

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

March 2016

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1 EXECUTIVE SUMMARY

Asciano welcomes the opportunity to make a submission to the Queensland Competition Authority (QCA) on the submissions to the QCA's Draft Decision on the Queensland Rail's 2015 Draft Access Undertaking (2015 DAU). Asciano did not make a submission to the QCA's Draft Decision on the Queensland Rail 2015 DAU.

This submission outlines Asciano's position on:

- submissions by other parties to the QCA's Draft Decision on the Queensland Rail 2015 DAU. In particular Asciano supports comment in submissions that are seeking to increase obligations on Queensland Rail to maintain and improve service standards and service levels, increase levels of transparency, accountability, flexibility and customer focus from Queensland Rail and extend a more prescriptive access tariff approach to other Queensland Rail lines; and
- the QCA's Draft Decision on the Queensland Rail 2015 DAU. Asciano is particularly concerned that the 2015 DAU took an unbalanced approach to risk allocation and risk management. This unbalanced approach was particularly evident in the Standard Access Agreement. Asciano recognises that the Draft Decision has addressed some of the risk imbalances in the 2015 DAU but Asciano remains concerned that an unbalanced approach to risk remains, particularly in the Standard Access Agreement. Asciano believes that risks should be borne by whichever party is best able to control the risk. Asciano seeks that in the Final Decision the QCA more evenly balance risks between parties such that risks are borne by whichever party is best able to control the risk.

2 INTRODUCTION AND BACKGROUND

Asciano welcomes the opportunity to make a submission to the QCA on the submissions to the QCA's Draft Decision on the Queensland Rail's 2015 DAU. 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.

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 the QCA on these DAUs¹. In these submissions Asciano has consistently put forward positions that:

- support regulator approved access agreements and 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 is not available.

Asciano continues to broadly 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 DAU² along with the Asciano submission made in June 2015 and this current submission.

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

3 ASCIANO COMMENTS ON THE SUBMISSIONS TO THE DRAFT DECISION

Submissions to the QCA Draft Decision on the 2015 DAU were made by Queensland Rail, end users who rely on Queensland Rail infrastructure as a key component of their supply chain and train operators who operate trains on Queensland Rail infrastructure. Asciano supports many of the positions put forward in the submissions made by train operators and end users.

In making comments on submissions to the Draft Decision Asciano is not making comment on the sections of the other parties' submissions where detailed comment is made in relation to the wording of the Access Undertaking, Operating Requirements Manual and the Standard Access Agreement. Section 5 of this submission contains Asciano's detailed comment in relation to the wording of the Access Undertaking, Operating Requirements Manual and the Standard Access Agreement.

¹ These submissions include submissions in July 2012, September 2012, April 2013 and May 2013.

² 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.

Asciano supports positions put forward in the submissions of other parties which seek to:

- increase obligations on Queensland Rail to maintain and improve service standards and service levels³. In particular Asciano supports the positions of:
 - Aurizon Operations⁴ that the standards should include an explicit reference to benchmark transit times and that the Standard Access Agreement section 8.12 Compensation be amended to take into account impacts of changes from the benchmark transit time; and
 - Glencore⁵ that KPIs should be linked to financial incentives in order to provide additional incentives for Queensland Rail to meet agreed service standards;
- increase Queensland Rail's levels of flexibility and customer focus. For example Asciano supports the Aurizon Operations⁶ position that the current regulatory framework does not support efficiency improvements. Under the current regulatory approach any improvements in above rail efficiency which reduces the number of train paths required will result in a relinquishment fee, thus improvements in efficiency are penalised. Asciano believes that relinquishment fees should be waived in circumstances where the relinquishment of paths is as a result of a more efficient use of network capacity.
- increase Queensland Rail's levels of transparency and accountability⁷. In particular a lack of transparency in relation to costs should be addressed. Asciano supports the position in the Glencore submission⁸ in relation to the scope of information which should be provided; and

³ For example Aurizon Operations 22 December 2015 Response to QCA Draft Decision on the Queensland Rail 2015 DAU page 8 and pages 25 - 29

⁴ Aurizon Operations 22 December 2015 Response to QCA Draft Decision on the Queensland Rail 2015 DAU page 26

⁵ Glencore 23 December 2015 Submission on the Draft Decision on the Queensland Rail DAU pages 3-4.

