with the QCA's recognition in the Draft Decision of the limits on producers' willingness and ability to pay;
- (b) creates the real potential for resulting in the cessation of production at Cameby Downs which will definitely result in asset stranding for all parties; and
- (c) is completely unfair and unreasonable in terms of punishing Yancoal as the producer which has maintained its tonnage levels and has no ability to management or mitigate the risks of New Hope's approvals delays.

To the extent that a loss recovery premium is to be applied, it should only be applied to new paths that are contracted during the term of the 2020 DAU (whether that is by New Hope, Yancoal or a third party).

## **5.5 Loss recovery premiums – additional paths**

As discussed in section 2.5 of this submission, Yancoal is opposed to additional pricing premiums for services that are surplus to contract levels as such a premium:

- (a) will act as a disincentive for existing producers railing additional volume when coal market opportunities exist; and
- (b) punishes Cameby Downs for the rationale economic decision of not contracting additional paths on a long term take or pay basis when there is no certainty as to whether future charges will be based on a low volume scenario and how tariffs might change in those circumstances; and
- (c) is unlikely to result in additional volumes being contracted.

## **6 Access Undertaking and Standard Access Agreement**

Yancoal is generally supportive of the Draft Decision positions in relation to the Access Undertaking and SAA terms.

Responses to each of the matters contained in the Draft Decision are set out in Schedule 1 (in relation to recommendations regarding the Access Undertaking terms) and Schedule 2 (in relation to recommendations regarding the SAA terms).

## Schedule 1

### Submissions on Access Undertaking Terms

#### 1 Preamble, Application and Scope

| QR Proposal   | Clause           | QCA Draft Decision  | Yancoal Response  |
|---|------------------|---|---|
| <b>Preamble</b>   |                  |   |   |
| Provides high-level context for Queensland Rail's 2020 DAU  | n/a              | Appropriate to be approved.   | Without pre-judging the likely outcomes of the declaration review process, if that process ultimately results in only access to part of QR's network remaining declared, Yancoal suggests the pre-amble be deleted as no longer being appropriate.<br><br>Yancoal also takes issue with the assertion that road haulage is competitive with rail haulage. However, this is not a major source of concern. |
| <b>Term of the undertaking</b>  |                  |   |   |
| Five-year term – 1 July 2020 to 30 June 2025  | 1.1              | Appropriate to be approved.   | Support Draft Decision.   |
| A shorter term will apply in certain circumstances, for example if the service is no longer declared.                             |                  | Not appropriate to be approved. Amendments are appropriate to clarify that the undertaking will continue if the service, or part of the service, is declared. | Support Draft Decision and QCA proposed drafting.<br><br>Yancoal confirms the QCA drafting rectifies the concern that was raised in the 1 <sup>st</sup> Yancoal submission about ensuring that a cessation of part of the declaration did not have the unintended consequence of the entirety of the undertaking ceasing.   |
| <b>Extensions and network connections</b>   |                  |   |   |
| Various provisions relating to the negotiation, development and funding of extensions. There is no standard connection agreement. | 1.4 (and others) | Largely appropriate to be approved. However we consider that clarifying amendments to the definition of 'extension' are appropriate.                          | Support Draft Decision and QCA proposed drafting.   |
| <b>Master planning provisions</b>   |                  |   |   |
| Regional network master plans for the Mount Isa and West Moreton systems will be developed on request.                            | 1.5              | Not appropriate to be approved. Amendments are appropriate to require Queensland Rail to provide access to the master planning                                | Master planning should be conducted by QR (without additional funding requirements being imposed on users) – given that it should be a matter of normal business for the West Moreton and Metropolitan system. That is particularly the case in the near to medium term for those systems, given the challenges QR has  |

| QR Proposal   | Clause       | QCA Draft Decision   | Yancoal Response   |
|---|--------------|--|--|
| Queensland Rail is not required to develop a plan if customers do not agree to fund it. |              | process for all systems, except the North Coast system. We support Queensland Rail's proposed approach of consulting with stakeholders about changes to the process for development master plans and encourage Queensland Rail to submit a revised approach for consideration. | identified and the proposed future developments like the cross-river rail and inland rail projects.<br><br>If the QCA continues to consider that master planning should only proceed if funding is agreed, then the regime clearly needs reasonable protections being included around the costs of funding (scope, budget and timeframe and overruns) and input that funding users would have in that process. |
| <b>Other matters</b>  |              |  |  |
| Removal of the words 'subject to schedule F', which were in the 2016 undertaking        | 1.2.1(b)(ii) | May not be appropriate to be approved, because the reasons for removing these words are not clear. The QCA seeks further submissions from Queensland Rail and stakeholders on this issue.  | Support Draft Decision. Yancoal remains unconvinced that there is a merit in the proposed deletion.  |

