



**Asciano Submission to the  
Queensland Competition Authority  
in relation to the Queensland Rail  
Draft Access Undertaking**

June 2015

---

# Table of Contents

1	Executive Summary .....	3
2	Introduction and Background .....	4
3	General Asciano Comments on the 2015 DAU .....	6
3.1	“Negotiate and Arbitrate” Regulatory Model .....	6
3.2	Access Agreements and Access Undertakings .....	11
3.3	Ring Fencing .....	12
3.4	Network Performance and KPIs.....	13
3.5	Risk Allocation and Management.....	13
3.6	Summary of Asciano Position .....	15
4	Specific Asciano Comments on the 2015 DAU .....	15
5	Specific Asciano Comments on the Operating Requirements Manual .....	27
6	Specific Asciano Comments on the 2015 DAU Standard Access Agreement.....	29
7	Conclusion .....	38
	Attachment 1 – Previous Asciano Submissions to the Queensland Rail 2012 and 2013 Draft Access Undertaking Regulatory Processes .....	40

## **1 EXECUTIVE SUMMARY**

Asciano welcomes the opportunity to make a submission to the Queensland Competition Authority (QCA) on Queensland Rail's 2015 DAU. Asciano recognises that Queensland Rail has addressed some of the issues raised by stakeholders (including Asciano) in previous consultations on the Queensland Rail access undertaking, in particular Asciano recognises that Queensland Rail are providing a standard access agreement for all users and are indicating that they will provide an increased level of cost information. However Asciano continues to have strong concerns with both the general framework of the 2015 DAU and the detailed proposed drafting of the 2015 DAU.

Asciano is particularly concerned with the 2015 DAU position on the following matters:

- the 2015 DAU uses the “negotiate and arbitrate” approach to determine Queensland Rail access prices (besides the prices in the West Moreton Coal system). Under this “negotiate and arbitrate” approach, negotiations will be unbalanced due to bargaining power imbalances and information asymmetry between the two parties. These imbalances will result in outcomes more favourable to the rail infrastructure monopolist as the access seeker has a very limited ability to counter the market power of the monopolist. Asciano seeks that the regulator develop regulator approved access prices to address this imbalance;
- the 2015 DAU substantially removes ring fencing requirements on Queensland Rail. Asciano believes that a broader ring fencing regime should be reinstated to minimise the potential for cost shifting or cross subsidisation between Queensland Rail businesses and to minimise the potential for Queensland Rail decision making on operational or commercial matters relating to freight access to be impacted by Queensland Rail's above rail passenger activities;
- the 2015 DAU does not place an obligation on Queensland Rail to maintain the network to an objective standard. Asciano believes that such an obligation must be included in the access undertaking. To complement this Asciano believes that a robust and consistent KPI reporting regime should be applied

to Queensland Rail to allow access holders, operators and end users to monitor Queensland Rail's compliance with, and its performance against, the access undertaking and access agreements; and

- the 2015 DAU continues to take an unbalanced approach to risk allocation and risk management. This unbalanced approach is particularly evident in the standard access agreement. Asciano believes that risks should be borne by whichever party is best able to control the risk. Queensland Rail takes an alternative approach to risk which requires the operator to bear the risk regardless of which party is best placed to manage the risk. This position is unacceptable to Asciano. Asciano seeks that the QCA more evenly balance risks between parties such that risks are borne by whichever party is best able to control the risk.

In addition to the broad matters outlined above Asciano has numerous concerns relating to the content of specific clauses and drafting of the 2015 DAU, including the Operating Requirements Manual and the Standard Access Agreement which are attached to the 2015 DAU. These concerns relating to specific clauses and drafting are outlined in the body of this submission.

Given Asciano continues to have strong concerns with the general framework and the detailed proposed drafting of the 2015 DAU Asciano seeks that the QCA not approve the 2015 DAU in its current form.

This submission is public.

## **2 INTRODUCTION AND BACKGROUND**

Asciano welcomes the opportunity to make a submission to the QCA on Queensland Rail's Draft Decision on the Queensland Rail 2015 Draft Access Undertaking (2015 DAU) which was submitted to the QCA in May 2015.

Asciano, via its subsidiary Pacific National, is a major user of Queensland Rail track infrastructure, and in particular it is a major user of both the North Coast Line and the Mount Isa Line. Access to both of these rail lines is intended to be covered by the 2015 DAU.

Asciano recognises that prior to submitting the 2015 DAU, Queensland Rail has submitted other Draft Access Undertakings to the QCA in 2012 and 2013. Asciano has previously made submissions to QCA on the DAU including:

- a submission in July 2012;
- a submission in September 2012;
- a submission in April 2013; and
- a submission in May 2013.

In these submissions Asciano has consistently put forward broad positions that:

- support separation of Queensland Rail's infrastructure and passenger services operations;
- support regulator approved access agreements for major Queensland Rail access paths;
- support regulator approved access pricing for major Queensland Rail access paths; and
- support the increased provision of cost information by Queensland Rail; particularly if regulator approved access pricing for a rail line is not available. In such an instance detailed cost information is needed to facilitate a more balanced commercial access price negotiation.

In addition, these Asciano submissions have raised numerous issues of detail relating to the drafting of the access undertaking, the drafting of the standard access agreement and the operating requirements manual. Asciano continues to generally support the positions put forward in these submissions and is seeking that the QCA take these submissions into consideration in its further deliberations on the 2015 DAU. In order to ensure these submissions are taken into account they are attached at Attachment 1<sup>1</sup>.

Asciano recognises that the resubmitted 2015 DAU addresses some of the concerns raised by Asciano and other respondents in previous submissions; however Asciano continues to have strong concerns with the general framework and the detailed

---

<sup>1</sup> To the extent there are any differences between positions in this current submission and the attached previous submissions the position in this current submission is the current Asciano position.

proposed drafting of the 2015 DAU. Consequently Asciano seeks that the QCA not approve the 2015 DAU in its current form.

This Asciano submission is set out as follows:

- introductory chapters 1 and 2 outline Asciano's broad position on the 2015 DAU and the background to this Asciano submission;
- Chapter 3 outlines key issues for Asciano that arise from the 2015 DAU;
- Chapter 4 outlines further specific issues that arise from the 2015 DAU;
- Chapter 5 outlines specific issues that arise from the 2015 DAU Operating Requirements Manual;
- Chapter 6 outlines further issues that arise from the 2015 DAU Standard Access Agreement;
- Chapter 7 outlines Asciano's broad conclusions including a conclusion that the 2015 DAU in its current form should not be approved by the QCA; and
- Attachment 1 - information on previous Asciano submissions on the 2012 and 2013 Queensland Rail DAU process.

This submission contains no confidential information. This submission may be considered a public document.

### **3 GENERAL ASCIANO COMMENTS ON THE 2015 DAU**

Asciano recognises that the 2015 DAU has adopted many of the positions put forward by the QCA in its Draft Decision on the Queensland Rail 2013 DAU; however Asciano remains concerned with numerous broad aspects of the 2015 DAU as outlined below.

#### **3.1 "Negotiate and Arbitrate" Regulatory Model**

The 2015 DAU continues to rely on the "negotiate and arbitrate" model to determine access tariffs for all users of the Queensland Rail network (besides the users of the West Moreton Coal system).

The 2015 DAU requires Queensland Rail and the access seeker to negotiate an access price between the floor and ceiling costs of access (where the derivation of the floor and ceiling cost are contained in clause 3.2 of the 2015 DAU). The range for price negotiations between the stand alone ceiling cost and the incremental floor cost

is expected to be very broad. Thus the 2015 DAU approach requires an access price to be negotiated with a monopoly between two broad parameters. Under the “negotiate and arbitrate” approach these negotiations will be unbalanced due to the bargaining power imbalances and information asymmetry which exist between the two parties. These imbalances will always result in outcomes more favourable to the rail infrastructure monopolist as the access seeker has a very limited ability to counter the power of the monopolist.

Asciano recognises that access dispute provisions exist in the QCA Act and the access undertaking but the costs and time involved in such dispute processes make them problematic, particularly if an access seeker or access holder has to use a dispute process on each occasion that it seeks access. Thus the existence of these access dispute provisions does not effectively limit Queensland Rail’s monopoly position.

Asciano’s experience of the “negotiate and arbitrate” model to determine access tariffs in both Queensland and other Australian rail markets is that in the absence of regulated prices (and access agreements), these negotiations favour the monopolist (and are typically more complex and protracted than would otherwise be the case).

Asciano has consistently argued in other regulatory submissions<sup>2</sup> that the “negotiate and arbitrate” access model is problematic as negotiations with natural monopoly infrastructure providers under this model result in outcomes more favourable to the natural monopolist due to the imbalances in bargaining power and information between the parties. Consequently, where rail infrastructure is provided by a natural monopoly infrastructure provider, Asciano strongly supports the development and use of regulator approved access prices and regulator approved access agreements. If the development of regulator approved access prices is problematic, then at the very least detailed and relevant cost information should be made available to access seekers in order to partially address the issue of information asymmetry.

---

<sup>2</sup> See for example

- Asciano Submission to ERA in relation to the Review of the Railways (Access) Code 2000 issues paper, April 2015, pp 4-5
- Asciano Submission to ESCOSA Issues Paper relating to the 2015 South Australian Rail Access Regime Review March 2015 pp 7-8
- Asciano Submission to the Commonwealth Competition Policy Review Issues Paper June 2014 pp 8-9

### **Regulator Approved Access Prices - General**

The 2015 DAU does not include a provision for regulator approved access prices besides the access prices for the West Moreton Coal system. As Asciano does not operate on the West Moreton Coal system this submission does not make any detailed comments on the West Moreton access prices per se.

Under the 2015 DAU Queensland Rail has the sole option to determine the circumstances when a reference tariff can be proposed. Asciano believes that such an approach is unbalanced and believes that it would be more appropriate if Queensland Rail, the QCA and access holders had the ability to trigger a reference tariff process. Asciano notes that clause 6.4.2(c) of the 2008 Queensland Rail access undertaking allowed the QCA to instigate a reference tariff process and in removing this clause Queensland Rail has removed an important protection for access seekers and holders.

Under the QCA Draft Decision on the previous 2013 DAU, the QCA required the inclusion of a provision that allows the QCA to require Queensland Rail to submit a proposed reference tariff if the QCA considers it warranted<sup>3</sup>. Queensland Rail has rejected this position in the 2015 DAU. Asciano believes that the QCA's position in the 2013 DAU Draft Decision should be reinstated.

Asciano believes that the current floor and ceiling price regulation is inadequate and, ideally, in order to limit the monopoly power of Queensland Rail in determining access prices, the QCA should determine benchmark tariffs for benchmark access services, with the access seeker and Queensland Rail being able to negotiate away from these prices if there is mutual agreement.

The 2015 DAU requires Queensland Rail and the access seeker to negotiate an access price between the floor and ceiling costs of access, where the floor price is the incremental cost and the ceiling price is the stand alone cost. This results in a broad range of potential prices. For the reasons outlined above in the discussion of the "negotiate and arbitrate" approach, Asciano believes that the QCA and Queensland Rail should develop regulator approved benchmark access prices to address the imbalance between the operator and Queensland Rail when negotiating access prices within such broad price parameters. A reinstatement of the QCA's

---

<sup>3</sup> Queensland Competition Authority Draft Decision on Queensland Rail's 2013 Draft Access Undertaking October 2014 Page 50



position in the 2013 DAU Draft Decision regarding reference tariffs would provide a “safety net” if broader reference tariff were not possible in the current regulatory process.

#### **Regulator Approved Access Prices – Mt Isa Line Access**

Asciano’s concerns with access pricing for the Mt Isa line is a special case of Asciano’s general concerns with Queensland Rail access pricing as outlined above. Access pricing on the Mt Isa line has previously been based on the “negotiate and arbitrate” model but due to stakeholder concerns the QCA sought to restrict the access pricing power of Queensland Rail in its 2014 Draft Decision on the 2013 DAU by placing various limits on Mt Isa line access prices.

The 2015 DAU rejected the QCA’s Draft Decision position on Mt Isa access pricing but has included provisions in clause 3.3 c) of the 2015 DAU which Queensland Rail argue seek to address stakeholder concerns with Mt Isa line pricing by proposing that in the case of a renewal application if the renewal is identical to the current access agreement then the methodology, rates and other inputs for calculating access prices in a new access agreement will be consistent with those used in the current access agreement but only if capacity is available and Queensland Rail can commercially provide access at these prices.

Asciano is concerned that this approach is limiting as in order to benefit from this clause:

- the renewal access rights must have the same characteristics as the existing access rights (for example there should be the same number of train services). Asciano believes that typically upon access agreement renewal there will be slight changes in train characteristics which will negate the application of this clause; and
- Queensland Rail has to be able to commercially provide access at these prices. This implies that any increase in costs (whether efficient or inefficient) can negate the application of this clause.

Asciano believes that the approach put forward in the 2015 DAU clause 3.3 c) is unlikely to be applied in practice for the reasons outlined above.

In relation to Mt Isa Line access pricing neither the current “negotiate and arbitrate” approach nor the proposed 2015 DAU approach is satisfactory. Asciano believes that an alternative access pricing approach should be developed which limits Queensland Rail’s monopoly power in relation to access pricing, while ensuring an appropriate level of Queensland Rail performance.

Overall, Asciano supports the need for access pricing on the Mount Isa line to be subject to regulatory limits in order to prevent monopoly pricing by Queensland Rail under the “negotiate and arbitrate” access pricing approach. If the development of such pricing limits is problematic Asciano believes that a more prescriptive regulatory approach to access prices must be considered as an option.

#### **Provision of Cost and Capacity Information**

Given the “negotiate and arbitrate” model continues to be applied in the 2015 DAU, then the provision of cost and capacity information must be substantially strengthened. The 2015 DAU has included stronger requirements on Queensland Rail to provide cost and capacity information in clause 2.7.2 (a) (i). These changes are welcomed by Asciano as the provision of sufficient cost and capacity information is an absolute minimum requirement for even handed price negotiations.

Asciano continues to have concerns that historically the provision of cost information by Queensland Rail has been inadequate, and while supporting the wording of clause 2.7.2 (a) (i), Asciano would wait until it receives actual relevant and detailed cost information before finally agreeing that the wording of clause 2.7.2 (a) (i) addresses this issue.

Asciano believes that the provision of Queensland Rail cost information can be further improved by ensuring that Queensland Rail provides consistent and transparent cost information to the QCA and users on an ongoing basis, where such costs are allocated according to the QCA approved cost allocation manual. This will allow a degree of cost certainty and consistency; however this approach remains a second best solution in relation to the determination of Queensland Rail access tariffs by the QCA.

## 3.2 Access Agreements and Access Undertakings

### Regulator Approved Access Agreements

Asciano has previously sought that standard form access agreements be available for numerous freight tasks on the Queensland Rail network including freight tasks on the North Coast Line and the Mount Isa Line. Asciano's view was that commercial negotiation with a monopoly service provider on the details of an agreement requires the commercial negotiation to be guided by the existence of an indicative access agreement (at a minimum) which has been reviewed in a regulatory process.

The 2015 DAU (clause 2.9.4) provides that unless otherwise agreed between Queensland Rail and the access seeker, an access agreement must be consistent with the standard form access agreement (as contained in Schedule H of the 2015 DAU). This change to the previous contracting approach is welcomed by Asciano.

While Asciano welcomes the broad approach, Asciano has substantial concerns with the content of the proposed standard access agreement. Asciano's detailed comments on the proposed standard access agreement are contained in section 6 of this submission.

### Shifting Principles from Access Undertakings to Access Agreements

While Asciano welcomes the development of a standard access agreement which is available to all users Asciano is concerned by the apparent shift of various rights and principles from the access undertaking to the standard access agreement. Many of the items shifted to the standard access agreement are outlined by Queensland Rail in its Explanatory Submission Volume 1<sup>4</sup> where it discusses the standard access agreement and recommendations made by the QCA in the 2014 Draft Decision on the 2013 DAU.

Asciano believes that shifting clauses and concepts previously in the access undertaking to an access agreement reduces transparency and certainty, and increases the potential for discrimination. Asciano believes that, as a general principle, clauses shifted from the access undertaking to the access agreements should be reinstated into the access undertaking.

---

<sup>4</sup> Queensland Rail Explanatory Submission - Queensland Rail's Draft Access Undertaking 2015 1 Volume 1, pages 35-40

### 3.3 Ring Fencing

The 2015 DAU substantially removes ring fencing requirements on Queensland Rail. In particular clause 2.2.3 of the 2015 DAU notes that Queensland Rail does not presently have interests in markets upstream or downstream from its below rail services that are in competition with third parties in those markets, but if Queensland Rail enters these markets it will prepare a draft amending access undertaking setting out its ring fencing obligations. While Asciano supports clause 2.2.3 Asciano believes that a broader ring fencing regime should be reinstated.

Asciano recognises that Queensland Rail does not directly compete with above rail freight operators, however Asciano believes that a broader ring fencing regime should be maintained. Asciano believes that such a ring fencing regime will:

- minimise the potential for cost shifting or cross subsidisation between Queensland Rail businesses including its above rail passenger activities and its below rail activities;
- minimise the potential for Queensland Rail decision making on operational or commercial matters for its above rail passenger activities to impact on the users of Queensland Rail freight access services. Queensland Rail's role as a vertically integrated provider of passenger services has the potential to conflict with its role as the access provider for freight services. Given this Queensland Rail must ensure that all access seekers and access holders are treated equally in regard to both commercial and operational matters (subject to the provisions of various regulatory instruments relating to passenger priority). Asciano believes that strong ring fencing provisions will provide such assurance; and
- minimise the potential for any inadvertent transfer of information between Queensland Rail and third parties. Queensland Rail has operational and commercial interfaces with participants in the Queensland rail industry; the maintenance of a ring fencing regime acts as a useful discipline in ensuring that there is no inadvertent transfer of information between Queensland Rail and third parties.

Asciano recognises that the 2015 DAU now provides stronger non-discrimination provisions, however Asciano continues to believe that the stronger ring fencing provisions in the current Access Undertaking should be retained.

### **3.4 Network Performance and KPIs**

The object of Part 5 of the QCA Act includes the promotion of the economically efficient operation of rail infrastructure and the principles on which access prices should be based in section 168A of the QCA Act include reducing costs and increasing productivity. Given these requirements Asciano is concerned that the 2015 DAU does not have a greater focus on efficient performance of Queensland Rail network.

Asciano is concerned that there is no obligation on Queensland Rail in the 2015 DAU to maintain the network to an objective standard. Asciano believes that such an obligation must be included in the access undertaking as well as access holder's access agreements.

Asciano believes that a robust and consistent KPI reporting regime should be applied to Queensland Rail to allow access holders operators and end users to monitor Queensland Rail's compliance with, and its performance against, the access undertaking and access agreements. Given this Asciano welcomes the increased reporting obligations placed on Queensland Rail in the 2015 DAU Section 5; however Asciano believes that this reporting can be further improved. Asciano believes that reporting as required by Section 5 of the 2015 DAU provides performance information to both parties and allows a more informed discussion to occur in relation to both operational performance and contractual obligations for both parties.

Asciano believes that as a provider of monopoly services Queensland Rail's performance should be measured and incentives should be developed to increase this level of performance. An incentive mechanism based on Queensland Rail's performance will drive efficiency improvements in Queensland Rail's operations (or at least halt a decline in standards). This mechanism must provide strong incentives for performance to be improved. Ideally such an incentive mechanism should be included in the 2015 DAU.

### **3.5 Risk Allocation and Management**

Asciano continues to be strongly concerned with Queensland Rail's unbalanced approach to risk allocation and risk management. This unbalanced approach is particularly evident in the standard access agreement in Schedule H of the 2015 DAU.

Asciano has taken a consistent position throughout the 2012 and 2013 DAU consultation processes that risks should be borne by whichever party is best able to control the risk. Queensland Rail takes an alternative approach to risk which requires the operator to bear the risk regardless of which party is best placed to manage the risk. This Queensland Rail position is unacceptable to Asciano.

Sections of the standard access agreement relating to risk allocation and management which are of particular concern to Asciano include:

- Standard Access Agreement 12.2 – Operators Carriage Indemnity – this clause requires an operator to indemnify Queensland Rail for claims from an operator’s customer which would have been the subject of clause 13 (i.e. limitations on liability) if the operator’s customer was a party to the agreement.

Asciano believes that operators should not have to indemnify Queensland Rail for claims made by the operator’s customers where the cause of the damage suffered by the operator’s customers is something done or not done by Queensland Rail. The cost of risk should be borne by the party that can best control that risk. In any case Queensland Rail is best able to manage these risks and / or insure against these costs.

- Standard Access Agreement Clause 12.3 - Indemnity for Dangerous Goods – this clause requires the operator to indemnify Queensland Rail against all losses / claims relating to the transportation of dangerous goods whether or not Queensland Rail (including Queensland Rail negligence) caused or contributed to the losses / claims.

Asciano remains strongly concerned that the Queensland Rail approach to indemnifying itself from any impact from dangerous goods (regardless of Queensland Rail negligence) continues to shift risk from the party which can best manage and control the risk. Queensland Rail should bear the risk for incidents involving dangerous goods where Queensland Rail (including Queensland Rail’s infrastructure) is responsible for the incident.

Further instances of Queensland Rail’s unbalanced approach to risk allocation and risk management are contained in section 6 of this submission, which addresses clauses in the standard access agreement in further detail.

Asciano seeks that in considering the 2015 DAU the QCA more evenly balance risks between parties such that risks should be borne by whichever party is best able to control the risk.

### **3.6 Summary of Asciano Position**

While Asciano acknowledges that the 2015 DAU has partially taken into account previous stakeholder comment on the Queensland rail access undertakings, Asciano does not believe that the 2015 DAU fully takes into account the matters set out in section 138 of the QCA Act. In particular the 2015 DAU approach to “negotiate and arbitrate” pricing, network performance, ring fencing and risk management demonstrate that the 2015 DAU has not fully addressed issues such as:

- the object of Part 5 of the QCA Act “to promote the economically efficient operation of, use of and investment in, significant infrastructure by which services are provided”;
- the public interest;
- the interests of parties who seek access to the service; and
- the pricing principles in section 168A including reducing costs and increasing productivity.