⁶ Aurizon Operations 22 December 2015 Response to QCA Draft Decision on the Queensland Rail 2015 DAU page 32

⁷ For example Aurizon Operations 22 December 2015 Response to QCA Draft Decision on the Queensland Rail 2015 DAU page 9

⁸ Glencore 23 December 2015 Submission on the Draft Decision on the Queensland Rail DAU page 5

- extend a more prescriptive access tariff approach to other Queensland Rail lines, particularly the Mt Isa line⁹. Asciano’s position on the need for a more prescriptive approach to access pricing on certain Queensland Rail lines, including the Mt Isa line, is outlined in more detail in section 4 of this submission.

4 ASCIANO COMMENTS ON THE DRAFT DECISION

Asciano welcomes the QCA’s Draft Decision to not approve the 2015 DAU and supports the QCA’s view that the 2015 DAU was skewed in Queensland Rail’s favour. Asciano supports Draft Decision positions which address imbalances between Queensland Rail and access seekers and which improve negotiation processes, which allow an improved balance in risk allocations between parties and which improve cost, reporting and operational transparency. Asciano remains concerned with several aspects of the Draft Decision as outlined below.

4.1 Regulator Approved Access Prices

The Draft Decision does not include a provision for regulator approved access prices besides the access prices for the West Moreton Coal system. The Draft Decision requires Queensland Rail and the access seeker to negotiate an access price between the floor and ceiling costs of access. As previously submitted, Asciano believes that “negotiate and arbitrate” price regulation is inadequate and, ideally, in order to limit the monopoly power of Queensland Rail 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.

Regulator Approved Access Prices – Mt Isa Line

The Draft Decision has recognised that the “negotiate and arbitrate” approach is not satisfactory by placing various limits on access prices in some circumstances when contracts are renewed (as outlined in 3.3 of the 2015 DAU as proposed in the Draft Decision). In practice this clause is most likely to impact the Mt Isa line. While the Draft Decision approach limits Queensland Rail’s future discretion the approach used is flawed as:

⁹ Glencore 23 December 2015 Submission on the Draft Decision on the Queensland Rail DAU page 1

- it does not address transparency concerns, as it is based on previously negotiated prices where the cost basis of these prices is not clear;
- it does not address concerns that Queensland Rail was operating in an unconstrained manner, as it is based on previously negotiated prices which were negotiated in an environment where Queensland Rail pricing on the Mt Isa line was largely unconstrained; and
- it may be too narrow to be implemented as intended. For example under 3.3 g) of the 2015 DAU as proposed in the Draft Decision the train services being contractually renewed 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 the renewal of a long term access agreement there will be slight changes in train characteristics which may then result in this clause not applying in these circumstances.

In relation to Mt Isa Line access pricing neither the current “negotiate and arbitrate” approach nor the proposed Draft Decision approach is satisfactory. Asciano believes that a more prescriptive regulatory approach to access prices on the Mt Isa line must be considered as an option.

Provision of Cost and Capacity Information

In the event that the “negotiate and arbitrate” model continues to apply, then the provision of Queensland Rail cost and capacity information becomes critical to ensuring imbalances in negotiating positions are minimised. 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. To this end Asciano supports the position of the Draft Decision to include stronger requirements on Queensland Rail to provide cost and capacity information in sections 2.4.2 and 2.7.2 of the 2015 DAU.

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. However, Asciano continues to have concerns that historically the provision of cost information by Queensland Rail has been inadequate, and while Asciano supports the Draft Decision changes Asciano will wait until it receives actual relevant and detailed cost information before finally agreeing that these Draft Decision changes 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.

4.2 Access Agreements

Regulator Approved Access Agreements

The 2015 DAU provides that, unless otherwise agreed, an access agreement must be consistent with the standard form access agreement in the 2015 DAU. This change to the previous contracting approach is welcomed by Asciano. While Asciano welcomes this approach, Asciano continue to have concerns with the content of the proposed Standard Access Agreement contained in the Draft Decision. Asciano's detailed comments on the proposed Standard Access Agreement are contained in section 5 of this submission.