## 2 Negotiation Process

| QR Proposal  | Clause        | QCA Draft Decision  | Yancoal Response  |
|--|---------------|---|---|
| <b>Access requests in different forms</b>  |               |   |   |
| If Queensland Rail agrees, a request for access rights does not need to be in the form of an access application. | 2.1.1(a)      | Largely appropriate to be approved. However, amendments are appropriate to clarify that applications in different forms are treated as access applications for the purposes of the undertaking. | Support Draft Decision.   |
| <b>Information exchanged in preliminary stages of negotiations</b>   |               |   |   |
| Information provided, and discussions held, in the   | 2.1.2(a), (b) | Appropriate to be approved  | Yancoal has some reservations about this change but is willing to support the Draft Decision, subject to the recommendation that QR be obliged to keep Capacity |



| QR Proposal   | Clause          | QCA Draft Decision   | Yancoal Response  |
|---|-----------------|--|---|
| preliminary stages of access negotiations are not binding on the negotiating parties  |                 |  | Information current and accurate also being adopted.  |
| Queensland Rail will keep preliminary information current and accurate  | 2.1.2(c)        | Not appropriate to be approved. Amendments are appropriate to require Queensland Rail to also keep capacity information current and accurate.                            | Support Draft Decision.   |
| <b>Permitted disclosures in confidentiality agreements</b>  |                 |  |   |
| Confidentiality agreements must permit disclosure of confidential information to certain parties and as required by law         | 2.2.2(d)        | Not appropriate to be approved. Amendments are appropriate to apply the same exceptions to the disclosure of confidential information that apply in cl 2.2.1(b)(ii).     | Support Draft Decision.   |
| <b>Contract renewal rights</b>  |                 |  |   |
| Eligible access holders can renew their access rights without joining a queue   | 2.7.2 and 2.9.3 | The proposal, which is considered in conjunction with the renewal pricing arrangements proposed in Part 3 of the 2020 DAU, is not considered appropriate to be approved. | Yancoal does not support either the QR proposal or the Draft Decision.<br><br>For at least West Moreton / Metropolitan network coal access services (i.e. reference tariff services where there is no prospect of QR earning more from a future access seeker with a theoretically higher willingness to pay in any case such that QR's rationale for the deletion does not apply), renewal rights should be inserted in the 2020 DAU reflecting the treatment from the 2016 access undertaking.<br><br>See further submissions in the pricing rules section below. |
| <b>Other rights</b>   |                 |  |   |
| Access applications be sent to the address nominated on QR's website  | 2.1.1(a)        | Appropriate to be approved.  | Support Draft Decision.   |
| An access seeker would be required to promptly advise if it does not intend to proceed with its access application on the basis | 2.5.1(b)        | Appropriate to be approved. We consider the proposed clause makes it clear that the access seeker only needs to advise Queensland Rail if it                             | Support Draft Decision.   |

| QR Proposal                          | Clause      | QCA Draft Decision          | Yancoal Response       |
|--------------------------------------|-------------|-----------------------------|------------------------|
| of the indicative access proposal    |             | does not intend to proceed. |                        |
| Changing '2008 undertaking' to 'AU1' | 2.8.3(ii)A) | Appropriate to be approved. | Support Draft Decision |

### 3 Pricing Rules

| QR Proposal  | Clause                      | QCA Draft Decision  | Yancoal Response   |
|--|-----------------------------|---|--|
| <b>Pricing limits rule</b>   |                             |   |  |
| Access charges will be set so that expected revenue does not exceed the ceiling revenue limit and, unless approved by the QCA, fall below the floor revenue limit  | 3.2                         | Largely appropriate to be approved. However, amendments are appropriate to clarify the application of the floor revenue limit and the definition of the weighted average cost of capital in the formula to calculate the ceiling revenue limit. | Support Draft Decision proposal that WACC for the floor and ceiling limits should be calculated by reference to an appropriate rate of return commensurate with the regulatory and commercial risks involved in providing the relevant service (that is it should not be linked to the WACC determined for West Moreton / Metropolitan coal reference tariff services where revenue limits are being determined in respect of a different service provided by QR). |
| <b>Price differential rule</b>   |                             |   |  |
| Queensland Rail will have regard to a range of factors when formulating access charges, but will not differentiate between access seekers where the characteristics of the train service are alike and the access seekers operate in the same end market | 3.3                         | Largely appropriate to be approved. However, amendments are appropriate to extend the limitation on price differentiation in cl 3.3(d) to capture access holders and to make consequential amendments, as required.                             | Support Draft Decision.  |
| <b>Contract renewal provisions are available to eligible access holders</b>  |                             |   |  |
| Contract renewal provisions are available to eligible access holders   | 2.7.2, 2.9.3 and 3.3(h)-(j) | Not appropriate to be approved. Amendments are appropriate to remove automatic renewal rights for new access seekers and expand renewal rights for existing access  | Do not support either the QR proposal or the Draft Decision.<br>For at least West Moreton / Metropolitan network coal access services (i.e. reference tariff services), renewal rights should be re-inserted in the 2020 DAU reflecting the treatment from the 2016 access undertaking.  |