Asciano seeks that the QCA not approve the 2015 DAU in its current form

## **4 SPECIFIC ASCIANO COMMENTS ON THE 2015 DAU**

Asciano recognises that the 2015 DAU has adopted some of the positions put forward by the QCA in its 2014 Draft Decision on the Queensland Rail 2013 DAU; however Asciano remains concerned with some specific 2015 DAU positions on the 2014 QCA Draft Decision.

The table below outlines some of these Asciano concerns. (This table is based on the format of the table in the Appendix to Queensland Rail’s Volume 1 Submission in Support of the 2015 DAU (page 13 – page 47). Note that:

- the table below does not address every issue in the table in the Appendix to Queensland Rail's Volume 1 Submission in support of the 2015 DAU. The fact that an issue is not addressed in the table below should not be taken as an indication that Asciano accepts the 2015 DAU position;
- the issue number column in the table below corresponds to the issue number in the Appendix to Queensland Rail's Volume 1 Submission in Support of the 2015 DAU;
- further specific Asciano comments on the 2015 DAU are provided below Table 1.

**Table 1: Asciano Comments on the DAU 2015 Position on Various Aspects of the 2014 QCA Draft Decision**

Issue No	Summary of QCA Draft Decision and 2015 DAU Position in Response	Asciano Position
5 – 1.4	<p>The QCA requires Queensland Rail to amend its proposal so that it clearly sets out how it will be prevented from unfairly differentiating between access seekers and holders</p> <p>The 2015 DAU accepted the QCA position.</p>	<p>The Asciano position on discrimination and ring fencing is outlined in section 3 of this submission.</p> <p>Asciano remains concerned that this approach does not minimise the potential for:</p> <ul style="list-style-type: none"> <li>• cost shifting or cross subsidisation between Queensland Rail businesses; and</li> <li>• Queensland Rail decision making on operational or commercial matters to favour its above rail passenger business.</li> </ul>
6 – 1.5	<p>The QCA requires Queensland Rail to amend its proposal so it is required to implement ring fencing requirements if it enters the market. The 2015 DAU largely accepted the QCA position via 2015 DAU clause 2.2.3</p>	
8 – 2.2	<p>The QCA requires Queensland Rail to amend its proposal so it is required to provide cost information. The 2015 DAU largely accepted the QCA position via 2015 DAU clause 2.7.2.</p>	<p>The Asciano position is outlined in section 3 of this submission.</p> <p>Given the monopoly position of Queensland Rail and the light handed regulatory framework used to negotiate access prices Asciano believes that at a minimum there should be extensive cost, price and capacity information available to access seekers and access holders to allow more balanced commercial negotiations on access prices between Queensland Rail and the access seeker.</p>
15- 2.6	<p>Amongst other issues the QCA require Queensland Rail to accept a price consistent with clause 3.8 which</p>	<p>Asciano believes that the approach put forward in the 2015 DAU clause 3.3 c) is unlikely to be applied in practice as</p>



Issue No	Summary of QCA Draft Decision and 2015 DAU Position in Response	Asciano Position
	<p>addressed Mt Isa pricing.</p> <p>Queensland Rail argues that such an approach does not take into account the pricing principles under clause 168A of the QCA Act.</p>	<p>the provisions relating to the clause are likely to be too restrictive for it to be applied (as outlined in section 3 of this submission).</p> <p>In relation to Mt Isa Line access pricing neither the current “negotiate and arbitrate” approach nor the proposed 2015 DAU approach is satisfactory. Asciano believes that an alternative access pricing approach should be developed which limits Queensland Rail’s monopoly power in relation to access pricing, while ensuring an appropriate level of Queensland Rail performance.</p>
16 – 2.7	<p>The QCA requires Queensland Rail to delete a clause that does not oblige Queensland Rail to enter an access agreement if there is insufficient capacity. Queensland Rail has accepted this position but note that they should not be required to execute an access agreement if there is insufficient capacity.</p>	<p>Asciano believes that Queensland Rail should be obligated to facilitate (but not necessarily fund) an extension or expansion of the network if there is insufficient capacity.</p> <p>At minimum Queensland Rail should be required to conduct studies / investigations to derive potential options that will create additional capacity to access seekers.</p>
17 – 3.1	<p>The QCA require Queensland Rail to reinstate the hierarchy of pricing principles as per clause 6.1 of the 2008 Access Undertaking. This hierarchy was</p> <ul style="list-style-type: none"> <li>• limits on price differentiation</li> <li>• pricing limits</li> <li>• infrastructure utilisation</li> <li>• revenue adequacy</li> </ul>	<p>Queensland Rail argues<sup>5</sup> that under clause 168A of the QCA Act revenue adequacy is the paramount pricing principle. Asciano does not believe that any of the pricing principles in clause 168A of the QCA Act is necessarily paramount and that all of these principles should be taken into account.</p> <p>Asciano recognises that the 2008 Access Undertaking has a hierarchy of pricing principles to ensure certainty as to which principle prevails in a conflict.</p> <p>In order to ensure certainty Asciano supports the retention of the 2008 Access Undertaking pricing hierarchy. Asciano believes that issues of price discrimination and pricing limits are important in limiting monopoly power and ensuring competition in above rail markets.</p>
18 – 3.2	The QCA require Queensland Rail to	Queensland Rail includes a provision

<sup>5</sup> Queensland Rail Explanatory Submission - Queensland Rail’s Draft Access Undertaking 2015 1 Volume 1, page 23

Issue No	Summary of QCA Draft Decision and 2015 DAU Position in Response	Asciano Position
	<p>only be able to differentiate access charges between access holders in specific circumstances.</p> <p>Queensland Rail partially accepts this but includes a provision 3.3 b) ii) B) that price differentiation can occur where access can no longer be commercially provided at the current access charge.</p>	<p>3.3 b) ii) B) that price differentiation can occur where access can no longer be commercially provided at the current access charge.</p> <p>Asciano has concerns as to how this clause may be applied. For example if two train operators serve a market and their access agreements expire at different times and due to a cost change the train operator whose access agreement expires first is required to pay a higher access charge. This may result in this operator losing market share to the other operator and exiting the market.</p> <p>Asciano is seeking clarity as to how this clause may be applied.</p>
19 – 3.3	<p>The QCA requires Queensland Rail to amend its proposal so that it is required to act reasonably when seeking to increase an access charge to offset a reduction in a transport service contract payment.</p> <p>Queensland Rail has rejected this requirement.</p>	<p>Asciano believes that Queensland Rail should be required to act reasonably when seeking to increase an access charge to offset a reduction in a transport service contract payment.</p>
21 – 3.5	<p>The QCA requires Queensland Rail to amend its proposal to remove the requirement that the asset value for determining a ceiling revenue limit be set through a depreciated optimised replacement cost methodology.</p> <p>Queensland Rail has rejected this requirement.</p>	<p>Pacific National believes that asset valuation methodologies other than depreciated optimised replacement cost should be able to be considered when determining price and revenue ceilings. Other valuation approaches, including depreciated actual cost should be able to be taken into consideration when determining asset values.</p>
22 – 3.6	<p>The QCA requires Queensland Rail to amend its proposal so that the QCA can require it to submit a proposed reference tariff if the QCA considers it is warranted.</p> <p>Queensland Rail has rejected this requirement.</p>	<p>The Asciano position on this matter is outlined in section 3 of this submission.</p> <p>Under the 2015 DAU Queensland Rail has the sole ability to determine when a reference tariff can be proposed. Asciano believes this approach is unbalanced and that it would be more appropriate if Queensland Rail, the QCA and access holders had the ability to trigger a reference tariff process.</p>
23 – 3.7	<p>The QCA requires Queensland Rail to amend its proposal to address Mt Isa</p>	<p>Asciano has had ongoing concerns with pricing on the Mt Isa line.</p>

Issue No	Summary of QCA Draft Decision and 2015 DAU Position in Response	Asciano Position
	<p>line pricing issues.</p> <p>Queensland rail has sought to address the concern via clause 3.3 c) which limits Queensland Rail's discretion in regard to access pricing for renewals on the Mt Isa line.</p>	<p>Asciano believes that the approach put forward in the 2015 DAU clause 3.3 c) is unlikely to be applied in practice as the provisions relating to the clause are likely to be too restrictive for it to be applied</p> <p>In relation to Mt Isa Line access pricing neither the "negotiate and arbitrate" approach nor the proposed 2015 DAU approach is satisfactory. Asciano believes that an alternative approach should be developed which limits Queensland Rail's monopoly power, while ensuring an appropriate level of performance.</p>
24 to 31 4.1 to 4.8	<p>The QCA requires Queensland Rail to make numerous changes to the Network Management Principles and Operating Requirements Manual.</p> <p>Queensland Rail has not accepted all of these requirements.</p>	<p>Asciano supports the recommendations in QCA's Draft Decision on the 2013 DAU and believes that these recommendations should be reinstated into the 2015 DAU in instances where Queensland rail has rejected them in the 2015 DAU.</p>
40 – 7.1	<p>The QCA requires Queensland Rail to make changes to the access undertaking to restore access rights provisions</p> <p>Queensland Rail claims it has addressed this issue via the standard access agreement.</p>	<p>Asciano is concerned that clauses relating to access rights have been moved from the access undertaking to the standard access agreement.</p> <p>Asciano believes that clauses relating to access rights should be included in the access undertaking.</p>
41 – 7.2	<p>The QCA requires Queensland Rail to make changes to the access undertaking to restore infrastructure management and maintenance risk allocation provisions</p> <p>Queensland Rail claims it has addressed this issue via the standard access agreement</p>	<p>Asciano is concerned that clauses relating to infrastructure management and maintenance risk allocation have been moved from the access undertaking to the standard access agreement.</p> <p>Asciano believes that clauses relating to infrastructure management and maintenance risk allocation should be included in the access undertaking.</p> <p>As outlined throughout this submission Asciano is concerned that there is no obligation on Queensland Rail in the 2015 DAU to maintain the network to an objective standard.</p> <p>Asciano believes that such an obligation must be included in the access undertaking and the access agreement.</p>

Issue No	Summary of QCA Draft Decision and 2015 DAU Position in Response	Asciano Position
42 and 43 7.3 and 7.4	<p>The QCA requires Queensland Rail to make changes to the access undertaking to restore risk, indemnity and liability provisions</p> <p>Queensland Rail claims it has addressed this issue via the standard access agreement</p>	<p>As outlined in section 3 of this submission Asciano is strongly concerned with Queensland Rail's unbalanced approach to risk allocation and risk management. This unbalanced approach is particularly evident in the standard access agreement.</p> <p>Asciano believes that risks should be borne by whichever party is best able to control the risk.</p>
44 and 45 7.5 and 7.6	<p>The QCA requires Queensland Rail to amend its proposal so that it restores the operational, maintenance, inspection and liability provisions in the same way they apply to dangerous goods (cl. 5, 6, 12, 14 and 15) contained in Schedule E of Aurizon Network's 2010 access undertaking.</p> <p>Likewise the QCA requires Queensland Rail to amend its proposal and restore the dangerous goods and liability provisions for train services (cl. 14 and 15) contained in Schedule E of Aurizon Network's 2010 access undertaking.</p> <p>Queensland Rail claims that the clauses 5, 6, 12, 14 and 15 do not deal with dangerous goods and in any event this issue is addressed in the standard access agreement via a different liability regime.</p>	<p>Sections 5, 6, 12, 14 and 15 of Schedule E of Aurizon Network's 2010 access undertaking address train operations, infrastructure management (including maintenance of infrastructure), inspection and audit rights, indemnities of liabilities and limitations of liabilities. All of these matters can be used broadly to deal with matters relating to dangerous goods.</p> <p>As outlined in section 3 of this submission the standard access agreement requires the operator to indemnify Queensland Rail against all losses / claims relating to the transportation of dangerous goods whether or not Queensland Rail (including Queensland Rail negligence) caused or contributed to the losses / claims.</p> <p>Asciano remains strongly concerned that the Queensland Rail approach to indemnifying itself from any impact from dangerous goods (regardless of Queensland Rail negligence) continues to shift risk from the party which can best manage and control the risk. Queensland Rail should bear the risk for incidents involving dangerous goods where Queensland Rail (including Queensland Rail's infrastructure) is responsible for the incident.</p> <p>Asciano notes that it is an extreme position for a party to seek to contract out of its own negligence and it would be exceptionally rare to be able to justify such a practice.</p>
48 – 7.9	The QCA requires Queensland Rail to	Asciano does not have an issue with

Issue No	Summary of QCA Draft Decision and 2015 DAU Position in Response	Asciano Position
	<p>amend its standard access agreement so that it is consistent with Aurizon Network's Operator Access agreement and the QCA's recommendations on other aspects of the 2013 DAU.</p> <p>Queensland Rail indicates that the standard access agreement is now a tripartite agreement.</p>	<p>the tripartite agreement in principle, however tripartite agreements can be difficult to negotiate and administer in practice.</p> <p>Asciano notes that the QCA has recently proposed an alternative model for the Aurizon Network which involves an end user agreement and a train operations deed. This structure may avoid the practical difficulties of tripartite contracting.</p> <p>Asciano considers that further consultation with the industry may be beneficial in determining the most appropriate contracting structure.</p>
49 – 7.10	<p>The QCA requires Queensland Rail to amend its proposal so that it retains the dangerous goods provisions in Aurizon Network's Operator Access Agreement (cl. 8.3) in Queensland Rail's standard access agreement to apply to non-coal traffics on its network.</p> <p>Queensland Rail argues that the standard access agreement provisions "on dangerous goods are appropriate for Queensland Rail's business".</p>	<p>As outlined in section 3 of this submission the standard access agreement requires the operator to indemnify Queensland Rail against all losses / claims relating to the transportation of dangerous goods whether or not Queensland Rail (including Queensland Rail negligence) caused or contributed to the losses / claims. This approach to indemnifying itself from any impact from dangerous goods (regardless of Queensland Rail negligence) continues to shift risk from the party which can best manage and control the risk. Queensland Rail should bear the risk for incidents involving dangerous goods where Queensland Rail (including Queensland Rail's infrastructure) is responsible for the incident.</p> <p>The standard access agreement provisions on dangerous goods place no responsibility on Queensland rail for its own actions including negligence. In this sense these one-sided provisions are "appropriate" for Queensland Rail's business as they protect Queensland rail from its own negligence.</p> <p>However, Queensland Rail's position is not appropriate for its customers who will be impacted by Queensland RAILS negligence and these provisions can only be forced on its customers by its use of its monopoly position. For the reasons stated above, Asciano</p>

Issue No	Summary of QCA Draft Decision and 2015 DAU Position in Response	Asciano Position
		<p>considers that this risk regime is entirely inappropriate and is likely to drive unreasonable behaviours.</p>
51 - 7.12	<p>The QCA requires Queensland Rail to amend its proposal so that it adopts schedule D of the ARTC 2011 access undertaking for the KPIs for inclusion in schedule 5 of the standard access agreement.</p> <p>Queensland Rail rejects this position believes that KPIs (and the performance they reflect) are contractual and should be subject to negotiation on a case by case basis.</p>	<p>Asciano believes that a consistent and transparent KPI reporting regime should be applied to Queensland Rail to allow access holders operators and end users to monitor Queensland Rail's compliance with, and its performance against, the access undertaking and access agreements.</p> <p>This also allows Queensland Rail's performance to be compared with similar rail infrastructure providers.</p> <p>Asciano notes that any commercial negotiation of KPIs with a monopoly (such as Queensland Rail) is likely to favour that monopoly and keep the KPIs confidential.</p> <p>Asciano believes that given Queensland Rail's monopoly position its performance should transparent.</p>
53 – 7.14	<p>The QCA requires Queensland Rail to amend its proposal so that it:</p> <p>(a) includes a new section to mirror the connecting infrastructure principles outlined in cl. 8.3 of Aurizon Network's 2010 access undertaking; and</p> <p>(b) provide scope for the QCA to give Queensland Rail a notice requiring it to develop a standard access agreement and / or proposed standard connection agreement that is consistent with the 2013 DAU.</p> <p>Queensland Rail has rejected this requirement in relation to the connection agreement as the connection of private infrastructure is not part of the declared service.</p>	<p>The 2015 DAU 2.7.2 b) notes that Queensland Rail will negotiate a connection agreement with an access seeker if needed.</p> <p>Given the monopoly power of Queensland Rail Asciano believes that, at a minimum, the framework of a connection agreement should be outlined in the 2015 DAU.</p> <p>The Standard Connection Agreement included in the Aurizon Network 2014 DAU could form the basis of such a connection agreement framework.</p>
61 - 9.6	<p>The QCA requires Queensland Rail to amend its proposal so that it inserts a new clause to oblige Queensland Rail to maintain the operational integrity of its network consistent with the Network Management Principles, Operating Requirements Manual and access rights contracted with access holders.</p>	<p>The Asciano position on this matter is outlined in section 3 of this submission.</p> <p>Asciano is concerned that there is no obligation on Queensland Rail in the 2015 DAU to maintain the network to an objective standard. Asciano believes that such an obligation must be included in the access undertaking</p>

Issue No	Summary of QCA Draft Decision and 2015 DAU Position in Response	Asciano Position
	Queensland Rail indicates that the standard access agreement now addresses operational integrity matters.	and access agreements.  Under the 2008 Access Undertaking Queensland Rail is obliged to maintain the Network such that the Network is consistent with Rollingstock Interface Standards and the Operator can operate services in accordance with their scheduled times. Asciano believes that this wording is preferable to the approach in the 2015 DAU and should be reinstated as an absolute minimum.

In addition to the matters raised in the table above, which relate to matters raised in the 2014 QCA Draft Decision on the 2013 Queensland Rail DAU, there are numerous additional matters of detail that Asciano is seeking to raise. These are outlined below:

- 2015 DAU Preamble – the 2015 DAU Preamble includes statements regarding the commercial viability of the network and the competitive position of the network compared to other transport modes. Asciano does not believe that these statements should be included as part of an access undertaking. By having QCA approve an access undertaking containing these statements the QCA could be seen as endorsing Queensland Rail's view as to its market position. Asciano does not believe that the QCA should be required to approve subjective statements only tangentially related to access. The access undertaking should be restricted to matters of access.

Asciano notes that the preamble (2013 DAU page 2) wording states that the access undertaking provides a balanced approach to the provision of access and a framework to manage access negotiations in an efficient and transparent manner. Asciano believes that this statement that the undertaking is balanced, efficient and transparent is largely subjective and as such should not be included in the access undertaking. Asciano believes that if the preamble is deemed necessary, then it should be restricted to an objective description of the background to the access undertaking.



2015 DAU 1.2.1 a) Scope – the 2015 DAU 1.2 1 a) states that the 2015 DAU only applies to access right negotiations between Queensland Rail and access seekers. The 2015 DAU 1.2.1 b) i) B) seeks to remove the applicability of the 2015 DAU to any matter involving an access holder or access agreement where the access agreement is inconsistent with the undertaking. (For example if the Queensland Rail operating requirements manual and an individual access agreement are in conflict then the access agreement takes precedence)

Asciano believes that the 2015 DAU should explicitly state that access holders are protected by the undertaking and that the undertaking applies to these access holders. For example the 2015 DAU includes sections relating to access holders such as renewals of access rights, dispute resolution and an operating requirements manual.

- 2015 DAU 1.4 Extensions – under the 2015 DAU, Queensland Rail is not obligated to fund nor construct extensions, but Queensland Rail can construct an extension if it is funded by the access seeker on terms satisfactory to Queensland Rail. Given this Asciano believes that the extension process needs to consider:
  - the ability of parties other than access seekers having the ability to fund extensions;
  - the need for the funding party to be guaranteed the capacity created from the extension they are funding (as constructed by Queensland Rail); and
  - the need for current users to not have their rights or capacity adversely impacted by any extension.

Overall Asciano believes that the 2015 DAU needs a clearer process for planning and funding extensions.

- 2015 DAU 2.4.2 Inclusions in Indicative Access Proposal – Asciano believes that the Indicative Access Proposal should also outline assumptions used in the Queensland Rail capacity analysis such as sectional run times and loading and unloading times (if these are relevant).



- 2015 DAU 2.8.2 Safety Considerations – the 2015 DAU gives Queensland Rail the ability to refuse an access seeker entering into an access agreement if they believe the access request impacts on the safety of persons using or intending to use passenger train services. This highlights that Queensland Rail prioritises passenger services over freight services and that the interests of passenger services and freight services may conflict. The potential for conflict between freight and passenger services reinforces the need for Queensland Rail to ring fence passenger services from below rail freight access services.

Asciano believes that in circumstances under the access undertaking where there are conflicts between Queensland Rail's passenger obligations and freight access obligations an independent body (such as the QCA) should be involved to ensure neutrality.

- 2015 DAU 2.9.5 Execution of Access Agreements – the 2015 DAU allows an access seeker 20 business days after receiving Queensland Rail's offer to execute an access agreement (or as otherwise agreed), otherwise the offer lapses. Asciano believes that this time frame is unnecessarily brief at this stage of the access agreement process. Asciano believes the time period for execution should be more reasonable (noting the time taken for an organisation's internal approvals process prior to execution may vary). Asciano queries if any time frame for execution of access agreements should be applied, but if a time frame is needed then a minimum of 30 business days should be used.
- 2015 DAU 2.9.6 Transfer of Access Rights – the 2015 DAU states that any transfers are addressed via the access agreement. Asciano disagrees with this approach as it will lead to variations in transfer methodology across time and between access holders. As transfers relate mainly to access rights and capacity, a uniform approach to transfers should be adopted to ensure both non-discrimination between access rights holders and consistent treatment of network capacity across access holders. On this basis, provisions relating to the transfer of access rights should be outlined in the 2015 DAU.

Access rights transfers are an important means by which track asset utilisation can be optimised. As such the 2015 DAU should ensure that such transfers can be facilitated in a consistent and timely manner.