Asciano has a broad concern with the currently proposed contracting structure where if an end user elects to be the access holder they can either choose to enter the access agreement without nominating a preferred rail operator, or appoint one or more rail operators. Where an end user nominates more than one rail operator Asciano believes that it should be clarified that there is a separate set of agreements between the end user, Queensland Rail and each of the nominated rail operators. The main concern is ensuring the details of the competing rail operator's arrangements with the end user are kept separate and confidential.

4.3 Separation of Functions

The 2015 DAU substantially removes the ring fencing requirements on Queensland Rail noting that Queensland Rail does not directly compete with above rail freight operators. The Draft Decision does not seek to reinstate these ring fencing requirements. Asciano believes that some level of separation is required in order to minimise both the potential for cost shifting and cross subsidisation between Queensland Rail's passenger activities and infrastructure activities and the potential for Queensland Rail to make decisions relating to its passenger activities which substantially impact on the freight users of Queensland Rail's track infrastructure.

Asciano believes that the ring fencing provisions from the previous access undertaking should be retained.

4.4 Risk Allocation and Management

Asciano has taken a consistent position throughout the Queensland Rail access undertaking consultation processes that risks should be borne by whichever party is best able to control the risk. Asciano recognises that the Draft Decision has addressed some of the instances of the proposed 2015 DAU's unbalanced approach to risk allocation and risk management but Asciano remains concerned about sections of the Standard Access Agreement where risk allocation and risk management remain unbalanced. In particular section 12.2 (Operators Carriage Indemnity) requires an operator to indemnify Queensland Rail for claims from an operator's customer in some circumstances. 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 many cases Queensland Rail is best able to manage these risks and / or insure against these costs.

Further instances of the 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 in the Final Decision the QCA more evenly balance risks between parties such that risks should be borne by whichever party is best able to control the risk.

Overall Asciano strongly believes that the unbalanced approach taken to risk management and indemnities by Queensland Rail in its 2015 DAU Standard Access Agreement indicates that Queensland Rail is operating in an unconstrained manner. In a competitive market a party to a contract could not insist that its counter party indemnify it for risks it is best placed to manage. Nor could they insist on indemnities that allow them to avoid liability for their own negligence or breach of contract. Absent a monopoly position, Queensland Rail would not be able to dictate such terms. Accordingly, Asciano is concerned that the issues raised in Asciano's June Submission with respect to the unacceptable risk management and indemnity positions put forward by Queensland Rail have not been fully addressed. In this submission Asciano strongly urges the QCA to reconsider these issues and ensure

that Queensland Rail is not able to avoid responsibility for properly maintaining and safely managing the Network, or avoid liability for loss or damage suffered by any person if it fails to do so.

5 SPECIFIC ASCIANO COMMENTS ON THE DRAFT DECISION DOCUMENTATION RELATING TO THE 2015 DAU

Asciano recognises that the QCA has addressed some of the issues raised by stakeholders (including Asciano) in response to the Queensland Rail 2015 DAU. However Asciano continues to have concerns with aspects of the QCA's Draft Decision and the documents attached to the Draft Decision including the access undertaking, the operations manual and the standard access agreement.

The tables below outline some of these concerns. There are four tables relating to:

- the Draft Decision;
- the access undertaking attached to the Draft Decision;
- the operations manual attached to the Draft Decision; and
- the standard access agreement attached to the Draft Decision.

5.1 Asciano Comments on the Draft Decision

Table 1: Asciano Comments on Various Aspects of the QCA Draft Decision's Position on the Queensland Rail 2015 DAU¹⁰.

Note that the item number column corresponds to the Draft Decision numbering.