| QR Proposal  | Clause | QCA Draft Decision  | Yancoal Response  |
|--|--------|---|---|
|  |        | holders who have made substantial sunk investments. We invite further submissions on an appropriate approach for existing access holders. | <p>The development of mining assets involves significant sunk costs to produce a long-life investment and providing certainty of future access is an important element of facilitating future investment in development and expansion of mining assets.</p> <p>In addition, the rationale QR provides for wanting to remove renewal rights of incumbent's renewal right preventing more efficient new entry cannot be a reasonable rationale in the current environment where there is anticipated to be spare capacity on the system.</p>    |
| <b>QCA Levy</b>  |        |   |   |
| Queensland Rail can charge access holders a QCA levy to recover the annual fees it pays to the QCA | 3.7    | Not appropriate to be approved. Amendments are appropriate to simplify the process, reduce the regulatory burden and improve certainty.   | <p>In principle, Yancoal supports the Draft Decision proposal to pre-determine the allocation for the term of the undertaking as a manner of reducing regulatory burden for all stakeholders.</p> <p>However, Yancoal considers a lower allocation to West Moreton / Metropolitan system services would be more appropriate – having regard to the reduction in the QCA's time that should be required to deal with West Moreton coal issues during the 2020 DAU assessment and term (relative to when these proportions were first set).</p> |

#### 4 Operating Requirements

| QR Proposal  | Clause           | QCA Draft Decision   | Yancoal Response   |
|--|------------------|--|--|
| <b>Operating requirements manual</b>   |                  |  |  |
| Remove the ORM from the access undertaking. Require consultation before amendments are made to the ORM | 4.3(c) and Sch G | Not appropriate to be approved. Amendments are appropriate to revise the way the ORM is reviewed and altered.                                  | Support Draft Decision including QCA proposal to incorporate into the 2020 DAU the same protections as exist in relation to System Rules amendments in the Aurizon Network access undertaking.                           |
| <b>Network management principles</b>   |                  |  |  |
| Create a new category of possessions called 'Ad hoc planned possessions'                               | 7.1, Sch F       | Not appropriate to be approved. It is appropriate to provide further detail on the purpose of ad hoc planned possessions and keep track of all | <p>Support Draft Decision recommendation of utilising the Western Corridor Alignment Calendar.</p> <p>To be appropriate, this is likely to require consequential amendments to the Network Management Principles to:</p> |

| QR Proposal  | Clause                  | QCA Draft Decision  | Yancoal Response   |
|--|-------------------------|---|--|
|  |                         | possessions and disruptions in a public documents.  | <p>1) ensure that the Daily Train Plan (DTP) is derived from the Western Corridor Alignment Calendar</p> <p>2) oblige QR to regularly update the Western Corridor Alignment Calendar</p> <p>3) provide the same level of protections for users where new planned possessions are included in the Western Corridor Alignment Calendar as would be the case where they were included in the Master Train Plan (MTP).</p> |
| Permit variations to the daily train plan (DTP) on short notice to accommodate special events  | Sch F, cl 2.2(f)(i)     | Not appropriate to be approved. Amendments are appropriate so Queensland Rail makes reasonable endeavours to consult and promptly updates a public document that keeps track of special events. | Support Draft Decision recommendation of utilising the Western Corridor Alignment Calendar, subject to the Network Management Principles being appropriately amended (see comments on consequential amendments as noted above).  |
| Maintain approach for modifying a master train plan (MTP), save to update to account for ad hoc planned possessions                                | Sch F, cl 2.1(m)(ii)    | Not appropriate to be approved. Amendments are appropriate such that there is certainty regarding an access holder's TSE when modifying a MTP/scheduling an ad hoc planning possession.         | Support Draft Decision.  |
| Remove the requirement that a planned possession that is subject to a dispute raised by an access holder be delayed until that dispute is resolved | Sch F, cl 2.4           | Not appropriate to be approved. Amendments are appropriate so that access holders and operators are required to raise the dispute at least 60 days before the possession.                       | Support Draft Decision.  |
| Maintain the Traffic Management Decision Making Matrix from the 2016 access undertaking  | Sch F and cl 3(g)       | May not be appropriate to approve. We invite comment from stakeholders on the viability of extending on-time windows for freight rail.  | Subject to the views of haulage operators, support maintaining the existing matrix in respect of the West Moreton / Metropolitan systems.  |
| Maintain the principles for managing deviations from a DTP   | Sch F and cl 3(i)(i)(B) | Appropriate to be approved  | Support Draft Decision.  |