- 2015 DAU 4.3 Operating Requirements Manual – the 2015 DAU contains an Operating Requirements Manual. This manual will be updated by Queensland Rail from time to time, but there does not appear to be any explicit requirement for Queensland Rail to have these changes approved by the QCA or consult with stakeholders prior to updating the manual.

This manual has the potential to impact the costs and operations of train operators and end users, and given that the QCA approve the initial manual via the access undertaking process, Asciano believes that the QCA should approve subsequent changes to the manual. If QCA involvement is not possible then the following process for amending the manual should occur as a minimum:

- Queensland Rail should justify any proposed changes in the Operating Requirements Manual;
- Queensland Rail should then consult with stakeholders in relation to the proposed changes; and
- in the event that Queensland Rail do not incorporate stakeholders comments into the manual Queensland Rail should provide reasons to stakeholders as to why they were not incorporated; and
- Queensland Rail should have special consideration of the cost impact which any proposed changes have on above rail operators.

Asciano acknowledges that the above process would not be required to apply to changes which are trivial or changes of fact.

- 2015 DAU 5.3.4 Audit – the 2015 DAU allows for the QCA to audit Queensland Rail's quarterly and annual reports if it believes that material in these reports are inaccurate. Asciano believes that an approach that limits the audit to the content of the regulatory reports is too restrictive. Asciano believes that the QCA should have the power to audit Queensland Rail's compliance with the access undertaking (rather than just the quarterly and annual reports).

In addition Asciano believes that the requirement that the audit will only take place if the QCA believes that material in the quarterly and annual reports are inaccurate is too restrictive. Asciano believes that audits of Queensland Rail's compliance with the access undertaking should be undertaken at regular intervals. Such audits will provide necessary assurance that the regulated entity is complying with the Act, the access undertaking and other associated regulatory instruments. These audits are fundamental to ensuring that the Queensland Rail access regime is seen by stakeholders as both credible and workable.

Asciano recognises that such audits are not costless, and thus believes that an audit every two years balances the need for assurance that Queensland Rail remains compliant with the access undertaking with the need to manage the cost of the audit.

Asciano believes that the audit regime could be further strengthened by ensuring stronger obligations on Queensland Rail to remedy any breaches identified by the audit

- 2015 DAU Schedule F Network Management Principles – the network management principles require a level of consistency across rail networks especially in relation to interfaces between networks. Given that both Aurizon Network are currently in the process of finalising new access undertakings (and in the case of Aurizon Network finalising system rules) Asciano is seeking that Queensland Rail continues to be cognisant of the need to ensure seamless interfaces between the Aurizon Network and the Queensland rail network where possible.

## **5 SPECIFIC ASCIANO COMMENTS ON THE OPERATING REQUIREMENTS MANUAL**

The 2015 DAU Schedule G includes an Operating Requirements Manual. Asciano has several concerns with the Operating Requirements Manual as outlined below.

The introduction to the Operating Requirements Manual indicates that it will be “updated by Queensland Rail from time to time”. Thus it seems this document could be updated with no consultation with stakeholders, even though the document

impacts on stakeholders operations and costs. Asciano believes that there should be an obligation on Queensland Rail to consult with stakeholders prior to amending the Operating Requirements Manual.

Throughout the manual there are numerous website addresses (particularly in section 6 where they relate to operational concerns such as radio channels, interface points, network control centres etc.) Asciano believes that in the event that website addresses in the manual change then Queensland Rail should be obliged to notify the operator of the changed website address.

Throughout the manual there are several places where Queensland Rail has a right to provide directions to operators or require operators to undertake an action. These directions and requirements should be qualified by requiring them to be “reasonable” directions or requirements.

Asciano’s comments on specific clauses of the Operating Requirements Manual are outlined below:

- Interface Risk Management Plan 2.2 c) ii) B) – the obligation for the operator to provide information on products transported should be limited to the type of information required on a manifest.
- Interface Risk Management Plan 2.2 c) ii) C) - the obligation for the operator to provide information on the anticipated environmental risks of their proposed activities should be further clarified in the drafting. Besides statements referring to a certain level of noise and emissions, any further impact on the environment presupposes an incident or other unexpected occurrence.
- Interface Risk Management Plan 2.2 c) ii) G) - the obligation for the operator to provide “any information in relation to anything referred to in section 5” seems unusual as section 5 relates to Train Route Acceptance certification issued by Queensland Rail. If the drafting was intended to refer to section 4 (i.e. emergency response) then this requirement is too broad. This clause should be narrowed to a more specific request for information.

- Emergency Responses 4.3 – while Asciano recognises that Queensland Rail is responsible for the management of the response to a network incident and will assist Queensland Rail throughout the response process, Asciano believes that any obligation to assist should be reciprocal.
- Operator Requirements for Controller 6.2 a) i) – Asciano queries whether providing after hours contact details for an operator's controller is relevant or necessary if there is a 24 hour control centre.
- Consultation between Queensland Rail Network Controller and the Operators Train Crew 6.3 – Asciano queries the whole of clause 6.3 as it seems to focus on instructing the operator on how they should manage their crewing. This is inappropriate given that the operator's crewing is an issue for the operator, not Queensland Rail.
- Document Control Procedures 7.2 – this obligation on the operator to provide contact details must be reciprocal. Thus Queensland Rail must also notify the operator of relevant staff contact details.
- Operational Meetings 7.3.1 c) and d) – as this section is currently drafted the operational meetings address matters relating to operators performance and operators reliability. For these meeting to be constructive they must be reciprocal and issues relating to Queensland Rail's performance and Queensland Rail's reliability must also be able to be discussed.

## **6 SPECIFIC ASCIANO COMMENTS ON THE 2015 DAU STANDARD ACCESS AGREEMENT**

The 2015 DAU Schedule H includes a Standard Access Agreement. The 2015 DAU clause 2.9.4 provides that unless otherwise agreed between Queensland Rail and the access seeker, an access agreement must be consistent with this standard form access agreement. Asciano's comments and concerns relating to the details of the proposed standard access agreement are outlined in the table below.

Asciano continues to be strongly concerned with Queensland Rail's unbalanced approach to risk management, as evidenced in the standard access agreement. Asciano has taken a consistent position throughout the 2012 and 2013 DAU

consultation processes that risks should be borne by whichever party is best able to control the risk. Queensland Rail takes an alternative approach to risk which requires the operator to bear the risk regardless of which party is best placed to manage the risk. This Queensland Rail position is unacceptable to Asciano.

**Table 2: Asciano’s Comments on the Queensland Rail Proposed Standard Access Agreement (SAA)**

Clause Reference	Outline of Clause	Asciano Position
3	Relationship with the Operator's Customer - the standard access agreement permits the Operator's Customer to be a party to the standard access agreement.	<p>Asciano does not have an issue with the concept of the Operator's Customer being a party to the standard access agreement in principle, however notes that tripartite agreements can be difficult to negotiate and administer in practice.</p> <p>Asciano notes that the QCA has recently proposed an alternative model for the Aurizon Network which involves an end user agreement and a train operations deed. This structure may avoid the practical difficulties of tripartite contracting highlighted above.</p> <p>Asciano considers that further consultation with the industry may be beneficial in determining the most appropriate contracting structure.</p>
5.7	<p>Interim take or pay notices – this clause permits Queensland Rail to issue a statement of the accrued Take or Pay Charge liability in respect of a particular period (which is not defined).</p> <p>The Operator has 10 Business Days to respond with a Dispute Notice, otherwise it will be deemed to have accepted the Interim Take or Pay Notice.</p>	<p>Asciano does not understand the justification for this process, which has the potential to cause significant detriment to the Operator if it fails to respond within the required time frame</p> <p>Asciano notes that Take or Pay Charge liability appears to be determined on an annual basis. If it is considered that Take or Pay Charge liability should be determined more regularly then:</p> <ul style="list-style-type: none"> <li>• There should be a defined period e.g. each half year; and</li> <li>• There should be a deemed rejection and progression to dispute resolution if the Operator fails to issue the Dispute Notice.</li> </ul>
6.1	Maintenance – this clause requires Queensland Rail to maintain the Network in a condition such that the Operator can operate Train Services in accordance with the standard access agreement.	<p>Asciano is concerned that there is no obligation to maintain the network to an objective standard and as such this is a weak commitment at best.</p> <p>Under the current (i.e. 2008) Access Undertaking Queensland Rail is obliged to</p>

Clause Reference	Outline of Clause	Asciano Position
		<p>maintain the Network such that the Network is consistent with Rollingstock Interface Standards and the Operator can operate services in accordance with their scheduled times.</p> <p>Asciano believes that this wording is preferable to the proposed wording in the 2015 DAU and should be reinstated as an absolute minimum. Asciano believes that the Access Undertaking and access agreements should include specific commitments to maintain the Network.</p> <p>As outlined in section 3 of this submission the Access Undertaking should explicitly address the quality of the access to be provided by Queensland Rail. (This does not preclude an individual access agreement containing more detail about service quality, particularly service quality specific to the haulage task being contracted, which Asciano would support).</p> <p>Asciano believes that the standard access agreement must include some level of objective standard of track quality and track maintenance such as key performance indicators relating to train reliability, train quality, track quality and path availability.</p> <p>Asciano believes that the reporting performance provides information to both parties and allows a more informed discussion to occur in relation to both operational performance and contractual obligations for both parties.</p>
6.2	Exercise of Train Control	<p>Asciano considers that the obligations of Queensland Rail with respect to the train control function should be strengthened to reflect the importance of the Queensland Rail's responsibilities.</p> <p>For example Asciano believes that the following additional obligations are relevant to train control:</p> <ul style="list-style-type: none"> <li>• safely and efficiently operating the network so that any permitted use of the network by the operator is facilitated promptly and effectively and in accordance with the access agreement;</li> <li>• having facilities in place (including signaling) to enable the operator to utilise the train paths on the terms of</li> </ul>

Clause Reference	Outline of Clause	Asciano Position
		<p>the access agreement;</p> <ul style="list-style-type: none"> <li>• receive, record and collate information from the operator and other users of the network for the purposes of, and to more effectively exercise, the train control function;</li> <li>• maintain and operate a communication system for the purpose of communication with the operator and other users of the network, and to facilitate the operator's access to that communication system;</li> <li>• use its best endeavours to provide the operator with details, as soon as reasonably practicable of all operating incidents which have affected or could potentially affect the ability of any train to retain its path, or else affect its security or safety.</li> </ul>
7.3(b)(ii)	Compliance – this clause requires the Operator to at all times act in accordance with Prudent Practices	<p>Asciano notes that the term, “Prudent Practices” is defined to mean:</p> <p>“the exercise of that degree of diligence, care, foresight, prudence and skill that would reasonably be expected from a competent, skilled and experienced person in the same type of undertaking in the same or similar circumstances.”</p> <p>Asciano believes that this obligation should be imposed on all parties, and in particular it should be applied to Queensland Rail's obligations under clause 6 of the standard access agreement.</p>
7.3(d)	Compliance – this clause requires the Operator to notify Queensland Rail of any failure or likely failure by the Operator to comply with the standard access agreement as soon as practicable	<p>Asciano queries the need for this clause and notes that it is an unusual requirement.</p> <p>If the clause is deemed necessary, then Asciano believes it should apply to all parties including Queensland Rail and should be limited to material breaches.</p>
7.7	Operator to supply information – this clause requires the Operator to maintain software, hardware and communications links with Queensland Rail, where Queensland Rail can alter these at its absolute discretion.	<p>Asciano believes that such an obligation has the potential to impose substantial costs on operators.</p> <p>Asciano believes that there should be an obligation placed on Queensland Rail to consult with access holders prior to substantially amending software, hardware and communications links and performing Rail Infrastructure Operations.</p>



Clause Reference	Outline of Clause	Asciano Position
		<p>In the event that Queensland Rail does not incorporate access holder's consultation comments into the activity then Queensland Rail should provide reasons as to why they were not incorporated.</p> <p>In any event Queensland Rail to use its best endeavours to minimise cost and disruption for the Operator.</p>
7.8(d)	Queensland Rail may supply data	<p>Clause 7.8(d) indicates that:</p> <p><i>"Any intellectual property rights in relation to the Operator's business or Train Services that are discovered or developed, or otherwise come into existence, in connection with the Data are assigned to and vest in Queensland Rail ..."</i></p> <p>This clause is too broad and should be limited to either the specific train services or rolling stock. It should not extend to cover the business of the Operator.</p>
7.9(a)(ii)	<p>Authorisation of Rolling Stock and Train Configuration – this clause requires the Operator to have completed/obtained the following prior to operating a Train Service:</p> <ul style="list-style-type: none"> <li>• provided the Certification;</li> <li>• obtained from Queensland Rail a notice indicating that Queensland Rail is satisfied with the Certification.</li> </ul>	<p>Asciano believes that clause 7.9(a) (ii) should be amended to confirm that Queensland Rail's notice and satisfaction should not be unreasonably withheld or delayed. In addition, there should be a maximum time period for Queensland Rail to respond in order to ensure the Operator's Train Services are not unreasonably delayed.</p>
10.1(a)(ii)	<p>Operator's Emergency Plan – the Operator must not operate a Train Services unless it has submitted an Emergency Management Plan and obtained a notice from Queensland Rail that it has no objection.</p>	<p>Asciano believes that the same considerations set out in clause 7.9(a) (ii) should apply to this clause.</p>
10.7	<p>Noise Mitigation – this clause requires the Operator to pay a contribution of any expenses related to noise mitigation, as reasonably determined by Queensland Rail.</p>	<p>Asciano believes that:</p> <ul style="list-style-type: none"> <li>• noise mitigation should only be undertaken when relevant noise levels are breached;</li> <li>• train operators should only be required to pay expenses related to noise mitigation when it is demonstrable that the train operation</li> </ul>

Clause Reference	Outline of Clause	Asciano Position
		<p>issues, rather than below rail issues, are responsible for noise. In addition if train operations are responsible for noise and more than one Operator uses the track then further investigations should be conducted to determine whether a specific operator should bear the cost; and</p> <ul style="list-style-type: none"> <li>the expenses related to noise mitigation, as determined by Queensland Rail, should be able to be tested by an Operator and should be agreed in advance with an Operator before they are incurred. Asciano notes that Queensland Rail is required to consult with the Operator; however Asciano believes that this should be strengthened by requiring Queensland Rail to provide in advance any tender documents and quotes to support any expenses which they seek to recover and any Queensland Rail internal costs should be benchmarked to ensure that these costs are efficient. Queensland Rail should not be able to determine these expenses without scrutiny. In the event that there is a dispute relating to such expenses the standard access agreement dispute mechanism should apply.</li> </ul>
12.2	Operator's carriage indemnity – where the Operator's Customer is not a party, then the Operator is required to indemnify Queensland Rail for any claims which would have been the subject of clause 13 if the Operator's Customer was a party	<p>Asciano submits that this clause is highly prejudicial and unfair to the Operator and should be deleted from the standard access agreement. The definition of Operator's Customer set out in clause 28 is exceptionally broad and includes "any other person directly or indirectly benefiting from, or for whom the Operator operates, the Train Services".</p> <p>Asciano believes that it is unfair for Queensland Rail to seek that operators indemnify Queensland Rail for claims made by the Operator's Customers where the cause of the damage suffered by the Operator's Customers is something done or not done by Queensland Rail. The cost of risk should be borne by the party that can best control that risk. Queensland Rail is best able to control this risk and insure against these costs.</p>
12.3	Indemnity for Dangerous Goods – this clause states that the Operator must indemnify	Asciano remains strongly concerned that the Queensland Rail approach to indemnifying itself from any impact from dangerous goods

Clause Reference	Outline of Clause	Asciano Position
	<p>Queensland Rail and its Associates against all losses/claims relating to the transportation of dangerous goods whether or not caused or contributed to by Queensland Rail (including negligence)</p>	<p>(regardless of Queensland Rail negligence) continues to shift risk from the party which can best manage and control the risk.</p> <p>Queensland Rail should bear the risk for incidents involving dangerous goods where Queensland Rail infrastructure is responsible for the incident. Asciano's position on this matter has consistently been that the liabilities associated with the carriage of these goods should be borne by whichever party is best able to control the risk (and hence the cost of managing the risk). The liability for any incident involving dangerous goods should be borne by whichever party's negligence resulted in the incident.</p> <p>As this wording currently stands Queensland Rail has a reduced incentive not to be negligent in relation to dangerous goods and this reduced incentive may, perversely, increase the risk of an incident.</p>
12.4	<p>Conditions of carriage exclusions and limitations of liability – this clause requires the Operator to ensure that Queensland Rail has the benefit of any exclusion or limitation in favour of the Operator under its conditions of carriage and to provide to Queensland Rail details of those conditions of carriage</p>	<p>Asciano notes that its conditions of carriage between itself and its customers are often confidential documents. It is not appropriate for Queensland Rail to seek a clause such as this.</p> <p>Queensland Rail has the ability to seek insurance to cover it for its legal liability. Asciano maintains its position that the liability should be borne by the party best able to control the risk.</p>
12.6(d)	<p>Operator responsible for Operator's Associates – this clause requires the Operator to have notified Queensland Rail where it authorises an agent or contractor to exercise its rights or perform its obligations under the standard access agreement</p>	<p>Asciano has concerns as to how to how this clause may operate in practice and that it may place an unreasonable administrative burden on the Operator. Asciano also queries whether it is necessary, having regard to clause 12.6(c).</p>
13.4	<p>Liability for Network – this clause significantly limits Queensland Rail's liability in respect of the condition of the Network</p>	<p>Asciano considers that this clause unreasonably limits Queensland Rail's liability and should be rejected having regard to the importance of Queensland Rail's role in ensuring that the network is safe for use. At a minimum, Queensland Rail should be responsible for where it has breached its obligations under clause 6.1 and / or has been negligent.</p> <p>Secondly, Asciano considers that the limit of \$50m for any one occurrence is unreasonable, particularly where the</p>

Clause Reference	Outline of Clause	Asciano Position
		<p>Operator is required to maintain \$350m in public liability insurance and has no cap on liability.</p> <p>This is an inefficient approach to risk management. Queensland Rail is able to insure for this risk, thus Queensland Rail should insure for these risks. This is the most efficient approach to the costs of risk management.</p> <p>The most efficient outcome is one where the party which can best manage and control the risk should bear the consequence of the risk. In many instances this party may be Queensland Rail.</p>
15.4	Termination for Change in Control - this clause allows Queensland Rail to terminate the standard access agreement for a change in control of the Operator.	<p>Asciano believes that such a clause is too broad and that Queensland Rail should at least be required to provide some material reason for such a termination relating to either bona fide operational or safety concerns or bona fide concerns regarding financial strength.</p> <p>The new owner of the Operator should be allowed an opportunity to address any Queensland Rail concerns (for example by providing safety accreditation or a security deposit).</p>
16.6	Disclosure of insurance – under this clause the Operator may be required to produce copies of its insurance policies.	Asciano's insurance policies are confidential and as such cannot be supplied. Asciano understands that this is likely to be the case for the insurances of other access seekers and holders. It is standard industry practice to supply certificates of currency only.
17	Security – this clause requires the Operator to provide Security which may be called upon in certain circumstances	<p>Asciano believes the following amendments are appropriate:</p> <ul style="list-style-type: none"> <li>• Security should only be provided where Queensland Rail considers (acting reasonably) that the Operator is not: <ul style="list-style-type: none"> <li>○ financially sound;</li> <li>○ able to meet its debts as and when they fall due;</li> <li>○ otherwise be capable of performing its obligations under the standard access agreement;</li> </ul> </li> <li>• Recourse to Security should clarified/limited as follows: <ul style="list-style-type: none"> <li>○ in the case of 17.2(a)(i), to confirm for the avoidance of doubt that Queensland Rail</li> </ul> </li> </ul>

Clause Reference	Outline of Clause	Asciano Position
		<p>may not call on the Security where the Operator has disputed the amount; and</p> <ul style="list-style-type: none"> <li>○ in the case of clause 17.2(a)(ii), Queensland Rail may not call on the Security where the Operator is required to indemnify Queensland Rail unless: <ul style="list-style-type: none"> <li>▪ Queensland Rail has issued a demand that the Operator indemnify it; and</li> <li>▪ The Operator has refused to do so.</li> </ul> </li> </ul>
19.5	Resolution of Disputes by Queensland Rail – under this clause if a dispute is in relation to the IRMP or the safety of any persons/property or the environment and the dispute is not otherwise resolved it may be resolved by Queensland Rail	<p>Asciano believes that this clause is unfair as a party to a dispute (Queensland Rail) is effectively the final arbiter of the dispute to the extent the dispute concerns safety/environment or the IRMP.</p> <p>Asciano believes that any such dispute should be resolved by the relevant rail safety regulator or failing that another expert acceptable to the parties.</p>
20.1(d)	Force Majeure Event occurrence – under this clause Queensland Rail is not obliged to fund the repair / replacement of any part of the Network that is necessary for the Train Services and is damaged / destroyed by a Force Majeure Event	Given Queensland Rail's unique position as the rail access provider, Asciano believes that it should have an obligation to repair / replace the Network.
22.1	Assignment by Queensland Rail – Queensland Rail may assist all or part of its rights / obligations under the standard access agreement provided that it procures the Assignee to covenant with the Operator to be bound by and to perform the obligations of Queensland Rail under the standard access agreement	Asciano submits that this should be subject to the same requirements which apply to the Operator under clause 22.2(b) (ii), that is. that the proposed Assignee has the financial resources and capability to perform Queensland Rail's obligations under the standard access agreement and is accredited to perform those functions.
22.2(c)	Assignment by the Operator – under clause 22.2(c), the Operator will remain liable for the performance of the Assigned Obligations	<p>Asciano notes that under clause 22.1(b), Queensland Rail will be released and discharges from any further liability under the standard access agreement once the Assignee has signed the deed of covenant.</p> <p>Asciano considers that an identical regime should apply to all parties under the standard access agreement.</p>

Clause Reference	Outline of Clause	Asciano Position
23	Representations and warranties	<p>Asciano notes that this clause sets representations and warranties to be provided by the Operator. Asciano believes:</p> <ul style="list-style-type: none"> <li>• Most of the warranties / representations should be provided by Queensland Rail (noting that the Operator's Customer is also required to do so under clause 3.5);</li> <li>• In respect of clause 23 (a) (ix) (relating to the standard and suitability of the Network and the Operator's ability to safely interface with it), it is unreasonable for the Operator to be taken to have given that warranty on each day during the Term. It would be impossible for the Operator to satisfy itself of this, noting that under clause 23 (c), it is required to give reasonable notice to Queensland Rail of its intention to inspect the Network.</li> </ul>
28	Definition of "Repeated Breach"	<p>Given that this term relates to a termination right for Queensland Rail, Asciano believes that paragraph (a) of this definition should be limited to breaches of material provisions of the standard access agreement.</p>

## 7 CONCLUSION

Asciano recognises that Queensland Rail has addressed some of the issues raised by stakeholders (including Asciano) in previous consultations on the Queensland Rail access undertaking; however Asciano continues to have strong concerns with both the general framework of the 2015 DAU and the detailed proposed drafting of the 2015 DAU.