Item No	Summary of QCA Draft Decision Position	Asciano Position
1.7 – 1.9	<p>Non Discriminatory Treatment</p> <p>The Draft Decision requires the 2015 DAU (s1.3) to be amended so it sets out clearly how Queensland Rail will be prevented from unfairly differentiating between access holders.</p>	<p>Asciano supports the Draft Decision position but believes that it could be further strengthened by increasing transparency related to</p> <ul style="list-style-type: none"> • cost information provision (to ensure there is no cross subsidisation between Queensland Rail businesses); and • decision making (to ensure

¹⁰ Note that many of the items in Table 1 above were previously discussed by Asciano in Table 1 of Asciano's June 2015 submission to the QCA on the Queensland Rail DAU. (Asciano Submission to the Queensland Competition Authority in relation to the Queensland Rail Draft Access Undertaking June 2015 pp 16 – 23)

Item No	Summary of QCA Draft Decision Position	Asciano Position
		Queensland Rail operational or commercial decisions do not favour its related above rail passenger business).
1.13 – 1.14	<p>Term of the Undertaking</p> <p>The undertaking is to expire in June 2020.</p>	Asciano does not object to this term.
2.4 – 2.6	<p>Information Provided by Queensland Rail</p> <p>The Draft Decision requires the 2015 DAU (s2.4.2 and s 2.7.2) to be amended to ensure that Queensland Rail provides cost information consistent with the QCA Act.</p>	<p>The Asciano position on cost information provision is outlined in more detail in section 4 of this submission.</p> <p>Asciano generally supports the Draft Decision position on this matter.</p>
3.1 – 3.3	<p>Hierarchy of Pricing Principles</p> <p>The Draft Decision requires the 2015 DAU (s3) to be amended to ensure that the hierarchy of pricing principles is:</p> <ol style="list-style-type: none"> 1. limits on price differentiation 2. pricing and revenue limits 3. network utilisation 4. revenue adequacy 	Asciano generally supports the Draft Decision position on this matter. Asciano believes that issues of price discrimination and pricing limits are important in limiting monopoly power and ensuring competition in above rail markets
3.9 – 3.12	<p>Limits on Price Differentiation</p> <p>The Draft Decision requires the 2015 DAU (s3) to be amended to ensure that Queensland Rail can only differentiate access charges between similar train services in specific circumstances.</p>	Asciano generally supports the Draft Decision position on this matter.
3.13 – 3.16	<p>Pricing and Revenue Limits</p> <p>The Draft Decision requires the 2015 DAU (s3) to be amended to ensure that Queensland Rail has a clear methodology to determine floor revenue, a test for cross subsidies and QCA approval for any pricing below incremental cost.</p>	<p>Asciano supports the Draft Decision as this ensures that Queensland Rail cannot charge its own services at below incremental cost.</p> <p>However more broadly this issue could be better addressed via stronger ring fencing, improved cost transparency and regulator determined pricing.</p>
3.21 – 3.24	<p>Asset Valuation Methodology</p> <p>The Draft Decision requires the 2015 DAU to be amended to remove the requirement that Queensland Rail only use the depreciated optimised</p>	Asciano generally supports the Draft Decision position on this matter. Asset valuation methodologies other than depreciated optimised replacement

Item No	Summary of QCA Draft Decision Position	Asciano Position
	replacement cost asset valuation methodology.	cost should be able to be considered when determining price and revenue ceilings.
3.25 – 3.27	<p>Pricing For Access Rights at Renewal</p> <p>The Draft Decision requires the 2015 DAU (s3) to be amended to limit the ability of Queensland Rail to use its discretion to set access prices in some circumstances related to access agreement renewal.</p> <p>In practice this matter is largely related to Mt Isa line pricing issues.</p>	<p>Asciano has had ongoing concerns with pricing on the Mt Isa line.</p> <p>The approach put forward in the Draft Decision for renewal pricing 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>Asciano believes that an alternative approach should be developed which limits Queensland Rail's monopoly power in relation to Mt Isa rail line access pricing, while ensuring an appropriate level of Queensland Rail performance.</p>
4.1 – 4.27	<p>Operating Requirements</p> <p>The Draft Decision requires numerous changes to be made to operating procedures and documents.</p>	<p>Asciano generally supports the Draft Decision position on this matter.</p> <p>Note that more detailed Asciano comments on the Operating requirements manual are set out in Section 5.3 of this submission.</p>
5.1 – 5.3	<p>Performance and Access Reporting</p> <p>The Draft Decision requires the 2015 DAU to be amended to require annual reporting on Indicative Access Proposal timeframes.</p>	<p>Asciano generally supports the Draft Decision position on this matter.</p>
5.4 – 5.12	<p>Reporting of Cost and Price Information and Regulatory Accounts</p> <p>The Draft Decision requires the 2015 DAU to be amended to require cost and volume information to be reported annually and for audited financial statements to be released annually.</p>	<p>The Asciano position on cost information provision is outlined in more detail in section 4 of this submission. Asciano strongly supports the Draft Decision position on this matter</p>
7.6 – 7.8	<p>Balanced Risk Allocation</p> <p>The Draft Decision requires the 2015 DAU to be amended to give effect to “a</p>	<p>Asciano has strong concerns with Queensland Rail's unbalanced</p>