## 5 Reporting

| QR Proposal  | Clause      | QCA Draft Decision  | Yancoal Response   |
|--|-------------|---|--|
| <b>Quarterly network performance report</b>  |             |   |  |
| Publish by end of month after each quarter, or as agreed with QCA  | 5.1.1       | Appropriate to be approved.   | Support Draft Decision.  |
| Allow 30 minutes' leeway in timing of planned possessions  | 5.1.2(x)    | Not appropriate to be approved. Amendments are appropriate to specify that reporting on planned possessions should be subject to 15 minutes' leeway, and provision of information in ranges | Support Draft Decision.  |
| No proposal on reporting on use of ad hoc planned possessions  | 5.1.2(y)    | Queensland Rail should report on ad hoc planned possessions.  | To the extent that the QCA determines that ad hoc planned possessions are permitted, support Draft Decision.   |
| Specify types of service covered, for example: coal, bulk minerals, freight; exclude metropolitan system | 5.1.2(b)    | Appropriate to be approved.   | Support Draft Decision.  |
|  |             | QCA invited further submissions on whether urgency or emergency possessions should be reported.   | Support number of urgent or emergency possessions being reported – as if the number of unplanned possessions of this type are rising that will assist in identifying issues with asset condition or maintenance practices. |
| <b>Annual network performance report</b>   |             |   |  |
| Format of annual network performance report unchanged  | 5.2 and 5.3 | Not appropriate to be approved. Amendments are appropriate to provide for combined performance reporting with the regulatory accounts.  | Support either of QR proposal or Draft Decision position – Yancoal is more concerned with the information contained in the reports rather than their format.   |
| Publish within six months after end of each year   | 5.2.1(a)    | Appropriate to be approved.   | Support Draft Decision.  |

| QR Proposal                                     | Clause       | QCA Draft Decision   | Yancoal Response        |
|---|--------------|--|-------------------------|
| Commentary required only for 'material' changes | 5.2.2(k)     | Not appropriate to be approved. Amendments are appropriate to define 'material' (suggested as greater of \$500,000 or 10% of forecast amount). | Support Draft Decision. |
| <b>Other matters</b>                            |              |  |                         |
| Incorrect clause number                         | 5.2.2(i)(vi) | Clause 5.2.2(i)(vi) should be numbered 5.2.2(i)(v)(B).   | Support Draft Decision. |

## 6 Administrative Provisions

| QR Proposal   | Clause | QCA Draft Decision   | Yancoal Response  |
|---|--------|--|---|
| <b>Parties that can access dispute resolution</b>   |        |  |   |
| Dispute resolution is only available to access seekers  | 6.1.2  | Not appropriate to be approved. Amendments are appropriate to enable other parties to access the dispute resolution mechanism if they receive the benefit of an obligation in the undertaking. | Support Draft Decision. This is logically necessary to make effective those provisions of the undertaking that are for the benefit of entities other than access seekers (including most relevantly to Yancoal ,access holder disputes that relate to provisions of the undertaking rather than provisions of the access agreement)..                         |
| <b>Disputes referred to the QCA for resolution</b>  |        |  |   |
| The QCA must obtain advice from a rail safety expert when arbitrating certain disputes        | 6.1.4  | Not appropriate to be approved. Amendments are appropriate to address identified problems with the workability and clarity of the clause.  | Support Draft Decision.   |
| The process for the QCA to resolve disputes may differ depending on the nature of the dispute | 6.1.4  | Not appropriate to be approved. Amendments are appropriate to provide certainty as to the awarding of costs and the binding nature of the process  | Yancoal has some concerns that the QCA proposal provides QR with the potential to delay and/or frustrate the dispute resolution process by not providing the required agreement.<br><br>An alternative than might be preferable would be to include as a condition of the undertaking that QR agrees to those matters and a condition of any party activating |

| QR Proposal   | Clause | QCA Draft Decision  | Yancoal Response  |
|---|--------|---|---|
|   |        |   | dispute rights under the undertaking that they also agree to those matters. |
| <b>Other matters</b>  |        |   |   |
| Update the transitional provisions so that references to 'the 2008 Undertaking' become 'AU1'                                    | 6.4    | Appropriate to be approved.   | Support Draft Decision.   |
| Remove a requirement for tariff reports for the West Moreton Network, which covers the period before the undertaking commences. |        | Appropriate to be approved if the 2020 DAU commences on 1 July 2020. If not, we consider it would be appropriate to include a similar clause to cl 6.4(f) of the 2016 undertaking, updated for the 2020 undertaking. We also consider that this requirement should be extended to include reports for other networks that are provided for under cl 5.2.2(j). In our view, this requirement reduces information asymmetry in negotiating and determining future access charges. | Support Draft Decision.   |
| Cross-referencing errors  |        | The following amendments are appropriate: <ul style="list-style-type: none"> <li>• cl 6.1.2(b) – correct the reference to cl 1.0.1(a)</li> <li>• any further amendments that are required to correct identified typographical or cross-referencing errors.</li> </ul>   | Support Draft Decision.   |