Asciano is particularly concerned with the 2015 DAU position on the following matters:

- the 2015 DAU uses the "negotiate and arbitrate" model to determine Queensland Rail access prices (besides the West Moreton Coal system). Under this approach price negotiations will be unbalanced due to bargaining power imbalances and information asymmetry between the two parties,

resulting in outcomes more favourable to the rail infrastructure monopolist as the access seeker has a very limited ability to counter the market power of the monopolist. Asciano seeks the development and use of regulator approved access prices to address this imbalance;

- the 2015 DAU substantially removes ring fencing requirements on Queensland Rail. Asciano believes that a broader ring fencing regime should be reinstated to minimise the potential for cost shifting or cross subsidisation between Queensland Rail businesses and to minimise the potential for Queensland Rail decision making on operational or commercial matters relating to freight access to be impacted by Queensland Rail's passenger activities;
- the 2015 DAU does not place an obligation on Queensland Rail to maintain the network to an objective standard. Asciano believes that such an obligation must be included in the access undertaking. To complement this Asciano believes that a robust and consistent KPI reporting regime should be applied to Queensland Rail; and
- the 2015 DAU continues to take an unbalanced approach to risk allocation and risk management, which is particularly evident in the standard access agreement. Asciano seeks that the QCA more evenly balance risks between parties such that risks should be borne by whichever party is best able to control the risk.

In addition to the broad matters outlined above Asciano has numerous concerns relating to the content of specific clauses and drafting of the 2015 DAU, including the Operating Requirements Manual and the Standard Access Agreement. Asciano is seeking the QCA take these matters into account when assessing the 2015 DAU. Given Asciano continues to have strong concerns with the general framework and the detailed proposed drafting of the 2015 DAU Asciano seeks that the QCA not approve the 2015 DAU in its current form.

## **ATTACHMENT 1 – PREVIOUS ASCIANO SUBMISSIONS TO THE QUEENSLAND RAIL 2012 AND 2013 DRAFT ACCESS UNDERTAKING REGULATORY PROCESSES**

Asciano recognises that prior to submitting the 2015 DAU Queensland Rail has submitted other Draft Access Undertakings to the QCA in March 2012 and February 2013.

Asciano has previously made submissions to QCA on these previous Queensland Rail Draft Access Undertakings including:

- July 2012 – Asciano Submission to the Queensland Competition Authority in Relation to the Queensland Rail Ltd Draft Access Undertaking
- September 2012 – Asciano Further Submission to the Queensland Competition Authority in Relation to the Queensland Rail Ltd Draft Access Undertaking
- April 2013 – Asciano Submission to the Queensland Competition Authority in Relation to the Queensland Rail 2013 Draft Access Undertaking ; and
- May 2013– Asciano Submission to the Queensland Competition Authority in Relation to the Queensland Rail 2013 Draft Access Undertaking.

Asciano has attached these previous submissions to allow issues raised in these submissions to be considered by the QCA when assessing the 2015 DAU.

Note that to the extent there are any differences between positions in this current submission and the attached previous submissions the position in this current submission is the current Asciano position.



**Attachment 1 to the June 2015 Asciano Submission to the Queensland Competition Authority in Relation to the Queensland Rail Draft Access Undertaking**

**Previous Asciano Submissions to the Queensland Rail 2012 and 2013 Draft Access Undertaking Regulatory Processes**

- July 2012 – Asciano Submission to the Queensland Competition Authority in Relation to the Queensland Rail Ltd Draft Access Undertaking
- September 2012 – Asciano Further Submission to the Queensland Competition Authority in Relation to the Queensland Rail Ltd Draft Access Undertaking
- April 2013 – Asciano Submission to the Queensland Competition Authority in Relation to the Queensland Rail 2013 Draft Access Undertaking ; and
- May 2013– Asciano Submission to the Queensland Competition Authority in Relation to the Queensland Rail 2013 Draft Access Undertaking.



**Asciano Submission to the  
Queensland Competition Authority  
in relation to the Queensland Rail  
Ltd Draft Access Undertaking**

July 2012

---

# Table of Contents

1	Executive Summary .....	3
2	Introduction and Background .....	4
	2.1 Introduction.....	4
3	Asciano’s General Position on the DAU .....	4
	3.1 Asciano’s View Regarding the Negotiate Arbitrate Model and Regulated Tariffs .....	5
	3.2 Asciano’s View Regarding Standard Form Access Agreements .....	8
	3.3 Asciano Concerns Regarding Queensland Rail Vertical Integration .....	8
	3.4 Asciano’s Concerns Regarding Interfaces with QR Network .....	10
	3.5 Asciano’s Views Regarding Uplift of Access Undertaking Outcomes into Existing Access Agreements .....	11
4	Asciano’s Specific Comments on the DAU .....	12
	4.1 Term .....	12
	4.2 Extensions .....	12
	4.3 Access Application .....	13
	4.4 Negotiation Cessation .....	13
	4.5 Capacity Allocation and Queuing .....	13
	4.6 Reporting .....	14
	4.7 Dispute resolution .....	15
	4.8 Notices .....	15
	4.9 Access Agreement Principles .....	15
5	Asciano’s Specific Comments on the Standard Form Access Agreement.....	18
6	Conclusion .....	22

## 1 EXECUTIVE SUMMARY

Asciano welcomes the opportunity to make a submission to the Queensland Competition Authority (QCA) on the Queensland Rail Draft Access Undertaking (DAU).

Asciano is concerned that the DAU is focussing on a “negotiate and arbitrate” model rather than QCA approved standard form access agreements and pricing. Asciano’s experience is that commercial negotiations under a “negotiate-and-arbitrate” model will be more expensive and more complex with a less efficient outcome than reliance on approved regulated reference prices and standard agreements (where there remains scope for some negotiation). Thus Asciano is seeking that:

- other Reference Tariffs should be included in the DAU, including, for example an intermodal or general freight tariff for the north coast line,; and
- other Standard Form Access Agreements should be included in the DAU, including, for example an intermodal or general freight agreement for the north coast line.

Asciano is also seeking that a level of ring fencing and cost separation should be applied to Queensland Rail. While Queensland Rail does not directly compete with access holders, Queensland Rail does operate above rail passenger services which impact on above rail freight services via operational restrictions and the impact of cost allocations on pricing.

Asciano also has numerous detailed concerns with the details of the DAU and the Standard Form Access Agreement. Many of these concerns are focussed on the one sided nature of Queensland Rail’s approach to liability caps, insurance and indemnity. In particular Asciano is concerned that Queensland Rail seeks to shift risk to the operator, even though Queensland Rail is in a better position to manage that risk. Queensland Rail’s positions are inconsistent with industry norms and in particular the standard ARTC access agreement.

Other major concerns with content of the DAU and the Standard Form Agreement include:

- the extensions policy;
- the capacity allocation process including the process of re-contracting for access; and
- the lack of a continuing strong ring fencing regime and the attendant QCA powers to monitor and audit such a regime.

## **2 INTRODUCTION AND BACKGROUND**

### **2.1 Introduction**

Asciano welcomes the opportunity to make a submission to the Queensland Competition Authority on the Queensland Rail Draft Access Undertaking.

Asciano, via its subsidiary Pacific National, currently uses the below rail assets of Queensland Rail for intermodal haulage along the north coast corridor, bulk minerals and concentrate haulage on the Mt Isa to Townsville corridor and some coal haulage on an ad hoc basis, primarily on the north coast corridor. In addition Pacific National stores coal wagons at Queensland Rail sites at Auckland Point (in Gladstone) and at Rockhampton. These wagon storage functions are not covered by the current or proposed access regime.

Since 1 July 2010, Queensland Rail has been providing access to its below rail network under QR Network's 2008 Access Undertaking (as at 30 June 2010) to the extent that it was made to apply to Queensland Rail by a transfer notice. Asciano welcomes the move by Queensland Rail towards an Access Undertaking which better reflects the market and industry structures facing Queensland Rail.

Queensland Rail has previously consulted with Asciano on the DAU and appears to have taken into account some of the comments made by Asciano in this previous consultation. Asciano welcomes the consultative approach of Queensland Rail in relation to the DAU.

This submission is public.

## **3 ASCIANO'S GENERAL POSITION ON THE DAU**

Asciano recognise that Queensland Rail commenced business as a separate entity in July 2010, but that Queensland Rail continue to provide access under an Access

Undertaking which was drafted to address access and market issues which may no longer completely apply to the Queensland Rail's current situation.

Asciano has some concerns that the DAU is seeking to move away from a regulatory approach based on QCA approved standard form access agreements and QCA approved pricing towards a regulatory approach based on the "negotiate and arbitrate" model. Asciano has experience of the "negotiate and arbitrate" access model with other rail infrastructure owners in Australia. Asciano's experience is that, in the absence of regulated prices and access agreements, these negotiations are often more complex and protracted than would otherwise be the case and outcomes are often inefficient due to an asymmetry of information between the two parties.

More generally Asciano believes that there are some inconsistencies between Queensland Rail's stated desire to move towards a more commercial negotiation model and Queensland's Rail ongoing positions in relation to issues such as extensions, dangerous goods, indemnities and liability that demonstrate Queensland Rail continues to be a risk averse organisation. Asciano believes that there is a fundamental mismatch between Queensland Rail's move towards a commercial negotiation model and Queensland Rail's risk averse culture. Asciano's concern is that this will result in a veneer of commerciality but Queensland Rail will use its position as a natural monopoly infrastructure provider to ensure that the details of contracts and operational procedures will continue to shift all risks to access seekers and access holders. Economic efficiency requires that those parties that control risk should bear the cost of the risk. An uncommercial shift of risk to access providers will result in economically inefficient outcomes. Evidence of this can be seen in the fact that although the DAU is intended to be a document which facilitates commercial negotiation, Queensland Rail has the ability to use its "absolute discretion" at least seventeen times in the DAU, often in relation to issues such as extension where it is expected there could be genuine and material commercial differences.

### **3.1 Asciano's View Regarding the Negotiate Arbitrate Model and Regulated Tariffs**

The Queensland Rail DAU only contains Reference Tariffs for West Moreton Coal traffics. These tariffs are effectively based on an escalation of the current West Moreton Coal tariffs and are not based on any transparent cost information.

Asciano believes that these coal Reference Tariffs are included in the DAU largely due to historical reasons, as when Queensland Rail and QR National were a single entity coal reference tariffs were a major issue in the central Queensland coal region. Following the separation of Queensland Rail and QR National these coal Reference Tariffs on the Queensland Rail network remain. Asciano believes that other haulage tasks such as intermodal haulage and minerals haulage are now proportionately much more important to Queensland Rail than they were to the previous combined entity, and as such reference tariffs for these haulage tasks should be implemented.

Under the DAU as proposed, tariffs for other hauls, such as intermodal haulage and minerals haulage, will be negotiated (and if necessary arbitrated) as there are no non-coal Reference Tariffs in the DAU; although floor and ceiling revenue limits are discussed, including a derivation of the ceiling revenue limit but no actual cost data appears to be provided in respect of this the derivation of this limit.

As noted above, Asciano have experience of the “negotiate and arbitrate” access model with other rail infrastructure owners in Australia. These negotiations are often problematic due to a lack of cost information, which places access seekers at a disadvantage in negotiating access prices with the access provider, as only the access provider has detailed knowledge of their costs.

Asciano believes that several other reference tariffs should be included in the DAU, including, for example an intermodal or general freight tariff for the north coast line (Brisbane to Cairns). Negotiation around rates for particular hauls will still occur but the regulatory approved reference tariffs overcome the asymmetry of cost information problems discussed earlier.

Asciano notes that the under the DAU (2.4.2 c)) the Indicative Access Proposal will

*... provide a methodology for calculating Access Charges (including an initial estimate of any applicable rates or other inputs for formulae*

and more generally the DAU (2.6.2 a) i)) provides that

*... Queensland Rail will provide to the Access Seeker additional information relevant to the negotiations, as requested by the Access Seeker*

and DAU (2.6.2 a) v)) provides that

*Queensland Rail will provide a methodology for calculating the Access Charges (including any applicable rates or other inputs for formulae)*

Asciano welcomes the provision of information under these clauses, particularly cost information, by Queensland Rail but believes that the cost information provided needs to be consistent over time and at such a level that it provides sufficient information to access seekers to allow them to negotiate pricing on an even basis with Queensland Rail. (In addition Asciano notes that the DAU (2.6.2 a) v)) quote above implies that the methodology for calculating access charges is fixed by Queensland Rail, Asciano believes that to the extent a negotiate arbitrate model applies then the calculation methodology should be negotiable rather than be fixed by the monopoly infrastructure provider).

Given the fundamental asymmetry in cost information between Queensland Rail and access seekers Asciano believes that the provision of this cost information by Queensland Rail of itself is unlikely to address Asciano's concerns in relation to price negotiation.

The issue of the asymmetry in cost information between Queensland Rail and access seekers may be partially addressed by Queensland Rail providing consistent and publicly available cost information to the QCA on an ongoing basis, where such costs are allocated according to the QCA approved cost allocation manual. Such an approach will allow a degree of cost certainty and consistency; however this approach remains a second best solution in relation to the determination of Reference Tariffs by the QCA.

Overall Asciano is seeking that additional Reference Tariffs be provided in the DAU for haulage tasks such as freight tariff on the north coast line. Asciano believes that there would still be scope to negotiate around these tariffs depending on the precise nature of the haulage task involved. The provision of these reference tariffs should not be onerous given they relate to existing traffic (and so should be costed internally) and given Queensland Rail is already providing a coal reference tariff (and so should have appropriate regulatory pricing models).



### **3.2 Asciano's View Regarding Standard Form Access Agreements**

The Queensland Rail DAU only contains a Standard Form Access Agreement for West Moreton Coal traffics, although Asciano notes that the DAU (2.8) contains provisions for the introduction of new standard access agreements for other train services if sought by the QCA.

Asciano's view is that commercial negotiation with a monopoly service provider on the details of an agreement requires the commercial negotiation to be guided by the existence of, at a minimum, an indicative access agreement which has been reviewed in a regulatory process. Asciano's view is that the acceptability and workability of terms and conditions contained in access agreements ultimately determines whether there is an environment that is conducive to effective negotiations.

Asciano believes that, consistent with its view in section 2.1 above, several other Standard Form Access Agreements should be included in the DAU, including, for example an intermodal or general freight agreement for the north coast line (Brisbane to Cairns). (Asciano believes that the inclusion of section 2.8 in the DAU which allows for new Standard Form Access Agreements indicates that Queensland Rail is expecting the development of such new agreements at some time in the term of the access undertaking). Given these are existing traffics with existing access agreements this should not be an onerous task.

Before the inclusion of any other Standard Form Access Agreements in the DAU there should be a public consultation process conducted by the QCA on these proposed Standard Form Access Agreements.

### **3.3 Asciano Concerns Regarding Queensland Rail Vertical Integration**

Queensland Rail operates both a below rail network which provides third party access and above rail passenger train services, thus Queensland Rail is a vertically integrated business. This vertical integration results in some concerns for above rail operators, such as Asciano, who use the Queensland Rail network.

Asciano recognises that Queensland Rail does not operate freight train services in direct competition with third party users such as Asciano and, as such, there is no direct commercial competition. However, the above rail services operated by

Queensland Rail do still impact on the operations of third party users such as Asciano. Typically these impacts are operational impacts relating to issues such as pathing priority and track occupations or cost allocation impacts relating to the allocation of Queensland rail costs between above rail and below rail services.

This dual role of Queensland Rail provides it with an incentive to develop processes which minimise the potential for freight rail operations to interfere with Queensland Rail above rail passenger operations.

Asciano notes that Queensland Rail (Queensland Rail DAU Explanatory Note page 7) seeks that it:

*.. should effectively be treated as if it were a non-vertically integrated access provider in respect of access to its rail network.*

Asciano has concerns with this request from Queensland Rail. Asciano believes that it is more appropriate that the regulatory process treat Queensland Rail as a vertically integrated access provider, albeit one which has substantially reduced financial incentives to discriminate against third party users of its network as they are not in direct commercial competition with Queensland Rail in the contestable sectors of the rail industry. Thus while Asciano recognises that Queensland Rail seeks to provide access for freight rail the potential for this access to conflict with the needs of Queensland Rail passenger services means that the regulatory process should impose a degree of vertical separation and transparent cost allocation on Queensland Rail. Such separation minimises the potential for any conflict.

Asciano notes that (Queensland Rail DAU Explanatory Note page 8 states that:

*Ringfencing requirements are only relevant for a vertically integrated monopoly that is competing with third party operations in downstream competitive markets. While Queensland Rail is vertically integrated, it does not compete with third party operators of train services.*

*Ringfencing provisions are not appropriate for Queensland Rail's business. However, AU1 does set out confidentiality provisions to protect the confidential information of access seekers and access holders, and Queensland Rail will*

*maintain separate accounting records in accordance with section 163 of the QCA Act.*

Asciano opposes this position. Queensland Rail remains a vertically integrated monopoly and as such there should be a ring fencing regime which ensures that:

- any cost shifting or cross subsidisation between the network business and passenger service business is transparent and approved via an external process (such as the current cost allocation manual approved by the QCA). In particular Asciano is concerned that the DAU (3.1.1) allows that if Queensland Rail earn excess revenue from Access Charges and Transport Service Payments then Queensland Rail may seek to reduce Transport Service Payments rather than Access Charges. Asciano believes that it is more appropriate that the reduction in Transport Service Payments or Access Charges be aligned with revenue source responsible for the excess revenue; and
- there is no potential for Queensland Rail decision-making on operational or commercial matters in its above rail passenger business to disadvantage third party users of the Queensland rail below rail business.

Asciano believes that ring fencing is a useful discipline in ensuring rigorous and consistent cost allocation and should be used in Queensland Rail as a matter of good regulatory practice.

In seeking a ring fencing regime Asciano recognises that in all of Asciano's dealings with Queensland Rail, Queensland Rail has acted appropriately, however Asciano believes that a ring fencing regime provides a level of confidence to users of the monopoly service that they can continue to operate in the market and make long term investment decisions with a degree of confidence that they will not be disadvantaged in the future.

### **3.4 Asciano's Concerns Regarding Interfaces with QR Network**

The Queensland Rail network contains several interfaces with the QR National Network. In particular, the main North Coast Line is

- owned and operated by Queensland Rail from Brisbane to Parana (near Gladstone);

- owned and operated by QR National from Parana to Rocklands (near Rockhampton);
- owned and operated by Queensland Rail from Rocklands to Merinda;
- owned and operated by QR National from Merinda to Durroburra; and
- owned and operated by Queensland Rail from Durroburra to Cairns.

Other interfaces also exist around Auckland Point (in Gladstone) and at other points in regional Queensland where the Queensland Rail network meets QR Network.

To date Queensland Rail and QR National have essentially shared an identical Access Undertaking and so there has been no material divergence in access principles and processes. However, with the development of the current Queensland Rail DAU and the expected further developments of the QR National Access Undertaking in June 2013, Asciano is concerned that, given the development of these two separate access undertakings, there may be a level of divergence in regulatory principles and processes between the two networks over time, which in turn will lead to a divergence in operational processes over time. These divergences are likely to be most problematic on the North Coast Line.

Asciano is seeking a commitment from Queensland Rail, via a clause in the Undertaking that it will continue to seek to make these interfaces as seamless as possible. In particular Asciano is seeking that the DAU Schedule B Network Management Principles remain consistent with QR Network operations to the extent that this is possible.

### **3.5 Asciano's Views Regarding Uplift of Access Undertaking Outcomes into Existing Access Agreements**

Asciano recognises that Queensland Rail currently has numerous access agreements with various third party users and that Queensland Rail are likely to reach further agreements following the finalisation of the proposed Access Undertaking.

Asciano notes that the DAU (1.2.1 b) i) B) and 1.2.1 c)) notes that the DAU does not apply to access agreements currently in place.

Asciano believes that current access agreements should be retained as they are in relation to commercial terms and conditions, but in areas where common approaches

are needed to ensure efficient and effective operation Asciano believes that Queensland Rail should consult with existing contracted third parties in order to amend agreements if required. Asciano believes that to the extent that any amendments are required they are likely to be operational amendments (for example including any amended network management principles), and as such these amendments are not likely to be contentious.

## **4 ASCIANO'S SPECIFIC COMMENTS ON THE DAU**

### **4.1 Term**

The DAU has a term of at least four years but not more than five. Queensland Rail (Queensland Rail DAU Explanatory Note page 7) notes that this term is consistent with Australian rail regulatory precedent.

Asciano believes that the term of the Queensland Rail Access Undertaking should be longer. Asciano notes that the current ARTC Interstate Access Undertaking, which largely deals with rail infrastructure used by intermodal traffic, has a term of ten years. This longer term provides increased regulatory certainty for long term contracting of above rail haulage agreements (some of which may require substantial capital investment in rolling-stock).