Item No	Summary of QCA Draft Decision Position	Asciano Position
	more balanced risk position for all parties”.	<p>approach to risk allocation and risk management. This unbalanced approach is particularly evident in the Standard Access Agreement. Asciano does not believe that the Draft Decision has adequately addressed these concerns. These concerns are outlined in more detail in section 4 of this submission.</p> <p>Asciano believes that risks should be borne by whichever party is best able to control the risk.</p>
7.9 – 7.11	<p>Key Performance Indicators</p> <p>The Draft Decision requires the 2015 DAU to be amended to include a KPI reporting regime including KPIs related to path consumption, network availability, network maintenance and closures, sectional run times and below rail transit times.</p>	<p>Asciano supports the Draft Decision position and believes that a consistent and transparent KPI reporting regime allows access holders and end users to monitor Queensland Rail’s performance against the access undertaking and access agreements and allows Queensland Rail’s performance to be compared with other rail infrastructure providers. Asciano believes that given Queensland Rail’s monopoly position its performance should be made transparent.</p>
7.12-7.14	<p>Development of Access Agreement for Different Access Scenarios</p> <p>The Draft Decision requires the DAU to be amended to include provisions for Queensland Rail to provide a standard funding agreement on reasonable terms.</p>	<p>Asciano generally supports the Draft Decision position on this matter but believes that there should also be an explicit requirement for a standard connection agreement. (The Standard Connection Agreement included in the Aurizon Network 2014 DAU could form the basis of such a connection agreement).</p>

5.2 Asciano Comments on the DAU as Attached to the Draft Decision

Table 2: Asciano Comments on Various Aspects of the Access Undertaking attached to the QCA Draft Decision’s on the Queensland Rail 2015 DAU

Section No	Access Undertaking	Asciano Position
Preamble		The Preamble includes statements regarding the commercial viability of the network and the competitive

Section No	Access Undertaking	Asciano Position
		<p>position of the network compared to other transport modes. As previously submitted, Asciano does not believe that these statements should be included as part of an access undertaking. The access undertaking should be restricted to matters of access.</p>
1.5	Master Planning and Extension Coordination	<p>This section requires Queensland Rail to prepare a Regional Network Master Plan for the West Moreton network, Mt Isa network and the North Coast Line network within 12 months of the approval date.</p> <p>Asciano believes that in establishing a Regional Network Capacity Group clause 1.5 d) should explicitly include operators (to the extent that the operators are not access holders or access seekers). Operators operating on these networks should be included in capacity planning processes. The network planning process should also ensure that assumptions used in the Queensland Rail capacity analysis (for example, sectional run times) are made available to industry participants.</p>
2.7.2	Issues to be Addressed in Negotiations	<p>This section states that if an End User Access Seeker does not provide required information regarding rolling stock during negotiations Queensland Rail will assume a Reference Train Service.</p> <p>Asciano believes that this is not workable for non-coal services as the Reference Train Service is a coal service. Ideally for non-coal services Queensland Rail should be required to attempt to seek rolling stock information from any Train Operator that the End User has included in access negotiations. Failing this Queensland Rail should at the least assume a train service that carries a similar product currently operating on the network.</p>
2.9.6	Transfer of Access Rights	<p>This section states that any transfers are addressed via the access agreement.</p>