## Schedule 2

### Submissions on Standard Access Agreement Terms

| QR Proposal   | Clause   | QCA Draft Decision  | Yancoal Response   |
|---|----------|---|--|
| <b>Variations for productivity improvement and efficiency improvements</b>  |          |   |  |
| Access holders or train operators can seek a variation to the access agreement to promote or accommodate a demonstrable efficiency or productivity improvement for the supply chain | 1.3      | Not appropriate to be approved. Amendments are appropriate to remove the words 'for the supply chain'.  | Support the Draft Decision. QR should be required to consider efficiency or productivity improvements in relation to a particular element of the supply chain even if they do not immediately result in the supply chain as a whole becoming demonstratively more efficient or productive. |
| <b>Operational rights for train operators</b>   |          |   |  |
| There is a process for granting operational rights to train operators and the nomination of subsequent train operators  | 3        | May not be appropriate to approve the proposed drafting, given our concerns about the clarity and workability of the clause, but we invite further submissions from QR and stakeholders on this matter. | Support the Draft Decision. While Yancoal would be willing to accept QR's drafting where the issues about identifying the initial operator are resolved, we agree with Aurizon Bulk that the changes are not particularly warranted.   |
| <b>Liability in relation to performance levels</b>  |          |   |  |
| Queensland Rail is not liable for failing to meet performance levels, except as set out in agreed performance levels  | 13.4(a)  | Not appropriate to be approved. We accept the intent of this clause, but consider that amendments are appropriate to clarify the drafting.  | Until QR agrees to useful performance levels and key performance indicators forming part of the SAA, this type of change is not appropriate.   |
| <b>Security deposits</b>  |          |   |  |
| Access holders must, in appropriate cases and having regard to the access holder's financial  | 17.1 and | Not appropriate to be approved. Amendments are appropriate to set the level of security as a maximum amount rather than a   | Support the Draft Decision.  |



| QR Proposal   | Clause    | QCA Draft Decision  | Yancoal Response  |
|---|-----------|---|---|
| capability, provide a security deposit of at least six months of access charges   | sch. 1    | minimum amount, and to make future payment obligations under the agreement a factor to be considered when determining the security amount   |   |
| <b>Relinquishment fees</b>  |           |   |   |
| Access holders must pay a fee for relinquishing their access rights that is 80 per cent of the present value of take-or-pay charges for the remainder of the agreement (unless the contracting parties agree otherwise) | 21.2(c)   | The overall proposal is not appropriate to be approved. QR's proposal as it applies to reference tariff services is appropriate to be approved. However, the proposal to prescribe relinquishment fees for non-reference-tariff services is not appropriate to be approved  | QR's position (and the recommendation in the Draft Decision) do not represent a change to the position on relinquishment fees as they apply to the reference tariff services utilised by Cameby Downs – such that Yancoal does not have any particular comments on this issue.  |
| <b>Requirements to negotiate or consult in good faith</b>   |           |   |   |
| Various obligations to negotiate or consult in 'good faith' in the current SAA no longer apply  | Various   | Not appropriate to be approved. Amendments are appropriate to reinstate the requirements to negotiate or consult in good faith that apply in the current SAA. We support QR's intentions to negotiate with stakeholders on the development of a definition of good faith.   | Support the Draft Decision. Good faith has been given meaning by a number of legal judgments concerning good faith contractual obligations. To the extent there is a degree of uncertainty involved in that concept it does not make it appropriate to simply remove the requirement given the importance of the issues in respect of which good faith is required. |
| <b>Other terms</b>  |           |   |   |
| QR proposed to remove the references to subsequent agreements contained in the current SAA to clarify the drafting  | 4.1(c)(i) | Appropriate to be approved, as it is a minor procedural change relative to the current SAA.   | Support the Draft Decision.   |
| QR proposed an amendment to the current SAA to clarify that each party to the agreement (including the operator) provides the relevant representations and warranties   | 4.6(a)    | Not appropriate to be approved. An operator must provide representations and warranties under cl. 23, so there is no need to add an additional requirement in clause 4.6(a). Therefore, our draft decision is that amendments are appropriate to reinstate the drafting that applies in cl. 4.6(a) of the current SAA | Support the Draft Decision.   |