### **4.2 Extensions**

The DAU (1.4) addresses extensions where extensions are defined to include "enhancement, expansion, augmentation, duplication or replacement". Asciano queries whether replacement assets should be included in the definition of extension. Asciano believes that the terms extension implies some increase in capacity rather than the replacement of an asset with a similar asset.

More generally Asciano believes that the extension framework outlined in the DAU (1.4) is weak and effectively allows Queensland Rail to own an asset and receive a return while incurring no risk in developing, constructing and funding the asset. Asciano believes that the mismatch of risk and return in the extension framework should be addressed and to the extent that Queensland Rail is seeking a zero risk position then Queensland Rail should receive zero return on the asset.

Under the DAU (1.4) Queensland Rail can effectively own and operate the extension although the extension is funded by a third party. Asciano believes that the DAU

should clarify how such an extension is treated with regard to the calculation of the regulatory asset base and the calculation of pricing both for parties who fund such extensions and parties who use the extension but did not initially fund the extension.

#### **4.3 Access Application**

The DAU (2.1) should clarify whether access applications are considered to be confidential. Asciano believes that Access Applications should be treated as though they are confidential by Queensland Rail<sup>1</sup>.

#### **4.4 Negotiation Cessation**

The DAU (2.6.3 c)) essentially requires that in the event of an unsuccessful negotiation the access seeker must pay Queensland Rail's negotiation costs. Asciano believes that this position is commercially inappropriate. In commercial negotiations both parties pay their own costs.

To the extent that Queensland Rail is seeking to move towards a more commercial negotiation for access then it should accept commercial practices in relation to negotiation rather than the more risk averse practices of a government owned monopoly infrastructure provider.

#### **4.5 Capacity Allocation and Queuing**

The DAU has no queuing mechanism and the allocation of capacity between competing access seekers relies on Queensland Rail's opinion as to which access seeker will, in the opinion of Queensland Rail, be the most favourable to Queensland Rail in terms of access charges, costs, access agreement terms and other factors (DAU 2.7.2 a) iv)).

This approach is not acceptable to Asciano as it is neither transparent nor objective and raises the potential for perceptions of "favoured treatment" for some access users by other access seekers, particularly where both access seekers are seeking to serve the same user or haulage task.

Asciano believes that a transparent path allocation methodology and process is much more preferable to a process with a substantial subjective element. In particular:

---

<sup>1</sup> Note that in Asciano's experience Queensland Rail currently de facto treats Access Applications as confidential.

- where there is potential for conflict between Queensland Rail's above rail passenger services and Queensland Rail's below rail network business then this decision making on capacity allocation should be transparent; and
- in the event that there is congestion on particular lines, perhaps due to minerals developments and port developments, then option of queuing should be considered as a transparent and objective capacity allocation option.

Asciano's main concern is that the path allocation be objective and transparent. In the event that the capacity utilisation assessment approach used by Queensland Rail is transparent and objective then Asciano would not oppose such a capacity allocation mechanism.

The DAU (2.7.2 b), c) and d)) addresses capacity allocation where an access seeker seeks access for capacity currently held by an access holder. Queensland Rail propose various measures to address this although under DAU (2.7.2 d)) these measures do not apply if the access holder submits its Access Application to Queensland Rail less than a year before the expiry of the access holders access agreement. Asciano believes that given the negotiation time lines in DAU (2.6 b) ii) d)), where nine months is identified as a maximum time frame for negotiations, the one year requirement in DAU (2.7.2 d)) is inconsistent with this. Given that the re-negotiation of an existing agreement may be undertaken in a time shorter than that envisaged in DAU (2.6 b) ii) d)) Asciano believes that if any time frame is to apply in DAU (2.7.2 d)) it should be six months (or less).

#### **4.6 Reporting**

The DAU (5.1) requires Queensland Rail to provide aggregated train performance reports. Asciano believes that the DAU (5.1) should also allow for Queensland Rail to provide confidential disaggregated reports (consistent with the reports in DAU 5.1) to access holders which relate to services specific to those access holders.

The version of the DAU previously circulated in 2011 contained clauses in section 5 which allowed the QCA to audit Queensland Rail's compliance with its access undertaking. These clauses have been deleted from the current version of the DAU and there has been no specific discussion of this deletion in the Queensland Rail DAU Explanatory Note. Asciano believes that Queensland Rail should explain why the deletion of these clauses occurred.

Asciano strongly supports the implementation of a strong compliance regime in regard to rail regulation in Queensland and believes that the ability of QCA to undertake compliance audits of Queensland Rail should be reinstated into the DAU.

Asciano believes that the QCA should have the explicit power to audit the quarterly and annual reports outlined in DAU section 5, although such audits do not need to be undertaken on all reports.

#### **4.7 Dispute resolution**

The DAU lacks an option for resolution by an expert in the dispute resolution clause (Clause 6.1). Asciano believes that dispute resolution is desirable in any access model, and as such dispute resolution by an expert is likely to be a valuable option for access holders, access seekers and access providers, particularly in specialist areas of dispute such as engineering, finance or rail operations where a more general dispute resolution approach may not be practical.

Asciano appreciates that options for resolution by an expert may be included in the dispute resolution clause in an access agreement, but believe that inclusion of such a clause in the access undertaking is also appropriate.

#### **4.8 Notices**

The DAU (6.3.4 c)) notes that a party is not entitled to object to a notice by fax being illegible unless the party requests a re-transmission within four hours. Asciano believes that this is inappropriate. If a notice is illegible then it cannot be acted upon and a party should be able to object to illegibility without reference to a time frame.

Asciano believes the clause should be deleted as parties acting in good faith could be expected to resolve the issue of illegibility without reference to an access undertaking clause.

#### **4.9 Access Agreement Principles**

The DAU Schedule C contains a series of principles to be used for access agreements.

Asciano understands that COAG (the Council of Australian Governments) has indicated its preference for using the ARTC standard form agreement (as determined



via an ACCC process) as a base rail access agreement template. To this end Asciano believes that Queensland Rail should consider using the ARTC standard form agreement as the basis for any future standard form access agreement. Asciano believes that the ARTC standard form agreement is more even handed and efficient in relation to risk management clauses than the DAU, the Access Agreement principles in the DAU and the Queensland Rail standard form agreement attached to the DAU.

Asciano's specific comments on these principles are as follows:

- 5.1 d) - allows Queensland Rail to perform Rail Infrastructure Operations (i.e. construction, repairs and maintenance) at any time without the access holders consent. Asciano believes that there should be an obligation placed on Queensland Rail to use reasonable endeavours to consult with access holders prior to performing Rail Infrastructure Operations and for Queensland Rail to use best endeavours to minimise the impact on access seekers ;
- 8.1 - requires that the access holder not carry dangerous goods, except as expressly provided for in the Access Agreement. Asciano believes that access holders should be able to carry dangerous goods provided the access holder complies with the relevant laws and codes;
- 10 and 11 – these sections largely act to indemnify Queensland Rail and limit Queensland Rail's liability in certain circumstances. These sections essentially shift risk from Queensland Rail to the operator. Asciano believes that these sections are generally inappropriate as Asciano believes that the party which can best manage and control the risk should bear the consequence of the risk. Thus for many risk factors it is Queensland Rail rather than the operators who should be bearing risk. In particular it should be noted that operators may not be able to obtain insurance for factors which are under control of the track access provider.

More generally the accepted commercial practice is for each party to indemnify (i.e. insure) the other against claims made against one party as a result of the negligence or breach of the other party. Thus it is inherently unfair for Queensland Rail to seek that operators indemnify Queensland Rail for claims made by the operator's customers where the cause of the damage

suffered by our customers is something done or not done by Queensland Rail;

- 14 - requires the access holder to provide a security deposit to Queensland Rail. Asciano believes that a security deposit should only be required if the access holder cannot meet certain financial criteria (e.g. credit rating). Asciano notes that it is not required to provide a security deposit to other rail infrastructure providers if financial criteria are met;
- 16 c) – allows Queensland Rail to determine disputes in some instances even where Queensland Rail may be a party to the dispute. Asciano does not believe that a dispute resolution clause that allows a party to a dispute to settle the dispute is appropriate in principle;
- 17 b) – allows Queensland Rail to elect to not replace infrastructure damaged by a force majeure event until the funding of the repairs is agreed with the other parties. Asciano believes that such a position poses additional fundamental risks on operators and shippers and is fundamentally unfair. Asciano accepts that operators and / or users may have to fund infrastructure improvements but Asciano believes that it is inappropriate to require operators and / or users to fund repairs to existing infrastructure which result from a force majeure event. Asciano believes that the risk of such events and the attendant repair costs is implicit in the rate of return received by Queensland Rail.
- 18.2 b) – provides for a detailed and prescriptive process for the determination of the fee payable when an access holder relinquishes their access rights. (The process outlined is effectively the process used in raiing coal in Queensland and is explicitly linked to take or pay charges that would have been payable). For the purposes of a broad set of access agreement principles which are intended to form the basis of a commercial negotiation across a range of rail traffics a relinquishment fee as outlined in clause 18.2b) is inappropriate and should be removed. If any relinquishment fee is required it should be determined in negotiation with reference to the nature of the traffics and access sought.

## **5 ASCIANO'S SPECIFIC COMMENTS ON THE STANDARD FORM ACCESS AGREEMENT**

The comments below are on the Standard Form Access Agreement for West Moreton coal traffics. Asciano recognises that some of these clauses may be specific to West Moreton coal traffics but Asciano remains concerned that once approved these clauses may then be used in other negotiated agreements or new Standard Form Agreements implemented under DAU 2.8.

These comments can also be read in the context of the Schedule C Access Agreement Principles, whereby to the extent that the clause commented on below reflect the proposed Access Agreement Principles the comments below apply to the Access Agreement Principles.

### Clause 6.5 Operator to Supply Information

This clause requires the operator to maintain software, hardware and communications links with Queensland Rail, where Queensland Rail can alter these at its absolute discretion. Asciano believes that such an obligation has the potential to impose substantial costs on operators. Asciano believes that there should be an obligation placed on Queensland Rail to consult with access holders prior to substantially amending software, hardware and communications links and performing Rail Infrastructure Operations and for Queensland Rail to use its best endeavours to minimise cost and disruption for the operator.

### Clause 6.6 Queensland Rail May Supply Data

Clause 6.6d) indicates that:

*Any intellectual property rights in relation to the Operator's business or Train Services that are discovered or developed, or otherwise come into existence, in connection with the Data are assigned to and vest in Queensland Rail ...*

This clause is too broad and should be limited to either the specific train services or rolling stock. It should not extend to cover the business of the operator.

### Clause 6.8 Operating Requirements

This clause allows Queensland Rail to amend the operating requirements, and though in making these amendments Queensland Rail must consult with the operator, Queensland Rail is under no obligation to compensate the operator when

these amendments result in a material financial impact on the operator. In addition Queensland Rail should include a best endeavours obligation to minimise the impact on the operator.

Access agreements should allow compensation of operators.

#### Clause 10.2 Operators Indemnity

The entire indemnity clause is one sided and essentially shifts risk from Queensland Rail to the operator. Queensland Rail is not offering any indemnities to the operator. Asciano believes that this clause in general is inappropriate as the party which can best manage and control the risk should bear the consequence of the risk.

Clause 10.2 requires the operator to indemnify Queensland Rail against claims and losses including claims and losses arising from claims by customers and third parties. Asciano believes that:

- clause 10.2 d) which indemnifies Queensland Rail from claims by the operator's customers. This clause should be deleted from Standard Form Access Agreements. Asciano believes that it is unfair for Queensland Rail to seek that operators indemnify Queensland Rail for claims made by the operator's customers where the cause of the damage suffered by the operator's customers is something done or not done by Queensland Rail. The cost of risk should be borne by the party that can best control that risk. Queensland Rail is best able to insure against these costs; and
- clause 10.2 e) which indemnifies Queensland Rail from claims by third parties with whom the operator has shared data. This clause is too broad and should be deleted in Standard Form Access Agreements unless it is substantially narrowed to address a specific area of particular concern. In particular it should be noted that;
  - clause 6.6 addresses issues of relating to data, and this clause should be sufficient; and
  - to the extent that data is provided by Queensland rail they could place conditions on the provision of that data (for example they could require that to the extent data is shared with third parties that the operator has an obligation to ensure that the third parties are aware that they should not rely on the data, but rather should form their own views).

Clause 11.1 General Caps on Liability

This clause caps Queensland Rail's liability. This limitation on liability is only in favour of Queensland Rail. This is an inefficient approach to risk management.

Queensland Rail is able to (and to Asciano's knowledge currently do) insure for this risk; the Operators cannot insure for this risk, or if they can they would have to incur a significant increase in their costs. Thus Queensland Rail should insure for these risks and then pass the insurance cost onto the operator through the access charge. This is the most efficient approach to the costs of risk management.

The most efficient outcome is one where the party which can best manage and control the risk should bear the consequence of the risk. In many instances this party may be Queensland Rail.

Clause 11.3 Exclusion of Liability

This clause excludes liability or limits liability to 41 for certain liabilities. The exclusions and limitations of liability apply to Queensland Rail only. Asciano believe that to the extent that a liability exclusion is required and then agreed then it should be reciprocal.

In any event, Asciano seeks that clauses 11.3 d), e) and f) be deleted even if a modified form of this non-reciprocal cap were to continue.

Clause 11.4 Limitation on Claims

This clause limits claims between the parties to an amount above \$500,000 in relation to one event (or related series of events).

Asciano believes that the twelve month time frame and claim limit are too restrictive. Asciano notes that it has smaller limits with other track access providers.

Clause 13.4 Termination for Change in Control

This clause allows Queensland Rail to terminate the access agreement for a change in control of an operator. Asciano believes that such a clause is too broad and that Queensland Rail should at least be required to provide some material reason for such a termination relating to either bona fide operational or safety concerns or bona fide concerns regarding financial strength. The new owner of the operator should be allowed an opportunity to address any Queensland Rail concerns (for example by providing safety accreditation or a security deposit).

Clause 14.2 Insurer

This clause requires the operator's insurer is licensed to carry out an insurance business in Australia and has a particular financial rating.

Asciano notes that it in its experience it is impossible to obtain insurance for rail operations from any insurer in Australia for the amounts that Queensland Rail is requiring and as such the requirement for the insurer to be Australian based cannot be met.

Clause 14.3 Essential Terms and Conditions (Of Insurance)

This clause indicates that Queensland Rail is a co-insured party and that due to this co-insurance a severability clause and non-imputation clause are required and a subrogation clause should be waived.

This clause is not likely to be commercially acceptable as written as Asciano does not believe that insurers are likely to agree to the essential terms sought. The approach adopted elsewhere is to note the track provider's interest on the insurance policy.

Clause 14.6 Disclosure of Insurance

Under this clause an operator may be required to produce copies of its insurance policies. Asciano's insurance policies are confidential and as such cannot be supplied. Asciano understands that this is likely to be the case for the insurances of other access seekers and holders.

It is standard industry practice to supply certificates of currency.

Clause 17.5 Resolution of Disputes by Queensland Rail

Under this clause if a dispute is in relation to the IRMP or safety and the dispute is not otherwise resolved it may be resolved by Queensland Rail.

Asciano believes that this clause is unfair as a party to a dispute (Queensland Rail) is effectively the final arbiter of the dispute to the extent the dispute concerns safety or the IRMP. Asciano believes that any such dispute should be resolved by the Rail Safety Regulator or failing that another safety expert acceptable to both parties.

## 6 CONCLUSION

Overall Asciano is concerned that the DAU is focussing on a “negotiate and arbitrate” model rather than QCA approved standard form access agreements and pricing. Asciano’s believes that commercial negotiations may be more expensive and complex than reliance on approved regulated reference prices and standard agreements (where there remains scope for some negotiation). Thus Asciano is seeking that:

- other Reference Tariffs should be included in the DAU, including, for example an intermodal or general freight tariff for the north coast line, (and that if such reference tariffs are not included Asciano is seeking that Queensland Rail supply further cost data to facilitate equitable price negotiations); and
- other Standard Form Access Agreements should be included in the DAU, including, for example an intermodal or general freight agreement for the north coast line.

Asciano is also seeking that a level of ring fencing and cost separation should be applied to Queensland Rail. While Queensland Rail does not directly compete with access holders, Queensland rail does operate above rail passenger services which may impact on above rail freight services via operational restrictions and the impact of cost allocations on pricing.

Asciano also has numerous detailed concerns with the details of the DAU and the Standard Form Access Agreement. Many of these concerns are focussed on the one sided nature of Queensland Rail’s approach to liability, insurance and indemnity. Asciano is particularly concerned that Queensland Rail is seeking to minimise risks which it is in a better position to manage than other parties.

Other major concerns include the extensions policy, capacity allocation, re-contracting for access and the need for the continuation of both a ring fencing regime and QCA powers to monitor and audit such a regime.



**Asciano Further Submission to the  
Queensland Competition Authority  
in relation to the Queensland Rail  
Ltd Draft Access Undertaking**

September 2012

---



# Table of Contents

1	Introduction and Background .....	3
2	Overview of Asciano’s and Other Respondent’s Previous Submissions to the Queensland Rail DAU .....	3
3	General Comments on Issues Raised in Submissions to the Queensland Rail DAU.....	9
4	Detailed Comments on Specific Proposals and Issues Raised in Submissions to the Queensland Rail DAU .....	10
5	Conclusion .....	16

## **1 INTRODUCTION AND BACKGROUND**

Asciano welcomes the opportunity to make a further submission to the Queensland Competition Authority (QCA) on Queensland rail's Draft Access Undertaking (DAU).

Asciano has made a previous public submission on this issue to the QCA in July 2012 as part of the first round of QCA consultation on this issue. Following this round of consultation the QCA considered that various respondents raised a number of issues in their submissions on which other respondents and stakeholders may wish to comment. Consequently this current Asciano submission is focussed on commenting on the issues raised in other respondent's submissions to this consultation process. This submission should be read together with Asciano's initial submission of July 2012.

There were eight submissions to the Queensland Rail DAU consultation process. Of these submissions seven submissions were from rail operators or end users (or industry groups representing these users) who use Queensland Rail infrastructure and one submission was from Queensland Rail itself, which supported the Queensland Rail DAU as proposed. This current Asciano submission will focus on the issues raised in the submissions from rail operators and end users. As Asciano does not operate in the West Moreton system, this current response will not make detailed comment on any proposals specific to the West Moreton system.

This submission is public.

## **2 OVERVIEW OF ASCIANO'S AND OTHER RESPONDENT'S PREVIOUS SUBMISSIONS TO THE QUEENSLAND RAIL DAU**

Asciano previously made a submission on this issue to the QCA identifying a number of concerns with the DAU. Similarly submissions from other rail operators and end users raised numerous issues with the DAU. Many of the comments of other respondents broadly align with the positions put forward by Asciano in its submission. As such Asciano generally supports comments which are broadly aligned with Asciano's own position. The table below identifies broad issues identified in submissions and position of Asciano and other respondents to these issues.

**Table 1: Broad Issues Identified in the July 2012 Submissions to the QCA in relation to the Queensland Rail DAU**

<b>Broad Issue<sup>1</sup></b>	<b>Asciano Position in its Previous Submission</b>	<b>Position of Other Respondents in their Previous Submissions</b>
Need to separate Queensland Rail's track access operations from Queensland Rail's above rail passenger operations.	Asciano supports ring fencing of Queensland Rail's track access operations from Queensland Rail's above rail passenger operations. Further to this Asciano supports a strengthened reporting and compliance regime.	Other respondents support ongoing Queensland Rail transparency on this issue (e.g. AMEC), ongoing Queensland Rail ring fencing on this issue (XStrata) or otherwise note that Queensland Rail's ongoing above rail operations may disadvantage freight operators ( e.g. QRN).
Appropriateness of a revenue cap as opposed to a price cap.	Asciano previously had no substantive comment on this issue.	New Hope support price cap over a revenue cap as it is more efficient.
Appropriateness of the level of information provision by Queensland Rail, particularly in relation to the facilitation of commercial negotiation.	Asciano believes that Queensland Rail must provide more detailed cost information in order to facilitate negotiations under the "negotiate and arbitrate" model; however such negotiations remain a second best solution to reference prices.	Other respondents (e.g. QRN, XStrata) support the provision of additional information by Queensland Rail in order to facilitate more balanced commercial negotiations.
Appropriateness of the development of a non-coal standard form agreement.	Asciano supports a standard non-coal access agreement (or agreements), with the COAG standard approach being preferred.	Xstrata also supports a standard non-coal access agreement.
Appropriateness of the price setting approach to be used in determining access prices, and in particular whether non-coal reference tariffs should be developed.	Asciano supports a standard non-coal reference tariff (or tariffs).	Xstrata supports the concept of a non-coal reference tariff being developed if requested by an access holder.
Need to ensure improved capacity assessment and system planning on constrained systems.		Other respondents (e.g. QRC, Peabody) seek the development of improved capacity assessment

<sup>1</sup> Respondents often identified a broad issue but may have characterised the issue in a different manner to other respondents or may have proposed a different solution to other respondents. This identification of broad issues necessarily summarises and synthesises these views.