Section No	Access Undertaking	Asciano Position
		<p>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 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.</p>
5.4.4	Audit	<p>This section allows for the QCA to audit:</p> <ul style="list-style-type: none"> • Queensland Rail's quarterly and annual reports if it believes that material in these reports are inaccurate; and • Queensland Rail's undertaking compliance if it believes Queensland Rail has failed to comply. <p>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 or if there is non-compliance is too restrictive.</p> <p>Asciano believes that audits of Queensland Rail's reports and compliance 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.</p> <p>Asciano recognises that such audits are not costless, and thus believes that an audit at least 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. In the event that major issues are identified the audits should be annual. In addition Asciano believes that the audit regime</p>

Section No	Access Undertaking	Asciano Position
		could be further strengthened by ensuring stronger obligations on Queensland Rail to remedy any breaches identified by the audit.
Definitions	Access Funder	The new definition 'Access Funder' in the 2015 DAU as attached to the Draft Decision is defined to mean an Access Seeker's Customer, an End User Access Seeker or an Access Seeker's nominee. This definition should be broadened to include any party which funds an extension, including Train Operators. This approach would be more consistent with the QCA's current approach in relation to Aurizon Network's 2014 DAU.
Schedule B Section 3	Ability to Use Access Rights	This section outlines a set of criteria which an Access Seeker needs to demonstrate in order to satisfy Queensland Rail of their ability to utilise the Access Rights as part of their access application (and to ensure they do not receive a negotiation cessation notice under DAU section 2.8.1). The criteria include the Access Seeker having a customer at the commencement date of the access agreement, their ability to secure entry and exit rights to and from the network and their nominated operator having sufficient facilities. It also includes, where access rights are sought to transport the output of a mine, the requirement to have sufficient output from the mine to support full use of the access rights sought. Asciano believes that for a new rail haulage task an access seeker may not have this information at this early stage in the development of the rail haulage task. In addition, requiring an access seeker to satisfy these criteria at an early stage in the development of the rail haulage task may hinder competition between train operators particularly if a tender process is being used. Asciano believes that the QCA should consider amending the 2015 DAU such that while the requirement to address the criteria outlined in Schedule B, section 3 is compulsory prior to the

Section No	Access Undertaking	Asciano Position
		commencement of an access agreement a reasonable time period needs to be allowed for the Access Seeker to develop and finalise this information.
Schedule C Section 6	Service Requirements	Section 6 of the Operating Plan template outlines information requirements needed including tonnage profile and daily, weekly, monthly, and annual train service entitlements. Asciano believes that such information is commercially sensitive and belongs in an Access Agreement where it is protected by confidentiality provisions. In addition to the commercial sensitivities the information may change in the Access Agreement and not updated in the Operating Plan.
Schedule F Section 2	Train Planning Principles	Asciano believes that if changes to the Master Train Plan or the Daily Train Plan result in an alternative scheduled time offered by Queensland Rail not being acceptable to the access holder then the access holder should not be subject to the take or pay requirements for the impacted train services. The impact should be assigned as a Queensland Rail cause for take or pay purposes.
Schedule F Section 2. 4	Disputes	Section 2.4 requires parties to apply the dispute resolution process contained under section 6.1 of the 2015 DAU if a dispute arises as a result of changes or modifications to either the Master Train Plan or the Daily Train Plan. The dispute process under section 6.1 of the 2015 DAU may be impractical in some cases in the operating environment; in particular the section 6.1 time frames may be impractical. As changes to the Master Train Plan or the Daily Train Plan occur on a daily basis the section 6.1 dispute process may not be a useful process. The dispute may not be resolved prior to the change needing to take effect. Asciano believes that either truncated time frames or an alternative dispute resolution approach is needed in instances

Section No	Access Undertaking	Asciano Position
		where operational time frames preclude a timely resolution using section 6.1 processes.