| QR Proposal  | Clause            | QCA Draft Decision  | Yancoal Response   |
|--|-------------------|---|--|
| QR proposed amendments to the current SAA to reflect changes to rail safety legislation and clarify that only relevant information is to be provided   | 5                 | This proposal, which reflects changes to rail safety legislation, is appropriate to be approved.  | Support the Draft Decision (and agree with the assessment that the changes do properly reflect the rail safety legislative amendments)   |
| Pacific National argued that the 10 business days timeframe for making payments, as proposed by QR, should be extended to 45 days in line with rail industry practice  | 6.2(a)            | QR's proposed payment timeframe is appropriate to be approved. Pacific National has not justified its suggestion to extend the timeframe to 45 days and we are not aware of evidence to suggest that 10 business days is out of line with industry practice. We also note that a 10 business day timeframe applies in Aurizon Network's current SAA.  | Yancoal considers 10 business day payment terms are not 'market' and that a longer payment term period would be appropriate, even if the QCA is not minded to extend the timeframe by as much as Pacific National has sought.  |
| Under QR's proposal, the parties are not required to provide notification of actual or likely failures of the access agreement. These requirements are in the current SAA, but QR said the requirements were inappropriate and not customary in commercial contracts.  | 7.3(f),<br>8.4(d) | QR's proposal is not appropriate to be approved because it prevents the parties from preparing for likely breaches or mitigating the effects of actual breaches. It does not appropriately balance the interests of QR, access holders and train operators. QR should amend the clauses to reflect the requirements in the current SAA, except that notification should only be required for material breaches or likely breaches (otherwise the obligation is likely to be too onerous).     | Support Draft Decision. Yancoal agrees with the QCA's reasoning, that notification of actual or likely failures is a clear benefit, and appropriate to retain, given it provides the counterparty an opportunity to mitigate the losses or other effects that would otherwise result. Particularly for coal producers, it may be possible to take steps elsewhere in the logistics chain to adapt to such events given sufficient forewarning. Yancoal is willing to support the requirement to be confined to material breaches or likely breaches. |
| Aurizon Bulk considered that additional train services and ad hoc train services were similar and should be consolidated under one request for extra train services that counts towards an access holder's take or pay obligations.<br><br>In response to Aurizon Bulk's submission, QR argued that the two services are different and that it did not support the consolidation of the definitions or | 8                 | QR only prescribes take-or-pay provisions for reference tariff services. QR's proposal of allow additional services but not ad hoc services, to offset an access holder's take-or-pay liability is appropriate to be approved.<br><br>As noted by QR, there are differences between ad hoc and additional services (as those terms are defined in the SAA). An additional services is the same type of service as the contracted service, but an ad hoc service different from the contracted | Yancoal is willing to accept the Draft Decision (noting that, at least for Cameby Downs, there is no real potential to utilise a different or ad hoc service).   |

| QR Proposal  | Clause                          | QCA Draft Decision   | Yancoal Response   |
|--|---------------------------------|--|--|
| consider there was a case for ad hoc services to be offset against take-or-pay obligations.  |                                 | <p>service (for example, it could be a service with a different origin and destination).</p> <p>Under the take-or-pay provisions, the access holder agrees to pay for the paths it has contracted, whether or not those paths are used. We do not consider it appropriate to use revenue from different types of services (i.e. ad hoc services) to reduce an access holder's take or pay liability.</p> <p>Our draft decision to approve QR's proposal appropriately balances the interests of QR and access holders.</p> |  |
| Aurizon Bulk submitted that amendments were appropriate to ensure QR provides additional and ad hoc train services wherever available and evidence to support any rejection of the request   | 8                               | QR's proposed is appropriate to be approved. We do not consider that Aurizon Bulk's suggested amendments are appropriate. We consider QR has an incentive to provide additional and ad hoc services to increase its revenue and note Aurizon Bulk's comment that QR has been accommodating and reasonable in practice.   | Yancoal is willing to accept the Draft Decision.   |
| Pacific National submitted that QR should only be allowed to recover 'reasonable' costs and expenses   | 8.4(c), 10.2(c), 10.7(a), 11(c) | QR's proposal is not appropriate to be approved. In relation to cl 8.4(c), 10.2(c) and 11(c), it is appropriate to include the caveat proposed by Pacific National to balance the interests of the contracting parties. QR should be able to recover reasonable costs, while access holder should not be liable for costs that are excessive. However, we do not consider it is appropriate to add this caveat to cl 10.7(a), because there are sufficient protections within the clause requiring QR to act reasonably.   | Support the Draft Decision. Yancoal agrees with the QCA that this provides an appropriate balance between the contracting parties. |
| QR proposed to clarify that changes to the interface risk management plan (IRMP) could be made by exchanging written notices. QR considered the amendment would remove an unnecessary administrative burden and enable safety issues to be dealt with quickly. | 9.2(d)                          | QR's proposal is not appropriate to be approved. We accept the intent of QR's proposal to simplify the process of changing the IRMP and consider that the rights of the contracting parties are not affected. However, amendments to cl 9.2(d) are appropriate to clarify the drafting in a manner similar to the following: '(d) For administrative ease, the IRMP may be amended by way of written communication between the duly authorised representatives of the Parties.   | Support the Draft Decision. Yancoal has no issue with QR's intention, but prefers the QCA's proposed clarification.                |