Broad Issue <sup>1</sup>	Asciano Position in its Previous Submission	Position of Other Respondents in their Previous Submissions
		processes and system planning processes for constrained Queensland Rail systems.
Need for a higher standard of maintenance and improved maintenance obligations	Asciano supports higher maintenance standards.	Numerous users (e.g. Peabody Energy, QR National, QRC, and XStrata) supported higher standards of maintenance and / or improved obligations to maintain the network.
Options for the term of the DAU	Asciano supports a longer term (up to ten years) for the DAU.	New Hope supports a term for the access undertaking of 3.5 to 4.5 years.
Appropriateness of the framework supporting investment in extensions including issues relating to the third party funding of extensions and capacity allocation issues arising from any third party funding of extensions.	Asciano queries the definition of extension and the mismatch of risk and return in relation to developing extensions.	<p>Numerous users (e.g. AMEC, New Hope, Peabody, QRC and XStrata) had numerous concerns regarding the proposed extension framework. Issues raised included:</p> <ul style="list-style-type: none"> <li>• priority access for the user funding the extension;</li> <li>• removal of Queensland Rail's absolute discretion as to whether extensions are built, where this discretion is to be replaced by an objective test where extensions are funded by users;</li> <li>• requirement for Queensland Rail to demonstrate that their capital costs in constructing the extension are prudent;</li> <li>• inclusion of an option to allow the user to construct the extension and then transfer the extension to Queensland Rail;</li> <li>• requirement for Queensland Rail to develop a standard user funding agreement.</li> </ul> <p>Overall there was a general view that this section required clarification and improvement.</p>

Broad Issue <sup>1</sup>	Asciano Position in its Previous Submission	Position of Other Respondents in their Previous Submissions
Options relating to mechanisms for allocating capacity	Asciano supports transparent and objective capacity allocation approaches rather than the proposed subjective approach.	Numerous users (e.g. XStrata, Peabody) support an objective and transparent capacity allocation approach, with several users (e.g. AMEC, new Hope, Peabody) identifying queuing as an acceptable objective and transparent capacity allocation approach.
Options relating to mechanisms for the renewal of access rights	Asciano previously had no substantive comment on this issue.	Numerous users (e.g. AMEC, New Hope, Peabody, QRC and XStrata) had concerns regarding renewal rights. In particular there was a view that the renewal rights should be held by users and that there should be increased certainty of access agreement renewal. In addition users should be notified of time frames regarding renewal of access rights and other issues relating to renewals should be further clarified.
Options for access rights (and the renewal and transfer of these rights) being held by end users.	Asciano previously had no substantive comment on this issue.	<p>Numerous users (e.g. AMEC, New Hope, Peabody, QRC and XStrata) support the option of users holding access rights. In particular the following concepts were supported:</p> <ul style="list-style-type: none"> <li>• development of a standard access agreement for users holding access;</li> <li>• under a user agreement users should be able to transfer operators;</li> <li>• users should be able to transfer their access rights;</li> </ul> <p>In addition to the above concepts the issue was raised that in the event an operator holding access rights defaults or terminates then the access rights should pass to the user.</p>

Broad Issue <sup>1</sup>	Asciano Position in its Previous Submission	Position of Other Respondents in their Previous Submissions
Options for including connection principles in the DAU.	Asciano previously had no substantive comment on this issue.	XStrata supports the inclusion of a set of connection principles in the DAU.
The appropriateness of the Queensland Rail approach to risk management and risk allocation, including issues such as the treatment of liability and the treatment of dangerous goods.	<p>Asciano believes that the Queensland Rail approach to risk management is inappropriate as it seeks to shift all risk to users and operators rather than assign risk to those best placed to manage that risk. Examples of this include<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>• operators should be able to carry dangerous goods subject to reasonable safeguards consistent with the <i>Australian Code for the Transport of Dangerous Goods by Road and Rail</i>,</li> <li>• operators should not indemnify Queensland Rail for claims made by the operators customers where the damage is related to an action by Queensland Rail;</li> <li>• limitations on liability are in favour of Queensland Rail.</li> </ul>	<p>Several respondents (e.g. QRN and XStrata) argued that the risk allocation between Queensland Rail and access holders is inappropriate. In particular XStrata identified numerous examples where there should be a more equitable sharing of risk including dangerous goods, liability, indemnity and force majeure.</p> <p>AMEC supported the DAU clauses relating to dangerous goods and Queensland Rail supported its position of dangerous goods with a consultant's report on managing the risks of dangerous goods.</p>
Numerous issues in the detailed drafting of the DAU and the standard form access agreement which act to favour Queensland Rail rather than reflect a more balanced approach.	<p>Asciano supports a more balanced approach. Examples of this include<sup>3</sup>:</p> <ul style="list-style-type: none"> <li>• currently access seekers are to pay Queensland Rail costs in some circumstances. This should be amended so that both parties pay their own costs;</li> <li>• currently access holders are to pay a security deposit. This should be amended so that both deposits are only paid in defined circumstances;</li> </ul>	<p>Respondents identified numerous issues with the drafting of the DAU and where the drafting favoured Queensland rail.</p> <p>Notably XStrata, QRC, Peabody and New Hope all identified an issue relating to clause 19 of the standard access agreement where currently the drafting allowing the reduction of access rights due to under utilisation are too restrictive and should be extended.</p>

<sup>2</sup> This listing of examples is not intended to be exhaustive.

<sup>3</sup> This listing of examples is not intended to be exhaustive.

<b>Broad Issue<sup>1</sup></b>	<b>Asciano Position in its Previous Submission</b>	<b>Position of Other Respondents in their Previous Submissions</b>
	<ul style="list-style-type: none"><li>• currently under the dispute resolution clause some disputes may be resolved by Queensland rail. This should be amended so an independent party resolves the dispute.</li></ul>	

### **3 GENERAL COMMENTS ON ISSUES RAISED IN SUBMISSIONS TO THE QUEENSLAND RAIL DAU**

The table in Section 2 above shows that there are relatively consistent positions from many respondents across many of the issues identified. This demonstrates that many of the issues identified are of genuine concern to both operators and end users and should be addressed by the QCA and Queensland Rail through this current regulatory process.

Some of the issues identified in the table in Section 2 above may be difficult to resolve with simple “one size fits all” amendments as different parts of the Queensland Rail network are utilised by different traffics with different operating and commercial requirements and different risk profiles. This heterogeneous usage profile creates issues for Queensland Rail in drafting a “one size fits all” access undertaking. As such, consideration should be given to having different regulatory approaches for these different network sections under the broad framework of an access undertaking. These different approaches could, for example, include different standard form access agreements, different approaches to end user funding of capital extensions and different approaches to having end users holding access rights.

Asciano believes that the three main sections of the network requiring different treatments are:

- the West Moreton Coal system – primarily coal traffics;
- the Mt Isa – Townsville system – primarily bulk minerals traffics; and
- the North Coast Line – primarily intermodal but with substantial bulk traffics in certain sections.

Asciano believes that while a single access undertaking can cover the entire network within the undertaking there should be different approaches for the different network sections which are designed to meet the different needs of traffic on these sections.



## **4 DETAILED COMMENTS ON SPECIFIC PROPOSALS AND ISSUES RAISED IN SUBMISSIONS TO THE QUEENSLAND RAIL DAU**

The table in Section 2 above identifies numerous broad issues which were raised in the responses to the Queensland Rail DAU. This section provides comment on the Asciano position on these issues within the context of comments made by other respondents<sup>4</sup>.

### **Separation and Ring Fencing**

Asciano continues to strongly support ongoing separation and ring fencing of Queensland Rail's track access operations from its above rail passenger operation. Asciano does not believe that any respondents support a removal of ring fencing protections.

In particular Asciano is seeking that ring fencing be supported by a strengthened reporting and compliance regime.

### **Price Cap Regulation**

Asciano notes that New Hope supports a move away from revenue cap regulation towards price cap regulation. This form of regulation typically provides increased incentives for operational efficiency and increased incentives to grow volumes. Asciano recognises that price cap regulation has benefits but believes that the decision on the form of regulation requires further information and discussion before a final position can be taken. In particular given the heterogeneous nature of traffic on the Queensland Rail network any details of a price cap mechanism would be complicated by considerations of what traffics and what sections of the system were subject to price caps, .

### **Level of Cost Information Provided by Queensland Rail**

Asciano continues to strongly support the provision of more detailed cost information by Queensland Rail in order to facilitate improved access price negotiations. Asciano does not believe that any respondents support a position where the level of detailed information provided by Queensland Rail is reduced.

---

<sup>4</sup> In discussing the submissions of respondents in this section Asciano is not taking into account the submission by Queensland Rail. Queensland Rail has, quite properly, made a submission supporting the Queensland Rail proposal.

### **Development of Non-Coal Standard Form Agreements and Non Coal Reference Prices**

Asciano continues to strongly support the development of a non-coal standard access agreement. In particular Asciano supports the development of standard form agreements for both the Mt Isa – Townsville system and the North Coast Line. In particular Asciano believes that the COAG standard (i.e. the ARTC access agreement) is a useful template in developing a non-coal standard access agreement. This COAG standard provides a more balanced approach to risk management issues than the current Queensland Rail approach.

Asciano notes that XStrata also supports the development of such an agreement on the Mt Isa – Townsville system.

Asciano does not believe that any respondents oppose the development of a non-coal standard access agreement.

### **Improved Capacity Assessment and System Planning**

Several respondents sought that Queensland Rail develop improved capacity assessment processes and improved system planning processes for constrained Queensland Rail systems. Asciano supports the development of improved objective and transparent system processes and the development of improved capacity assessment processes and system planning processes. At a minimum any system plan should include system operating assumptions, system capacity, contracted capacity, actual and potential capacity constraints and capacity expansion options to address capacity constraints. The details of improved capacity assessment processes and system planning processes should be developed by Queensland Rail in consultation with the relevant operators and users.

In addition, Asciano supports Queensland Rail providing increased information to operators and end users on:

- the capacity impacts of planned and unplanned service interruptions; and
- the condition of the rail infrastructure.

### **Improved Maintenance**

Several respondents supported the introduction of processes which resulted in higher standards of maintenance and improved obligations on Queensland Rail to maintain the network. Of particular concern is the ability of Queensland Rail to shift the

consequences of poor maintenance on to operators and end users, who are not well positioned to manage this risk.

Asciano believes that further clarity and transparency on maintenance standards is required, and in particular information on how maintenance and service quality are combined with price for a service offering. Asciano supports the development of processes to establish higher standards of maintenance, where the benefits of such maintenance are greater than the costs of the maintenance.

Asciano believes that Queensland Rail should be liable for delays and damage resulting from maintenance below the objective standard. Furthermore Queensland Rail should warrant that the network is of an appropriate standard for operating the relevant train services.

#### **Term of the Access Undertaking**

Asciano supported a longer term for the access undertaking than the five years proposed by Queensland Rail.

Asciano notes that the current ARTC interstate access undertaking, which largely deals with intermodal traffic, has a term of ten years, whereas the current ARTC Hunter Valley access undertaking and QR Network access undertaking, which deal with coal traffic, has a term of five years. These different terms are driven by the needs of the different traffics carried by the networks and by their different risk profiles and commercial and operating requirements

Given the Queensland Rail network carries intermodal, bulk and coal traffics there is a problem in meeting the needs of all the traffics carried. While continuing to support a longer term Asciano does not oppose a five year term for the access undertaking.

#### **Extensions Policy**

Respondents, including Asciano, identified numerous concerns with the proposed extensions framework put forward by Queensland Rail. The concerns raised by the respondents covered numerous shortcomings of the current extensions proposal. As such Asciano believes that Queensland Rail should redraft the entire section relating to extensions and include the following concepts:

- an objective test as to when an extension is to be constructed, which may be linked to the availability of user funding;
- a standard user funding agreement to be developed. Asciano notes that QR Network are currently developing such an agreement and a simplified version of any agreement finally developed by QR Network is likely to be a suitable agreement to be used by Queensland Rail;
- an option for either a third party or Queensland rail to construct the extension, and
  - where Queensland Rail is constructing the extension there should be requirements that construction costs are efficient; and
  - where a third party is constructing the extension there should be a requirements that the extension is transferred to Queensland Rail upon completion unless otherwise agreed;
- a transparent process as to how capacity on an extension will be allocated when the extension is funded by a user.

Asciano further notes that as such extensions are expected to be funded by end users and that Queensland Rail should further consult with end users to develop its extensions policy.

#### **Capacity Allocation Policy**

Asciano and other respondents broadly supported the introduction of a more objective and transparent capacity allocation approach, with several respondents suggesting that a queuing process would be acceptable. Asciano has no fundamental concern with queuing as an objective and transparent allocation policy but any queuing process should address concerns relating to the renewal of existing access rights.

#### **Renewal of Access Rights**

Numerous respondents had concerns regarding the renewal of access right, in particular that renewal rights should be held by end users rather than operators and there should be increased certainty of access renewal.

Asciano has no concerns with end users holding renewal rights, assuming that such renewal rights are not used as a means to prevent new entrants from obtaining access.

### **End Users Holding Access Rights**

Asciano broadly supports the concept of providing end users the option of holding access rights in their own right in circumstances where trains serve a single end user (this is more likely to be the case where end users are miners rather than where end users are engaged in general freight operations).

Asciano believes that Queensland Rail should develop a standard form of end user access agreements and a standard form of operator agreements. These agreements should be developed for those line sections and markets where an operator access agreement is already in place or is required to be developed.

Asciano notes that the QCA is currently consulting on end users holding access rights on the QR National network. Asciano believes that the outcome of this consultation may provide a useful template for further development of the concept of end users holding access in the context of the Queensland Rail access undertaking; particularly as the current QCA process is likely to address the numerous issues of detail that will arise in considering this issue. One issue in particular that may arise is the potential for end users to transfer between operators; while Asciano does not oppose this concept per se, any further consideration of end users transferring between operators should involve consultation with operators to ensure that any proposals are workable in practice.

Related to the above issue of end users holding access, some end users sought to include wording in standard operator's access agreements which provided some rights to end users in certain circumstances. These proposals included:

- the right of renewal of the access agreement should attach to the end user rather than its incumbent operator;
- in circumstances where the operators agreement is terminated the end user should have a right to enter into a new access agreement within a certain time frame rather than lose its access;
- transfers of the access rights require the consent of the relevant end user;

Asciano has no issues in principle with these proposals but notes that they may be more applicable to trains which are used by a single end user (this is more likely to be the case where end users are miners rather than where end users are engaged in general freight operations).

### **Risk Management and Risk allocation**

Several respondents, including Asciano, identified that the risk allocation between Queensland Rail and the access holders is inappropriate. In particular Xstrata identified numerous examples where there should be amore equitable sharing of risk. Asciano support the examples identified by Xstrata.

Of particular concern to Asciano is the current Queensland Rail approach to the management of the liabilities and indemnities associated with dangerous goods and the fact that the carriage of such goods appears to be at Queensland Rail's absolute discretion. Asciano believes that a more appropriate position is one where rail operators can carry dangerous goods in accordance with the relevant laws and codes relating to the carriage of dangerous goods. (Such an approach is used by other rail infrastructure providers in Australia).

Asciano notes that Queensland Rail has submitted a document from PWC relating to the treatment of the liability of dangerous goods. This paper seems to incompletely identify dangerous goods, focussing on goods such as explosives, while not addressing mineral concentrates. Asciano believes that in considering issues related to dangerous goods it may be useful for Queensland Rail to more closely identify which dangerous goods cause it the most concern.

This PWC paper further takes the position that the access holder is best placed to manage all risks associated with dangerous goods even if these risks arise due to Queensland Rail's actions. This is an economically flawed argument and Asciano strongly disputes this position.

Asciano supports a position where access holders can carry dangerous goods where the appropriate safeguards are in place and there is compliance with the appropriate laws and codes. Under this approach the liabilities associated with the carriage of these goods should be borne by whichever party is best able to control the risk<sup>5</sup>, but in any event the liability for any incident involving dangerous goods should be borne by whichever party's negligence resulted in the incident.

---

<sup>5</sup> This issue has previously been addressed by the QCA in relation to the QR Network Access Undertaking, specifically in the December 2009 QCA Draft Decision on the QR Network Access Undertaking. The QCA found that the allocation of risk is most efficient when borne by the party in the best position to manage the risk. Asciano does not believe that anything has occurred in the interim to change this QCA position.

If the appropriate safeguards are in place then Queensland Rail should not be able to refuse to provide access for dangerous goods or should not put in place an access regime that has the effect of making such access commercially non-viable through inappropriate liability and indemnity provisions.

Asciano notes that the policy outcome of the Queensland Rail position is that more dangerous goods will be carried by road, which is likely to expose the public to greater risks than if the goods were carried by rail.

## **5 CONCLUSION**

Overall Asciano supports the majority of positions put forward by the respondents to the QCA consultation process. In particular, there are relatively consistent positions from many respondents across many of the issues, demonstrating that these issues are of genuine concern and should be addressed.

Of particular concern to Asciano are:

- the need for ongoing ring fencing of Queensland Rail's above rail and below rail functions;
- the need for provision of more detailed cost information by Queensland Rail in order to facilitate improved pricing negotiations;
- the development of non-coal standard access agreements; and
- the need for a much improved approach to risk management by Queensland Rail as its current approach is completely inappropriate as it seeks to shift all risks to users. Of particular concern are the clauses relating to dangerous goods.

Asciano believes that this latter point in particular should receive further attention from the QCA.



**Asciano Submission to the  
Queensland Competition Authority  
in relation to the Queensland Rail  
2013 Draft Access Undertaking**

April 2013

---



# Table of Contents

1	Introduction .....	3
2	Asciano Comments on Queensland Rail Amendments Made in The 2013 DAU .....	4
2.1	Comments on the Preamble .....	4
2.2	Comments on Section 2.6.5 Rail Safety and Other Considerations for Passengers .....	5
2.3	Comments on Section 2.7.2 and 2.7.3 Access Seekers Competing for Access Rights and Renewals .....	5
2.4	Comments on Part 5 Reporting .....	7
2.5	Comments on Part 6 Administrative Process .....	7
2.6	Comments on Schedule C Access Agreement Principles .....	7
2.7	Comments on Schedule F Standard Access Agreement .....	10
2.8	Comments on Omissions .....	10
3	Asciano Comments on Issues Previously Raised by Asciano but Not Addressed in the Queensland Rail 2013 DAU.....	10
4	Conclusion .....	14
	Attachment 1 - 2013 DAU Sections Which Asciano has not Been Commented Upon in this Submission.....	15

## **1 INTRODUCTION**

Asciano welcomes the opportunity to make a submission to the Queensland Competition Authority (QCA) on the Queensland Rail 2013 draft access undertaking. Asciano, via its subsidiary Pacific National, uses the below rail assets of Queensland Rail for intermodal and minerals haulage.

In February 2013, Queensland Rail withdrew its 2012 draft access undertaking (2012 DAU) and submitted a new draft access undertaking (2013 DAU) to the QCA. Asciano recognises that the 2013 DAU submitted by Queensland Rail takes into account some issues raised by stakeholders in their responses to the 2012 DAU.

Asciano has previously commented on the Queensland Rail 2012 DAU in July 2012 and September 2012. To the extent that issues raised in these submissions have not been addressed in the 2013 DAU Asciano is seeking that they be considered by the QCA in its 2013 DAU approval process.

Asciano welcomes the consultative approach that has been used by Queensland Rail throughout this process.

Asciano notes that the QCA and Queensland Rail are undertaking a series of consultation sessions on various issues relating to the 2013 DAU. Asciano understands that issues to be addressed at these sessions include:

- above rail operational issues;
- Western system coal pricing;
- aspects of the proposed Standard Access Agreement;
- Mount Isa pricing; and
- investment framework matters.

Asciano is intending to attend the consultation sessions relevant to Asciano's activities on the Queensland Rail Network.

This current submission addresses those issues raised in the 2013 DAU which are not the subject of a consultation session. Following the consultation sessions Asciano will make a further submission on above rail operational issues, aspects of the proposed Standard Access Agreement, Mount Isa pricing and investment

framework matters. For the purpose of clarity sections of the 2013 which Asciano has not commented upon are outlined in Attachment 1. These sections will be commented upon in a subsequent submission.

This submission is public.

## **2 ASCIANO COMMENTS ON QUEENSLAND RAIL AMENDMENTS MADE IN THE 2013 DAU**

Asciano notes that numerous changes have been made between the 2012 DAU and 2013 DAU. Asciano comments on these changes are outlined in the section below<sup>1</sup>.

### **2.1 Comments on the Preamble**

Asciano notes that Queensland Rail has included an expanded preamble to the 2013 DAU. The preamble (2013 DAU page 2) includes statements regarding the commercial viability of the network and the competitive position of the network compared to other transport modes.

Asciano does not believe that these statements should be included as part of an access undertaking. By having QCA approve an access undertaking containing these statements the QCA could be seen as endorsing Queensland Rail's view as to its market position. Asciano does not believe that the QCA should be required to approve subjective statements only tangentially related to access. The access undertaking should be restricted to matters of access.

Asciano notes that the 2013 DAU preamble (2013 DAU page 2) also includes amended wording which states

*It provides a balanced approach to the provision of Access and a framework (based on a negotiate/arbitrate model) to manage negotiations in an efficient and transparent manner for Operators seeking Access to Queensland Rail's Network*

Asciano believes that views as to whether the undertaking is balanced, efficient and transparent are largely subjective and as such should not be included in the access undertaking.

---

<sup>1</sup> These comments exclude comments on above rail operational issues, aspects of the proposed standard access agreement, Mount Isa pricing and investment framework matters.

Overall Asciano believes that the preamble, if necessary, should be restricted to objective description of the background to the access undertaking.

## **2.2 Comments on Section 2.6.5 Rail Safety and Other Considerations for Passengers**

Asciano notes that section 2.6.5 a) and d) now effectively state that if proposed access rights may adversely effect passenger train operations in Brisbane that access may be denied. Asciano appreciates that the drafting of 2.6.5 b) and c) indicate that Queensland Rail and the access seeker should work together to seek a solution to the issue, however Asciano is concerned that the final decision is at Queensland Rail's discretion.

This is of particular concern as there is potential for Queensland Rail as an operator of passenger trains may have a conflict of interest in making such a decision. Asciano believes that an independent body, such as the QCA, should be involved in such a decision making process to ensure neutrality.

## **2.3 Comments on Section 2.7.2 and 2.7.3 Access Seekers Competing for Access Rights and Renewals**

Section 2.7.2 effectively allows that in the event that there are competing access requests then the access request which provides the most favourable terms to Queensland Rail will be granted access priority, and in the event that the competing access requests are identical then the first application received will be accepted. The Section provides for unsuccessful applicants to be provided with reasons as to why their application was unsuccessful.