5.3 Asciano Comments on the Operating Requirement Manual

The 2015 DAU includes an Operating Requirements Manual. Many of Asciano's previously submitted concerns with the Operating Requirements Manual have been addressed in the Draft Decision. Further Asciano's comments on the Operating Requirements Manual as attached to the Draft Decision are outlined below:

Table 3: Asciano Comments on Various Aspects of the Operating Requirements Manual attached to the QCA Draft Decision's Position on the Queensland Rail 2015

Section No	Operating Requirements Manual	Asciano Position
7.2	Document Control Procedures	this obligation on the operator to provide contact details must be reciprocal. Queensland Rail must also notify the operator of relevant staff contact details.
NA	Dispute Resolution	While the Operating Requirements Manual contains a dispute resolution approach specifically relating to 2.6, Environmental Risk Management Process the Operating Requirements Manual does not make a broader statement regarding dispute resolution. Asciano assumes that a dispute relating to the Operating Requirements Manual would be addressed via either section 6.1 of the 2015 DAU or the relevant section in an access agreement. If this is not the case then this should be made explicit.

5.4 Asciano Comments on the Standard Access Agreement

The Draft Decision on the 2015 DAU Schedule H includes a revised Standard Access Agreement. The 2015 DAU 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 remains concerned that many of Asciano's comments provided in its June 2015 submission have not been addressed in the Standard Access Agreement attached to the Draft Decision. Asciano remains strongly concerned with the unbalanced approach to risk management, as evidenced in the standard access agreement and reiterates most of its earlier comments and requests for amendments; in particular risks should be borne by whichever party is best able to control the risk.

Asciano's detailed comments and concerns relating to the details of the proposed standard access agreement as attached to the Draft Decision are outlined in the table below.

Table 4: Asciano Comments on Various Aspects of the QCA Draft Decision Position on the Queensland Rail Proposed Standard Access Agreement (SAA)

Clause Reference	Outline of Clause	Asciano Position
2.2 b) and 4.1 a) and b)	<p>2.2 b) Exercise of Access Rights and Operator Nomination - this clause allows an Access Holder to change their nominations to utilise their access rights upon giving a minimum of 20 business days prior notice.</p> <p>4.1 a) Changes to Operator Nominations – this clause allows an access holder to vary any nomination previously given by them under the agreement with at least 2 business days notice and Queensland Rail then has 10 business days to accept or reject the variation.</p>	Asciano believes that some of these timeframes appear inconsistent. Asciano is seeking that they be clarified.
6.7	Performance Level Reporting Regime – this section establishes a requirement for Queensland Rail to provide weekly and monthly reports in relation to agreed performance levels.	<p>Asciano welcomes this new section but queries the value of reporting on performance levels if there are no remedies available to an Operator or Access Holder if Queensland Rail does not achieve these performance levels.</p> <p>Asciano further queries why failure to agree to suitable performance levels should not be a Dispute for the purposes of clause 19. This is of particular concern as it allows Queensland Rail to avoid the performance</p>

Clause Reference	Outline of Clause	Asciano Position
		<p>level reporting regime by refusing to agree to performance levels.</p> <p>Asciano seeks the standard access agreement includes:</p> <ul style="list-style-type: none"> • the matters to be covered by the performance levels such as track quality and path availability; and • a right to refer matters regarding establishing performance levels to dispute resolution in accordance with clause 19; and • suitable remedies if Queensland Rail fails to achieve performance levels.
7.1	<p>Maintenance – this clause requires Queensland rail to maintain the network so that it is consistent with Rollingstock Interface Standards</p>	<p>Asciano is concerned that the Rollingstock interface Standards can be changed by Queensland Rail without consultation.</p> <p>Asciano seeks that where a change in the Rollingstock Interface Standards has the potential to impact on Queensland rail's maintenance obligations that Queensland Rail has an obligation to consult access holders and train operators.</p>
7.2	<p>Network Control</p>	<p>Asciano considers that the obligations of Queensland Rail with respect to the network control function remain unclear. Consequently, Asciano reiterates its earlier comments and requests that standards of train control be included as follows::</p> <ul style="list-style-type: none"> • 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; • having facilities in place (including signaling) to enable the operator to utilise the train paths on the terms of the access agreement; • 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; • 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; • use its best endeavours to provide