| QR Proposal  | Clause                | QCA Draft Decision   | Yancoal Response   |
|--|-----------------------|--|--|
| QR proposed a number of amendments to the current SAA to reflect changes to rail safety legislation and the establishment of the Office of the National Rail Safety Regulator                        | 9.3, 9.10, 10.1, 28.1 | <p>QR's proposal is not appropriate to be approved. We have reviewed QR's proposal and consider the following amendments are appropriate:</p> <ul style="list-style-type: none"> <li>• The definition of 'RNSL' needs to be amended to reflect that the Queensland and South Australian laws are separate acts and to refer to the South Australian National Law</li> <li>• The removal of the definition of 'Railway Operator' requires consequential amendments to Schedule 2 where the term 'Railway Operator' is still used</li> </ul> | Support the Draft Decision. Yancoal support's QR's intentions, but agrees with the technical amendments proposed by QR.  |
| Pacific National submitted that amendments should be made to this clause to only enable QR to do anything it considers 'reasonably' necessary  | 10.2(c)               | QR's proposal is not appropriate to be approved. It is appropriate for QR to amend cl 10.2(c) as suggested by Pacific National. Including this caveat is appropriate to guide the actions taken by QR and strikes a reasonable balance between the interests of the contracting parties  | Support the Draft Decision. Yancoal agrees this amendment makes the provision more balanced.   |
| Pacific National argued that the ability to use dispute resolution for disputes about the noise mitigation requirements should be made explicit  | 10.7                  | While the general dispute resolution mechanism in cl 19 would apply to disputes in relation to this clause, we do not consider that QR's proposal is appropriate to be approved because it may result in disputes being referred to a court, even though disputes of this nature would be more appropriately dealt with by an expert. QR should include an additional provision to provide that disputes in relation to cl 10.7 are directly referred to an expert for resolution under cl 19.3  | Support the Draft Decision. Clarity around this point is important for West Moreton services which operate through the Metropolitan system (where noise mitigation is a more important issue than it might be on some other components of QR's network). |
| Pacific National argued that the clause should be clarified to specify that QR is not indemnified in the event that it is negligent. Pacific National also suggested removing cl 12.2(c) and 12.2(d) | 12.2                  | <p>QR's proposal is not appropriate to be approved. This clause applies where the operator's customer is not a party to the SAA and is intended to apply the same limitations on the potential liability of QR as those that apply under cl 13 to the operator's customer. QR's potential liability for negligence is considered in cl 13.</p> <p>Pacific National has not provided any reasons for deleting cl 12.2(c) and (d) and these clauses are consistent with the intent of cls 12.2(a) and (b)</p>                                | Support Draft Decision   |

| QR Proposal  | Clause  | QCA Draft Decision  | Yancoal Response  |
|--|---------|---|---|
| QR proposed to amend the current SAA by including cl 15.1 to clarify that cls 15.2(c), 15.3(c), 15.4(a) and 15.5(a) are subject to relevant legislation and regulations regarding the enforcement of contractual provisions relating to insolvency events. QR advised that these changes are necessary to address the ipso facto legislative amendments. | 15      | QR's proposal is appropriate to be approved given the introduction of the new ipso facto regime. While QR advised that consequential amendments should be made to cl 17.2, which deals with QR's recourse to security, it did not appear to submit any proposed amendments. We will consider proposals in relation to further amendments in response to the draft decision.   | Support the Draft Decision (and agree that the changes are appropriate in the context of the new ipso facto regime) |
| Pacific National considered the clause should be amended to protect the operator from QR terminating the agreement, if the operator is not liable for a failure under the agreement. Pacific National proposed similar wording to cl 15.4(c)   | 15.2(a) | QR's proposed cls 15.2(a) and 15.3(a) are not appropriate to be approved. It is appropriate for QR to amend cls 15.2(a) and 15.3(a) to reflect the wording in cl 15.4(c). Providing reciprocal rights in relation to the ability to terminate an agreement appropriately balances the interests of QR, access seekers, access holders and train operators   | Support Draft Decision  |
| Pacific National argued that the operator should be able to terminate the agreement if QR fails to comply with safety related obligations in the agreement (consistent with QR's rights in cl. 15.2)   | 15.4    | QR's proposal is appropriate to be approved. We do not consider that the amendments proposed by Pacific National are necessary, noting that the operator's rights under cl 15.4(c) are likely to address Pacific National's concern.  | Yancoal is willing to support the Draft Decision  |
| Pacific National argues that the clause appears to be incorrectly drafted because insurance claims paid are for liability to QR, not necessarily damage to the network.  | 16.9    | QR's proposal is appropriate to be approved. We do not consider that cl 16.9 implies that all claims are paid in respect of damage to the network. Clause 16.9  | Support the Draft Decision (and consider the QCA's assessment of the clause is correct).                            |
| Pacific National argued that access holders should not be required to pay higher costs if there is a change in taxes, law or credit. This is an example of QR attempting to shift risk on to its customers who are not better placed to manage the risk.   | 18.2    | QR's proposal, which only applies to non-reference-tariff services, is appropriate to be approved. The clause appropriately addresses how adjustments to access charges are to be made when there is a change in costs due to the occurrence of certain events that are outside QR's control. Relevantly, it provides for adjustments that reflect cost decreases, as well as cost increases. While we consider the proposed clause is an appropriate default contract provision, the parties may negotiate variations. | As Yancoal only utilises reference tariff services it has not commented on this issue                               |