Asciano has no fundamental concerns with the principles in section 2.7.2 if there are no existing hauls or other access rights which are impacted. However, Asciano has a concern with the provision of even high level information to unsuccessful applicants. This information, as outlined in Schedule D, may include information which any successful access seeker would wish to keep from other access seekers, particularly as the same small group of access seekers is likely to be competing for multiple hauls over time.

Section 2.7.3 effectively allows that in the event of an access application impacting on an existing access right that the current access right holder or relevant nominee

the access holder and / or nominee will be informed. In addition, in the event that the access being sought is a reference service then the existing access holder can renew access if they match the terms being offered by the access seeker. The renewal right is only available on one occasion per access haul and the renewal application must be made two years prior to the current access rights expiring.

In its previous submissions Asciano made no substantive comment on the renewal of access rights.

Asciano is concerned with section 2.7.3 as

- the section is intended to meet concerns in relation to existing coal access, however Asciano believes that it should be broadened to include any existing access rights;
- the renewal rights should be allowed to be used more than once. Many mining projects have uncertain lives due to both physical and commercial factors;
- the two year time frame is too long. The right to renew should be allowed to be exercised any time up to expiry if a competing request for access is submitted;
- safeguards should be considered to prevent potential gaming by access seekers who may seek to drive up competitors access charges by submitting access applications which they have no intention of pursuing.

In addition Asciano has a broad concern that it may be in Queensland Rail's commercial interest to indicate that a current access right and an access application are in conflict in order to create competitive tension and drive up the price of access when, in reality capacity may exist to serve both hauls (or could be created to serve both hauls through relatively small levels of investment). Given this Asciano believes that Queensland Rail should be required to demonstrate that an access application genuinely impacts on an existing access right to the extent that they both cannot be accommodated and / or provide an estimate of the capital cost needed to accommodate both hauls.

## **2.4 Comments on Part 5 Reporting**

Asciano broadly supports the changes made in Part 5 reporting as they provide both increased detail in the reported information and greater safeguards to ensure the accuracy of the reported information.

However, Asciano remains concerned that issues such as the provision of increased cost information and greater separation of Queensland Rail functions have not been adequately addressed.

Asciano notes that Queensland Rail (Explanatory Submission February 2013 pages 19-20) continues to defend its position that it is not required to provide cost information under the QCA Act and that the provision of cost information in relation to hauls where pricing is based on market factors rather than cost factors is unnecessary.

Asciano believes that the “negotiate and arbitrate” access model is problematic due to a lack of cost information, which places access seekers at a disadvantage in negotiating access prices with the access provider, as only the access provider has detailed knowledge of their costs. The asymmetry in cost information between Queensland Rail and access seekers may be partially addressed by Queensland Rail providing cost information.

Asciano believes that the reporting templates outlined in Schedule E could be improved. In particular they could include scope for the provision of explanations for delays and cancellations of train service rather than just the reporting of statistics. Scope for the provision of explanations, for example the occurrence of a force majeure event, would provide context for the occurrence of unexpected statistics.

## **2.5 Comments on Part 6 Administrative Process**

In relation to section 6.3 Asciano believes that it should still be possible to send a notice by facsimile.

## **2.6 Comments on Schedule C Access Agreement Principles**

The Access Agreement Principles outline the principles on which access agreements are based. Asciano expects that its comments below on the Access Agreement Principles may be expanded upon in its 3 May 2013 submission following the session

on the Standard Access Agreement. For example sections relating to noise mitigation, risk and indemnity and limitations on liability have all been amended in the Standard Access Agreement, and as such Asciano believes that the session on the Standard Access Agreement may impact on the amendments in the Access Agreement Principles.

Specific areas of Asciano concern in relation to the amendment to the Access Agreement Principles are outlined below:

### **Dangerous Goods**

Section 8 of the Access Agreement Principles now states that an access holder can carry dangerous goods with Queensland Rail's permission. The access holder has to demonstrate that the carriage of the dangerous goods is permitted by relevant laws and codes and that the access holder has any authorisations required. The access holder must notify Queensland Rail of the details of the dangerous goods and have an emergency plan which includes procedures for responding to the dangerous goods.

Section 11 of the Access Agreement Principles now states that the access holder must indemnify Queensland Rail against all claims relating to the transportation of dangerous goods whether or not caused or contributed to by Queensland Rail (including negligence) but excluding any part of the claim that would have arisen regardless of whether dangerous goods were being transported.

Asciano remains concerned that the Queensland Rail approach to indemnifying itself from any impact from dangerous goods (regardless of whether Queensland Rail negligence is a factor). This approach to dangerous goods indemnities is more onerous for above rail operators than approaches which apply in other Australian jurisdictions. Asciano believes that the rationale for the Queensland Rail dangerous goods approach should be more comprehensively explained. In particular the fact that the carriage of dangerous goods by an above rail operator indemnifies Queensland Rail regardless of Queensland Rail's its own negligence should be justified. Asciano believes that risks arising from a parties own negligence should be carried by the party and there should not be exceptions based on the nature of the goods being carried.

The current Queensland Rail approach shifts risk from the party which can best manage and control the risk. Asciano believes that Queensland Rail should bear the risk for incidents involving dangerous goods where the incident results from issues related to Queensland Rail infrastructure.

Asciano's position has consistently been that the liabilities associated with the carriage of these goods should be borne by whichever party is best able to control the risk, but in any event the liability for any incident involving dangerous goods should be borne by whichever party's negligence resulted in the incident.

Asciano has a concern that the Access Agreement Principles 11) a) iv) applies only to mixed goods trains. The dangerous good indemnity position of the case of a Unit Train which is carrying a dangerous good should be clarified.

Asciano believes that the approach outlined in the Access Agreement Principles 11) a) iv) where liability may be split between the "non-dangerous goods component" and the "dangerous goods component" of any incident is problematic as it may result in definitional and delineation issues depending on the nature of the incident. Asciano believes that this issue may need to be further clarified in Access Agreements.

Overall Asciano believes that the Queensland Rail approach to dangerous goods indemnities is likely to shift the freight transport task for dangerous goods on to Queensland roads.

### **Noise Mitigation**

Section 9 of the Access Agreement Principles requires an operator to pay a portion of any expenses related to noise mitigation, as reasonably determined by Queensland Rail.

Asciano believes that:

- noise mitigation should only be undertaken when relevant noise levels are breached;
- train operators should only be required to pay expenses related to noise mitigation when it is demonstrable that the train operation issues, rather than below rail issues, are responsible for noise. In addition if train operations are responsible for noise and more than one operator uses the track then further



investigations should be conducted to determine whether a specific operator should bear the cost; and

- the expenses related to noise mitigation, as determined by Queensland Rail, should be able to be tested by an operator. For example Queensland Rail should be willing to provide tender documents, quotes and invoices to support any expenses which they seek to recover.

## 2.7 Comments on Schedule F Standard Access Agreement

Asciano expects that its comments below on the Standard Access Agreement will be expanded upon in its 3 May 2013 submission following the session on the Standard Access Agreement.

Asciano notes that section 11.1 of the Standard Access Agreement has removed the liability caps previously proposed. Given this issue relates to a change in the Standard Access Agreement Asciano will provide comment on this in its submission due May 3 2013.

## 2.8 Comments on Omissions

Asciano believes that the 2013 DAU should include an obligation to maintain the track at a level which is fit for purpose. This obligation is fundamental to the access undertaking as it seeks to ensure that there is a minimum level of access service being offered.

Asciano understands that Queensland Rail believes that this obligation should be in access agreements rather than the access undertaking.

Asciano believes that an obligation to maintain the track at a level which is fit for purpose should be in both the access undertaking and the agreement.

## **3 ASCIANO COMMENTS ON ISSUES PREVIOUSLY RAISED BY ASCIANO BUT NOT ADDRESSED IN THE QUEENSLAND RAIL 2013 DAU**

Asciano previously provided comments on the Queensland Rail 2012 DAU in July 2012 and September 2012. While Asciano recognises that some issues raised in these submissions have been addressed by Queensland Rail in its 2013 DAU not all of the issues raised have been addressed. Asciano is seeking that these issues be considered by the QCA in its 2013 DAU approval process.

Of particular concern to Asciano are the following high level issues:

#### **Lack of Cost Information**

Asciano's experience of the "negotiate and arbitrate" access model with other rail infrastructure owners in Australia is that this model is often problematic due to a lack of cost information, which places access seekers at a disadvantage in negotiating access prices with the access provider, as only the access provider has detailed knowledge of their costs.

The issue of the asymmetry in cost information between Queensland Rail and access seekers may be partially addressed by Queensland Rail providing consistent and publicly available cost information to the QCA on an ongoing basis, where such costs are allocated according to the QCA approved cost allocation manual. Such an approach will allow a degree of cost certainty and consistency; however this approach remains a second best solution in relation to the determination of Reference Tariffs by the QCA.

Asciano appreciates that the provision of cost information may be problematic within the time frames of the current DAU process. If this is the case then the provision of such information should be prioritised for the next undertaking due in 4 to 5 years time.

#### **Lack of Provision of a Broader Suite of Reference Tariffs**

Asciano believes that other reference tariffs should be included in the DAU, including, for example an intermodal or general freight tariff for the north coast line (Brisbane to Cairns). Negotiation around rates for particular hauls will still occur but a regulatory approved reference tariffs overcomes the asymmetry of cost information problem outlined above.

The issue of the asymmetry in cost information between Queensland Rail and access seekers may be partially addressed by Queensland Rail providing consistent and publicly available cost information to the QCA on an ongoing basis, where such costs are allocated according to the QCA approved cost allocation manual. Such an approach will allow a degree of cost certainty and consistency; however this approach remains a second best solution in relation to the determination of Reference Tariffs by the QCA.

Asciano is seeking that additional Reference Tariffs be provided in the DAU for haulage tasks such as freight tariff on the north coast line. Asciano believes that there would still be scope to negotiate around these tariffs depending on the precise nature of the haulage task involved.

#### **Standard Form Access Agreement**

Asciano's view is that commercial negotiation with a monopoly service provider on the details of an agreement requires the commercial negotiation to be guided by the existence of, at a minimum, an indicative access agreement which has been reviewed in a regulatory process.

Asciano believes that, consistent with its view above, several other Standard Form Access Agreements should be included in the DAU, including, for example an intermodal or general freight agreement for the north coast line (Brisbane to Cairns).

Asciano appreciates that the provision of Standard Form Access Agreements for additional routes may be problematic within the time frames of the current DAU process. If this is the case then the development of such agreements should be prioritised for the next undertaking due in 4 to 5 years time. However, as a minimum Asciano believes that the existence of the West Moreton Coal Standard Access Agreement provides a useful access agreement template and Queensland Rail should be required to explain any variation between this Standard Access Agreement and any other agreements (for example agreements on the north coast line or Mt Isa Line) where the variation is to the benefit of Queensland Rail.

#### **Vertical Integration**

Queensland Rail operates both a below rail network which provides third party access and above rail passenger train services, thus Queensland Rail is a vertically integrated business. This vertical integration results in some concerns for above rail operators, such as Asciano, who use the Queensland Rail network.

Asciano recognises that Queensland Rail does not operate freight train services in direct competition with third party users and, as such, there is no direct commercial competition. However, the above rail services operated by Queensland Rail do still impact on the operations of third party users such as Asciano. Typically these impacts are operational impacts relating to issues such as pathing priority and track

occupations or cost allocation impacts relating to the allocation of Queensland Rail costs between above rail and below rail services.

This dual role of Queensland Rail provides it with an incentive to develop processes which minimise the potential for freight rail operations to interfere with Queensland Rail above rail passenger operations.

Asciano believes that it is more appropriate that the regulatory process treat Queensland Rail as a vertically integrated access provider, albeit one which has substantially reduced financial incentives to discriminate against third party users of its network as they are not in direct commercial competition with Queensland Rail in the contestable sectors of the rail industry. Thus the regulatory process should impose a degree of vertical separation and transparent cost allocation on Queensland Rail. Such a separation minimises

- any cost shifting or cross subsidisation between the network business and passenger service business; and
- the potential for Queensland Rail decision-making on operational or commercial matters in its above rail passenger business to disadvantage third party users of the Queensland Rail below rail business.

In seeking a ring fencing regime Asciano recognises that in all of Asciano's dealings with Queensland Rail, Queensland Rail has acted appropriately, however Asciano believes that a ring fencing regime provides a level of confidence to users of the monopoly service that they can continue to operate in the market and make long term investment decisions with a degree of confidence that they will not be disadvantaged in the future.

None of the high level issues above have been addressed by Queensland Rail in its amendments in DAU 2013.

In addition to the issues above there are numerous issues of detail which Asciano raised in previous submission which have not been addressed. Asciano is seeking that these issues be considered by the QCA in its 2013 DAU approval process.

## **4 CONCLUSION**

Asciano remains concerned with elements of the Queensland Rail 2013 DAU, including newly added elements in relation to passenger priority, renewal of access rights issues, reporting and access agreement principles (including dangerous goods clauses and noise mitigation clauses). These concerns are detailed in the submission above.

In addition Asciano remains concerned that issues previously raised by Asciano have not been addressed. These issues have been outlined in detail in previous submissions by Asciano and include the lack of cost information provided by Queensland Rail, the lack of a broader range of reference tariffs and standard access agreements provided by Queensland Rail and the need to ensure a level of vertical integration for Queensland Rail.

Asciano will provide a further submission in May 2013 outlining additional Asciano concerns with above rail operational issues, standard access agreements, extensions and the Mount Isa line pricing.

**ATTACHMENT 1 - 2013 DAU SECTIONS WHICH ASCIANO HAS NOT BEEN COMMENTED UPON IN THIS SUBMISSION**

Asciano has not commented upon the 2013 DAU sections outlined below. Asciano will comment on these sections in a subsequent submission.

<b>2013 DAU Section</b>	<b>Rationale</b>
1.4 Extensions	To be further addressed following session on investment framework matters
4.2 Operating Requirements Manual	To be further addressed following session on above rail operational issues
Schedule F Standard Access Agreement	To be further addressed following session on standard access agreement



**Asciano Submission to the  
Queensland Competition Authority  
in relation to the Queensland Rail  
2013 Draft Access Undertaking**

May 2013

---

# Table of Contents

1	Introduction .....	3
2	Asciano Comments on Above Rail Operational Matters .....	4
	2.1 Comments on the Draft Access Undertaking Sections Relating to the Operating Requirements Manual .....	5
	2.2 Comments on the Operating Requirements Manual .....	6
	2.3 Comments on the Network Management Principles .....	6
	2.4 Comments on Other Queensland Rail Documents .....	6
3	Asciano Comments on Standard Access Agreements .....	7
	3.1 Comments on the Development of Standard Access Agreements.....	7
	3.2 Comments on the Access Agreement Principles (Schedule C).....	8
	3.3 Comments on Liability and Risk Allocation .....	9
	3.4 Comments on Queensland Rail’s Commitment to Maintain the Network .....	10
	3.1 Comments on Definition of Queensland Rail Cause.....	11
4	Asciano Comments on Queensland Rail Pricing .....	11
	4.1 Comments on Queensland Rail’s Pricing approach .....	11
	4.2 Comments on Cost Information Provision by Queensland Rail .....	13
5	Asciano Comments on the Investment Framework.....	14
	5.1 Comments on Queensland Rail’s Investment Framework Proposal.....	14
	5.2 Comments on Funding Principles and Agreements.....	14
6	Other Issues .....	15
	6.1 Service Standards .....	15
	6.2 Objects Clause .....	15
	6.3 Connection Agreements.....	15
7	Conclusion .....	16
	Attachment 1 Issues of Detail to be Addressed in Queensland Rail’s Operating Requirements Manual.....	17



## 1 INTRODUCTION

Asciano welcomes the opportunity to make a further submission to the Queensland Competition Authority (QCA) on the Queensland Rail 2013 Draft Access Undertaking. Asciano, via its subsidiary Pacific National, uses the below rail assets of Queensland Rail for intermodal and minerals haulage.

In February 2013, Queensland Rail withdrew its 2012 draft access undertaking (2012 DAU) and submitted a new draft access undertaking (2013 DAU) to the QCA. Asciano recognises that the 2013 DAU submitted by Queensland Rail takes into account some issues raised by stakeholders in their responses to the 2012 DAU.

Asciano has previously made submissions on the Queensland Rail 2012 DAU in July 2012, and September 2012. To the extent that issues raised in these submissions have not been addressed in the 2013 DAU Asciano is seeking that they be considered by the QCA in its 2013 DAU approval process<sup>1</sup>.

The QCA and Queensland Rail undertook a series of consultation sessions on various issues relating to the 2013 DAU in April 2013 which addressed the following areas of interest:

- above rail operational issues;
- Western system coal pricing;
- aspects of the proposed Standard Access Agreement;
- Mount Isa pricing; and
- investment framework matters.

This current submission addresses the areas of interest issues which were the subject of these consultation sessions. Note that Asciano does not operate on the

---

<sup>1</sup> Note that these issues included, but are not limited to, concerns with regard to

- the need for additional standard access agreements;
- the need for additional reference tariffs;
- the need for additional cost information and operational information;
- the potential for Queensland Rail vertical integration to impact of operations and pricing and the consequent need for appropriate ring fencing;
- the need for seamless network interfaces;
- and more detailed concerns on the wording and principles in both the proposed undertaking and the proposed standard access agreement. In particular many of these detailed concerns related to the liability, indemnity and risk management regime proposed and the dangerous goods regime proposed.

West Moreton coal system and as such is not making any detailed comment on issues related to West Moreton system coal pricing.

Asciano recognises that at the consultation sessions Queensland Rail took note of the attendee's comments and indicated that they would reconsider their position on a number of matters. Given Queensland Rail have not formally amended the 2013 DAU before the QCA the comments in this Asciano submission are based on the submitted 2013 DAU. Asciano appreciates that certain sections of the 2013 DAU are likely to be reworked by Queensland Rail following the consultation sessions.

Asciano has previously made a submission on the Queensland Rail 2013 DAU in April 2013 which addresses areas of interest not addressed by the sessions outlined above. The April 2013 submission and this submission should be viewed together as Asciano's comments on the Queensland Rail 2013 DAU.

The structure of this submission is largely based on the agendas used in facilitating the series of consultation sessions. This submission is public.

## **2 ASCIANO COMMENTS ON ABOVE RAIL OPERATIONAL MATTERS**

Asciano notes that the Queensland Rail 2013 DAU includes a package of documents which form part of the rules of access including an Operating Requirements Manual (ORM), an Access Application, a Safety and Environment Interface Risk Management Plan, an Operating Plan and Rolling Stock Authorisation documentation. These documents can be altered unilaterally from time to time by Queensland Rail. This is of concern to Asciano. Asciano believes that as a minimum any changes which are made to the documents by Queensland Rail should first go through a formal and meaningful consultation process with stakeholders, including above rail operators. Asciano believes that this process should:

- require Queensland Rail to justify any proposed changes;
- require Queensland Rail to consider comments from stakeholders and if these comments are not incorporated in the Queensland Rail final documents explain why they have not been incorporated; and
- require QCA to approve any proposed changes.

## 2.1 Comments on the Draft Access Undertaking Sections Relating to the Operating Requirements Manual

Part 4 of the 2013 DAU relates to the ORM. Section 4.2.3 a) of the 2013 DAU outlines instances where the ORM dispute resolution clause does not apply. Asciano has concerns that the exceptions identified in 4.2.3 a) are too broad. In particular:

- under 4.2.3 a) i) any issue relating to safety is exempt. Asciano believes this exemption should be qualified to allow an exemption only for urgent safety issues; and
- under 4.2.3 a) iii) any issue relating to Queensland Rail implementing a change to assets, facilities, infrastructure, processes and procedures used for the purposes of a train management system is exempt. Asciano believes that this exemption is far too broad and should be removed.

More broadly Asciano believes that changes to the ORM should be subject to QCA approval. As the QCA has to approve the initial ORM it seems that a consistent approach requires the QCA to approve subsequent changes to the manual. Allowing Queensland Rail to unilaterally alter a document approved by the regulator seems to undermine the intent of the regulatory process. Asciano strongly supports an approach which has the QCA approving subsequent changes to the ORM and believes that such an approach will minimise the need for the 2013 DAU to specifically address issues regarding ORM dispute resolution.

Section 4.2.4 of the 2013 DAU provides that an access agreement may provide that Queensland Rail has no liability (including liability resulting from negligence) resulting from amending the ORM (including implementing an amendment or acting in accordance with an amendment). This is unacceptable to Asciano; Asciano's consistent position throughout this regulatory consultation process has been that liabilities should be borne by whichever party is best able to control the risk. Liability for any incident involving negligence should be borne by whichever party's negligence resulted in the incident. Asciano believes that the Queensland Rail approach to indemnifying itself from any impact of amending the ORM (regardless of Queensland Rail negligence) continues to shift risk from the party which can best manage and control the risk. Queensland Rail should bear the risk of the consequences of amending its own document.

This negligence carve-out should be removed from section 4.2.4 of the 2013 DAU.

## **2.2 Comments on the Operating Requirements Manual**

Asciano has both general and detailed concerns with the ORM as proposed by Queensland Rail. Asciano's greatest concern is the concern outlined above that the ORM may be altered unilaterally from time to time by Queensland Rail from time to time with minimal input from impacted parties. Asciano believes that its proposal outlined above would substantially reduce this concern.

In addition to the concern above there are numerous other issues of detail which need to be addressed in the ORM. These issues are outlined in Attachment 1: Issues of Detail to be Addressed in Queensland Rail's Operating Requirements Manual.

## **2.3 Comments on the Network Management Principles**

Asciano has a concern with the 2013 DAU Schedule B Network Management Principles. In particular Schedule B 1.1 g) ii) allows the Master Train Plan to be amended without consultation when the amendment is to accommodate an operational constraint, an operational constraint includes temporary or permanent speed restrictions, load restrictions and possessions. Asciano believes that in instances where the Master Train Plan is being amended to accommodate operational constraints then operators must be consulted as the operational restrictions may impact on both the operational and commercial viability of the operator's operations.

Similarly Schedule B 1.2 f) ii) of Schedule B now allows the Daily Train Plan to be amended following consultation. Previously the wording required both consultation and agreement. Asciano believes that the previous wording should be reinstated.