| QR Proposal   | Clause  | QCA Draft Decision   | Yancoal Response   |
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|   |         | Our draft decision appropriately balances QR's legitimate business interests with the interest of access seekers and access holders.   |  |
| QR proposed to remove this clause, which was included in the current SAA, to reflect the commencement of the Rail Safety National Law (Queensland) and the establishment of the Office of the National Rail Safety Regulator, which has no jurisdiction to resolve disputes | 19.4    | QR's proposal is not appropriate to be approved having regard to the s 138(2) factors. While the changes to the safety laws mean that the national regulator has no jurisdiction to resolve disputes under the national law, QR should amend its proposal so that disputes relating to safety issues are to be referred to an expert for resolution under cl 19.3. We expect that safety-related disputes would be more appropriately dealt with by an expert than a court.  | Support the Draft Decision. Yancoal agrees that safety matters are more appropriately dealt with by experts – both due to the likely benefits of the specialised knowledge of a safety expert in resolving such disputes, and due to being likely to provide an opportunity for quicker resolution than would occur where the dispute was referred to a court. |
| QR's proposed dispute resolution mechanism requires the parties to agree to refer a dispute to an expert, unless the SAA explicitly requires a dispute to be referred to an expert  | Various | <p>Elsewhere in this chapter, we have identified disputes that may be more appropriately considered by an expert rather than being referred directly to a court (for example disputes in relation to noise mitigation requirements any performance levels). There may be other instances where disputes would be more appropriately, and also potentially more efficiently, dealt with by a relevant expert (such as disputes that relate to technical matters). Under the proposed drafting, these types of disputes would be referred to a court if the parties could not agree on expert review (unless the relevant clause specifically calls for expert review).</p> <p>We consider that such an approach may more appropriately balance the interests of QR, access holders, train operators and customers. However, we welcome comments from stakeholders in relation to these matters and particularly as to specific circumstances where disputes may be better referred directly to an expert. Relevant clauses for further consideration by stakeholders may include cls 8.8, 8.9, 8.10, 9.2, 9.6-9.8, 10.1, 11</p> | Support the QCA's suggestion that noise mitigation and safety disputes are better handled by an expert. All operational disputes are likely to be better determined by an expert.  |
| Pacific National argues that QR should reimburse train operators for take-or-pay charges incurred on  |         | In the absence of a reference tariff applying on the North Coast line and given the limited and specific circumstances to which  | As Yancoal does not utilise those sections of rail it has not commented on   |

| QR Proposal  | Clause | QCA Draft Decision  | Yancoal Response       |
|--|--------|---|------------------------|
| the Aurizon Network sections of the North Coast line, when train services are not used on those sections due to a QR cause |        | reimbursement may apply, we consider it would be appropriate for these matters to be negotiated between the contracting parties as part of an overall package of risks, costs and entitlements. In our view, this approach appropriately balances the interests of QR, access seekers and access holders.   | this issue             |
| Various corrections and updates  |        | <p>We consider that it is appropriate for QR to make the following amendments:</p> <ul style="list-style-type: none"> <li>• Cl 8.10(b)(i) – add 'to' after the word 'relation'</li> <li>• Cl 19.3(b)(i)(B) – the term 'Institute of Chartered Accounts in Australia' is not current and should be changed to 'Chartered Accountants Australia and New Zealand'</li> <li>• Cl 28.1 – in the definition of Access Charge Input the reference to cl 0 of schedule 3 should be corrected</li> <li>• Schedule 3 – references to cl 0 should be corrected</li> <li>• Any further amendments required to correct identified typographical or cross-referencing errors</li> </ul> <p>It is the interests of all parties that the SSA is workable and free from errors</p> | Support Draft Decision |