In addition to the issue above Asciano strongly believes that the Queensland Rail Network Management Principles and Aurizon Network Management Principles should be aligned in order to ensure smooth operations across network interfaces.

## **2.4 Comments on Other Queensland Rail Documents**

The Queensland Rail 2013 DAU document package contains several other documents including an Access Application, a Safety and Environment Interface Risk Management Plan, an Operating Plan and Rolling Stock Authorisation documentation.

Asciano's main concern is that these Queensland Rail documents and Aurizon network documents relating to similar concepts are aligned in order to ensure smooth operations across network interfaces. Thus Asciano is seeking that these documents (and the Schedule B Network Management Principles) remain consistent with Aurizon Network operations and documentation.

Asciano has no strong view as to whether these documents should be included in the formal access undertaking or not. To the extent that these documents are included in the formal access undertaking then changes to these documents should be subject to QCA approval. As the QCA would have to approve the initial documents it seems that a consistent approach requires the QCA to approve subsequent changes to the documents.

### **3 ASCIANO COMMENTS ON STANDARD ACCESS AGREEMENTS**

#### **3.1 Comments on the Development of Standard Access Agreements**

Asciano's view is that commercial negotiation with a monopoly service provider on the details of an agreement requires the commercial negotiation to be guided by the existence of, at a minimum, an indicative access agreement which has been reviewed in a regulatory process. Asciano believes that several other Standard Form Access Agreements should be included in the 2013 DAU, including, for example an intermodal or general freight agreement for the north coast line (Brisbane to Cairns).

Asciano believes that the existence of the West Moreton Coal Standard Access Agreement provides a useful access agreement template. Asciano believes that Queensland Rail should identify sections in this Standard Access Agreement which are coal specific and those sections which are not coal specific would form the basis of a more general Standard Access Agreement. Queensland Rail should then be required to explain any variation between this Standard Access Agreement and any other agreements (for example agreements on the north coast line or Mt Isa Line) where the variation is to the benefit of Queensland Rail.

Asciano recognises that within the consultation session Queensland Rail took note of stakeholder's comments relating to the development of a Standard Access Agreement. To the extent that such an agreement is further developed issues to be addressed via the broader access agreement principles may be minimised.

### 3.2 Comments on the Access Agreement Principles (Schedule C)

Asciano notes that the introduction of a more general Standard Access Agreement may change the content of the 2013 DAU Schedule C Access Agreement Principles.

As currently drafted Asciano has several concerns with these Access Agreement Principles, including both dangerous goods clauses and noise mitigation clauses.

Section 8 of the Access Agreement Principles now states that an access holder can carry dangerous goods with Queensland Rail's permission. The access holder has to demonstrate that the carriage of the dangerous goods is permitted by relevant laws and codes and that the access holder has any authorisations required. The access holder must notify Queensland Rail of the details of the dangerous goods and have an emergency plan which includes procedures for responding to the dangerous goods.

Section 11 of the Access Agreement Principles now states that the access holder must indemnify Queensland Rail against all claims relating to the transportation of dangerous goods whether or not caused or contributed to by Queensland Rail (including negligence) but excluding any part of the claim that would have arisen regardless of whether dangerous goods were being transported.

Asciano remains concerned that the Queensland Rail approach to indemnifying itself from any impact from dangerous goods (regardless of Queensland Rail negligence) continues to shift risk from the party which can best manage and control the risk. Queensland Rail should bear the risk for incidents involving dangerous goods where Queensland Rail infrastructure is responsible for the incident. Asciano's position has consistently been that the liabilities associated with the carriage of these goods should be borne by whichever party is best able to control the risk (and hence the cost of managing the risk). The liability for any incident involving dangerous goods should be borne by whichever party's negligence resulted in the incident.

Asciano believes that the approach outlined in the Access Agreement Principles 11) a) iv) where in relation to a Mixed Goods Train liability may be split between the "non-dangerous goods component" and the "dangerous goods component" of any incident is problematic as it may result in definitional and delineation issues depending on the nature of the incident.

In addition Asciano has a concern that a Unit Train which is carrying a good defined as a dangerous good (for example a mineral concentrate) could be involved in an incident where damage occurs but none of the damage is due to the “dangerous good component” of the haulage task. In this instance the same principle that applies to the Mixed Goods Train should be applied to the Unit Train. Queensland Rail should clarify the approach to be used for a Unit Train in these circumstances.

Section 9 of the Access Agreement Principles requires an operator to pay a contribution of any expenses related to noise mitigation, as reasonably determined by Queensland Rail. Asciano believes that:

- noise mitigation should only be undertaken when relevant noise levels are breached;
- train operators should only be required to pay expenses related to noise mitigation when it is demonstrable that the train operation issues, rather than below rail issues, are responsible for noise. In addition if train operations are responsible for noise and more than one operator uses the track then further investigations should be conducted to determine whether a specific operator should bear the cost; and
- the expenses related to noise mitigation, as determined by Queensland Rail, should be able to be tested by an operator and should be agreed in advance with an operator before they are incurred. For example Queensland Rail should be willing to provide in advance any tender documents and quotes to support any expenses which they seek to recover and any Queensland Rail internal costs should be benchmarked to ensure that these costs are efficient. Queensland Rail should not be able to determine these expenses without scrutiny. In the event that there is a dispute relating to such expenses the access agreement dispute mechanism should apply.

### **3.3 Comments on Liability and Risk Allocation**

The Asciano submission of July 2012 identified numerous issues with the Queensland Rail approach to indemnity, liability and risk allocation in the Standard Access Agreement.

Asciano recognises that Queensland Rail have removed the caps on liability but the Queensland Rail approach to indemnity, liability and risk allocation remains one sided and essentially shifts risk from Queensland Rail to the operator.

Asciano is remains concerned that clauses 10.1, 11.2 and 11.4 have not been amended to apportion risk and liability to the party best able to manage the risk. For example clause 11.2 excludes liability or limits liability to \$1 for certain liabilities. The exclusions and limitations of liability apply to Queensland Rail only. Asciano believe that to the extent that liability exclusion is required and then agreed then it should be reciprocal.

More generally Asciano continues to have concerns that an efficient liability and risk management regime should be based on the principle that the party that is best able to manage the risk should bear the risk (that is the party that can control the cost of managing the risk bears the risk). This approach to establishing an efficient liability and risk management regime is not evident in the 2013 DAU.

#### **3.4 Comments on Queensland Rail's Commitment to Maintain the Network**

Section 5.1 A) of the 2013 DAU proposed Standard Access Agreement is that Queensland Rail will maintain the network in a condition that the operator can operate train services in accordance with its agreement. There is no obligation to maintain the network to an objective standard and the access agreement is likely to provide Queensland Rail with an ability to impose constraints and undertake works without operator agreement<sup>2</sup>. As such the commitment to maintain the network in accordance with the access agreement is a weak commitment at best.

An the current (i.e. 2008) Access Undertaking Queensland Rail is obliged to maintain the network such that the network is consistent with Rollingstock Interface Standards and the operator can operate services in accordance with their scheduled times. Asciano believes that this wording is preferable to the proposed wording and should be reinstated.

Asciano believes that the Access Undertaking should include specific commitments to maintain the network; these commitments should not be devolved into individual

---

<sup>2</sup> The proposed Standard Access Agreement allows Queensland Rail to impose Operational Constraints and perform Rail Infrastructure Operations at any time without operator consent and without any liability for any disruption. Asciano believes that it is unlikely that for any non-standard access agreement Queensland Rail would willingly diverge from this position.



network user's access agreements. The Access Undertaking should explicitly address the quality of the access to be provided by Queensland Rail. (This does not preclude an individual access agreement containing more detail about service quality, particularly service quality specific to the haulage task being contracted).

Asciano believes that the Standard Access Agreement should contemplate some level of objective standard of track quality and track maintenance. (As an example ARTC access agreements may include key performance indicators relating to train reliability, train quality, track quality and path availability).

Asciano believes that the reporting performance provides information to both parties and allows a more informed discussion to occur in relation to both operational performance and contractual obligations for both parties. At this time Asciano is not proposing to link financial penalties or incentives to such reporting.

### **3.1 Comments on Definition of Queensland Rail Cause**

Asciano has a concern with the definition of Queensland Rail Cause in the Standard Access Agreement. This definition has now added wording which includes a derailment of any train caused solely by an act or omission of Queensland Rail. Using this amended definition read in conjunction with section 11.6 e) in the Standard Access Agreement this seems to imply that an operator cannot make a claim against Queensland Rail if Queensland Rail has caused the derailment of a train. Asciano believes the original wording should be reinstated.

## **4 ASCIANO COMMENTS ON QUEENSLAND RAIL PRICING**

The QCA and Queensland Rail consultation session focussed on Mount Isa pricing but Asciano believes that many of the issues that were raised both in this session and raised below could apply more broadly to Queensland Rail pricing approaches.

The comments on pricing below apply to Queensland Rail Mount Isa line pricing, but also apply to Queensland Rail access pricing more broadly.

### **4.1 Comments on Queensland Rail's Pricing approach**

Queensland Rail's approach to pricing on all lines except the West Moreton coal system is a "negotiate and arbitrate" pricing model. Asciano's experience of the "negotiate and arbitrate" access model with other rail infrastructure owners in

Australia is that this model is often problematic due to a lack of cost information, which places access seekers at a disadvantage in negotiating access prices with the access provider, as only the access provider has detailed knowledge of their costs.

In this approach the negotiated (or arbitrated) price has to be between the floor price and the ceiling price but these floor and ceiling prices are often not well defined. To the extent that an access seeker has knowledge of the floor price and the ceiling price this knowledge is sourced from information provided by Queensland Rail.

Asciano believes that in order to have a meaningful negotiation under a “negotiate and arbitrate” pricing model the access provider must supply a defined level of cost information which has been scrutinised by an independent party such as the QCA. (This information should include floor and ceiling prices). Asciano notes that the 2013 DAU sections 2.1.3 and 2.6.2 require Queensland Rail to provide some information to access seekers but these sections should be substantially strengthened and expanded to ensure that defined and consistent price information is provided by Queensland Rail such that negotiations can take place in an environment where both parties have similar cost information.

Asciano accepts that the impact of market factors, notably the presence of competitive alternatives such as road transport, needs to be taken into account in any a “negotiate and arbitrate” pricing model.

Asciano believes that there is scope for other reference tariffs to be included in the Access Undertaking, including an intermodal tariff for the north coast line. Under a reference tariff approach negotiation around rates for particular hauls will still occur but a regulatory approved reference tariff overcomes the cost information issues (as outlined in the section below).

Asciano is not supporting an application of reference tariffs across the Queensland Rail network but Asciano believes that on routes where major users of these routes seek reference tariffs such tariffs should be implemented. Thus on the Mount Isa line Asciano believes that the issue of reference tariffs is an issue for the major users of the line.

## 4.2 Comments on Cost Information Provision by Queensland Rail

As noted above the “negotiate and arbitrate” model is problematic due to a lack of cost information, which places access seekers at a disadvantage in negotiating prices, as only the access provider has detailed knowledge of their costs.

The issue of the asymmetry in cost information between Queensland Rail and access seekers may be partially addressed by Queensland Rail providing a consistent series of cost information (including floor and ceiling price) to the QCA on an ongoing basis, where such costs are allocated according to the QCA approved cost allocation manual. This information can then be provided to access seekers and access users as required. Such an approach will allow a degree of cost certainty and consistency and allow a more even handed price negotiation.

Asciano recognises that within the consultation session Queensland Rail took note of stakeholder’s comments relating to the provision of cost information and indicated that additional cost information would be available. Asciano believes that such cost information should be made available for all major Queensland Rail lines rather than just the Mt Isa line.

Asciano believes that the provision of costs should include information on

- actual and efficient capital expenditure;
- asset value;
- asset life;
- depreciation;
- cost of capital;
- efficient and actual operating and maintenance costs.

This information above should be provided for line sections relevant to the service being negotiated. The provision of such information will go some of the way to addressing the cost information asymmetry which frustrates current pricing negotiations.

In relation to considering the issue of efficient levels of operating cost and capital expenditure Asciano believes that industry benchmarking of costing is a reasonable approach to assess the efficiency and prudence of capital and operating expenditure.

In addition to cost information Asciano also believes that a level of service quality information should also be provided. Asciano believes that there should be a trade off between cost and service quality. The provision of service quality information should assist in assessing the level of service obtained for a given cost.

## **5 ASCIANO COMMENTS ON THE INVESTMENT FRAMEWORK**

### **5.1 Comments on Queensland Rail's Investment Framework Proposal**

The investment framework as currently proposed places only very limited obligations on Queensland Rail to invest. Asciano believes that there should at least be an obligation on Queensland Rail to invest to ensure that at a minimum contracted services can be maintained and / or to invest where a user funding agreement is in place.

The 2013 DAU investment framework section 1.4.1 a) iv) indicates that Queensland Rail should bear no cost or risk in relation to constructing, owning, operating or managing the extension. Asciano believes that requirement that Queensland Rail bear no risk is too broad and the requirement should be limited to Queensland rail bear no costs of constructing the extension.

Queensland Rail's investment framework largely relates to the funding of extensions. Asciano's concern is that the definition of extension is very broad as it includes enhancement, expansion, augmentation, duplication and replacement of the Network. (Asciano recognises that this definition reflects the Act). This broad definition provides the potential for access seekers and users to pay for the same capital through both an extension funding agreement and through tariffs. Section 1.4.1 a) of the 2013 DAU seems somewhat narrower identifying an extension as being necessary to provide additional capacity. Asciano is seeking that definition of extension and the types of arrangements contemplated under section 1.4 of the 2013 DAU be further clarified to minimise any potential for "double dipping" or for potential conflict as to what types of activities are or are not funded under section 1.4.

### **5.2 Comments on Funding Principles and Agreements**

Asciano believes that the user funding principles should provide greater protections to users by ensuring that both legitimate business interests of both the user and Queensland rail are protected.

Asciano believes that the funding principles and funding agreements should address the issue of residual value. That is, an extension may physically outlive its relevant funding agreement or related access agreement. In this instance the extension may continue to have value. In this instance the original funder of the asset should continue to receive a return while ever the asset is being utilised.

Section 1.4.2 f) ii) of the 2013 DAU relates to efficiency and prudent practice in relation to the construction of an extension. Asciano believes that Queensland rail should provide additional detail around the procurement of construction and the transparency of efficient and prudent practices.

## **6 OTHER ISSUES**

Asciano has brief comments on several other issues in the 2013 DAU.

### **6.1 Service Standards**

Asciano recognises that that to some extent there is a trade off between pricing and service quality. However at the current time Asciano sees that Queensland Rail is increasing prices but there is no commensurate increase in service standards. Asciano believes that in the longer term there needs to be a more direct connection between the services delivered and the prices charged.

### **6.2 Objects Clause**

In the Asciano submission of April 2013 Asciano raised several concerns regarding the 2013 DAU Preamble. Asciano believes that this preamble could be deleted and replaced with an objects clause which outlines the objective of the Access undertaking.

### **6.3 Connection Agreements**

Section 2.6.2 b) of the 2013 DAU indicates that Queensland Rail may negotiate a separate connection agreement. Asciano is seeking that further detail and prescription be put around this clause. At a minimum such agreements should be subject to dispute resolution mechanism in the Access Undertaking and should be subject to a set of principles (the principles relating to extensions in section 1.4.2 of the 2013 DAU may act as a reasonable template for such a set of principles).

## **7 CONCLUSION**

Asciano remains concerned with elements of the Queensland Rail 2013 DAU, including issues with:

- the ability of Queensland Rail to unilaterally amend the ORM with no scrutiny by operators or regulators;
- the details of the ORM as outlined in Attachment 1;
- the proposed approach to managing liabilities, indemnities and risks;
- the proposed approach to managing the risks associated with dangerous goods regime;
- the proposed approach to addressing noise mitigation issues;
- the apparent reduction in the obligation to maintain the rail network;
- the lack of a broader range of reference tariffs and standard access agreements provided by Queensland Rail;
- the lack of cost information provided by Queensland Rail; and
- the proposed approach to extensions and user funding agreements.

In addition Asciano remains concerned that issues previously raised by Asciano have not been addressed. These issues have been outlined in detail in previous submissions by Asciano and include the need to ensure a level of vertical integration for Queensland Rail.

## **ATTACHMENT 1 ISSUES OF DETAIL TO BE ADDRESSED IN QUEENSLAND RAIL'S OPERATING REQUIREMENTS MANUAL**

Asciano has numerous comments on the content of Queensland Rail's ORM. These comments are outlined in this attachment. These comments include both general comments on issues which recur throughout the document and issues which relate to specific sections of the manual.

### **General Comments**

Throughout the ORM there are various references to "relevant" standards and regulations. Asciano believes the manual should identify the actual regulations and standards that are considered "relevant" while allowing some scope for additional standards and regulations to be considered.

Throughout the manual there are numerous places where Queensland Rail has a right to provide directions to operators. These directions should be qualified by requiring them to be "reasonable" directions. For example:

- 4.2 a) – insert "reasonable" directions
- 4.2 b) i) - insert "reasonably" assist
- 4.2 c) – insert "reasonably" necessary

In the manual numerous terms are placed in quotation marks (for example "accredited" in 6.3 b) ii)). These terms in quotation marks should be defined or reworded such that the quotation marks are not required.

### **Specific Comments**

Comments on Asciano issues with specific sections and clauses of the ORM are outlined below:

Section 2 – the interface risk approach outlined in Section 2 should be explicit about how residual risk is managed. Asciano believes that the party best able to manage the risk should manage the risk.

Sections 2.1iii) and iv) – these requirements for monitoring, competence, complaint handling, audit, inspection and review should be even handed and open for both operator and access provider.

Section 2.2 ii) B) – the obligation for the operator to provide information on products transported should be limited to the type of information required on a manifest.

Section 2.2 ii) D) - the obligation for the operator to provide information on the location of waterways is not appropriate. The access provider should have a much better understanding of the location of waterways on the route.

Section 2.2 ii) D) - the obligation for the operator to provide information on the anticipated environmental impact of their proposed activities should be further clarified. Besides statements referring to a certain level of noise and emissions any further impact on the environment may presuppose an incident or other unexpected occurrence.

Section 2.2 ii) G) - the obligation for the operator to provide “any information in relation to anything referred to in section 4” (i.e. emergency and incident response) seems too broad. This point should be narrowed to a more specific request for information.

Section 2.3 b) - this section is too broadly worded. Noise from a train may contribute to a noise level exceeding relevant standards however the issue to be addressed should be whether the noise level from the train is the primary cause of the relevant standard being exceeded (for example the cause may be track geometry or another below rail issue).

Section 2.3 g) B) - the obligation for the operator to conduct baseline monitoring is not appropriate. Baseline monitoring should be done by the access provider to ensure that all operators are considered in an even handed manner and to avoid duplication of multiple (and probably inconsistent) baseline studies. Furthermore baseline studies should be restricted to areas where noise complaints have been lodged.

Section 2.3 a) (second a) on page 6) – if Queensland Rail has relevant baseline data they must provide the data if requested. If Queensland Rail has the option of not providing the data then they will only provide data which reflects positively on Queensland Rail. More generally the scope of any baseline study should be agreed by the access providers and all impacted operators.

Section 3.6 b) - the obligation for the operator to provide Queensland Rail with the details of any operator’s staff who may enter the rail corridor is too broad. The



contact list should be limited to the responsible management of the operator and the management of any major contractors to the operator.

Section 4 – This section addresses incident and emergency response. The section refers to an operator's emergency management plan. There should be requirements on Queensland Rail to have similar plans and discuss these plans with operators to ensure that the plans of both parties are aligned.

Section 4.1b) iv) – the requirement for notification to the authorities should clarify which party undertakes this action or refer to a document where this is outlined in more detail.

Section 4.1b) v) – the method to clean up the site should clarify which party undertakes this action or refer to a document where this is outlined in more detail.

Section 4.1b) vi) – the obligation for the operator to keep a central register of all incidents seems inappropriate. The access provider is in the best position to keep a central register.

Section 4.3 – assistance provided in investigations should be reciprocal. That is to the extent the operator is required to assist Queensland Rail, Queensland Rail should be required to assist the operator.

Section 6.2 a) i) – Asciano queries whether providing after hours contact details for an operators controller is necessary if there is a 24 hour control centre.

Section 6.2.2 – Asciano queries the appropriateness of the whole of section 6.2.2 as it seems to focus on instructing the operator how they should manage their crewing.

Section 6.2.2 b) – the requirement that a crew can only request relief from the operator's controller should be qualified by allowing the request to be broader in the event of an emergency or some other unexpected incident.

Section 6.2.2 e) – in the event that the operator's controller and the operators train crew cannot contact each other Queensland Rail should be obliged to relay a message.

Section 6.2.4 – in the event that any of the documents at the web addresses listed in this section change then Queensland Rail should be obliged to notify the operator of the change, even if only to inform them that the documents on the website have changed.

Section 6.5 - in the event that the document at the web address listed in this section changes then Queensland Rail should be obliged to notify the operator of the change, even if only to inform them that the documents on the website have changed.

Section 6.6 - in the event that the document at the web address listed in this section changes then Queensland Rail should be obliged to notify the operator of the change, even if only to inform them that the documents on the website have changed.

Section 7.2.2 – Asciano understands that the weekly notices referred to in this section are quite broad. Asciano believes that a more targeted notice may be applicable. To this end Asciano queries why sections 7.2.2 a) and b) are included in the document.

Section 7.3 a) – this obligation must be reciprocal. Queensland Rail must notify the operator of relevant staff details.

Sections 7.4 c) i and ii) – these sections should be reciprocal between the operator and access provider. They should read “... the Operator’s Train Services and Queensland Rail’s network to ...” and “... the Operator’s Trains and Queensland Rail’s network”.

Section 7.5 – Asciano notes that these maps continue to include Aurizon network assets and network assets south of Brisbane which Asciano believes is managed by ARTC.