Clause Reference	Outline of Clause	Asciano Position
		<p>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.</p> <p>In Asciano's view, network control together maintenance of the network, are the primary functions of Queensland Rail under an Access Agreement. The nature and standard to which these functions are performed are poorly defined and accordingly an Operator or Access Holder's ability to ensure either function is properly performed is extremely limited.</p> <p>This lack of certainty with respect to Queensland Rail's role is unacceptable.</p>
8.3(d)	<p>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 the Operator becomes aware of the failure or likely failure.</p>	<p>Asciano notes that the comments it made in its June submission on this matter have not been adopted. Asciano believes that these comments are reasonable and therefore reiterates these comments and requests:</p> <ul style="list-style-type: none"> • clause 8.3(d) be amended to read "...must notify Queensland rail of any material failure, or likely material failure..." (that is, the clause must be limited to material breaches); and • the inclusion of a new clause imposing the same obligation on Queensland Rail (such that the clause is reciprocal).
8.7	<p>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 reasonable discretion.</p>	<p>This clause is unduly oppressive and is not accepted by Asciano. The amendments requested in our June comments strike a fair compromise between Queensland Rail managing its communications networks and making sure Operators are not adversely impacted by decisions that have the potential to impose substantial costs or that may not be practicable in the circumstances.</p> <p>Asciano believes that there should be an explicit obligation on Queensland Rail to consult with access holders prior to substantially amending software, hardware and communications links. 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</p>

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		<p>incorporated. In any event Queensland Rail must use its best endeavours to minimise cost and disruption for the Operator under such circumstances.</p> <p>Asciano would be grateful if the QCA could reconsider the comments in the Asciano June submission and requests for amendments to clause 8.7.</p>
8.8(d)	<p>Queensland Rail may supply data – this clause states that data collected by Queensland Rail remains the property of the Supplier of the data.</p>	<p>Asciano welcomes changes to the clause.</p> <p>Asciano requests that the approval of the Supplier be qualified as the “.....prior, written approval of the Supplier.”</p>
8.9(a)	<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"> • provided the Certification; • obtained from Queensland Rail a notice indicating that Queensland Rail is satisfied with the Certification. 	<p>Asciano believes its request for amendments to clause 8.9(a) (ii) in its June submission were reasonable and standard in nature. Accordingly, Asciano is seeking that the QCA reconsider these comments</p> <p>Asciano believes that clause 8.9(a) should be amended to require that Queensland Rail’s notice and satisfaction should not be unreasonably withheld or delayed. 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 its request for amendments to clause 10.1(a) (ii) in its June submission were reasonable and standard in nature. Accordingly, Asciano is seeking that the QCA reconsider these comments</p> <p>Asciano believes the requirement for an Emergency Management Plan should apply to both parties including Queensland Rail who should make their Emergency management plan available to the Operator under the access agreement.</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 its requested amendments to clause 10.7 in its June submission provide guidance as to what “acting reasonably” means in the context of any obligation imposed on Queensland Rail with respect to noise mitigation. Accordingly, Asciano is seeking that the QCA reconsider these comments</p> <p>Asciano believes that:</p> <ul style="list-style-type: none"> • noise mitigation should only be undertaken when relevant noise

Clause Reference	Outline of Clause	Asciano Position
		<p>levels are breached;</p> <ul style="list-style-type: none"> • 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. 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.
12.2	<p>Operator's carriage indemnity – where the Operator's Customer is not a party and commences a claim against Queensland Rail in circumstances where the operator is excluded from making a claim 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>	<p>Asciano notes its request for amendments to clause 12.2 have not been adopted and repeats its comments from its June submission. Asciano is seeking that the QCA reconsider these comments</p> <p>As presently drafted, clause 12.2 is highly unusual in that Asciano is required to indemnify Queensland Rail in circumstances where Queensland Rail may have been negligent or breached the terms of the relevant Access Agreement. In addition, given the very broad definition of "Operator's Customer" (which includes "any other person directly or indirectly benefiting from, or for whom the Operator operates, the Train Services"), Asciano is exposed to unmanageable and potentially uncapped costs.</p>

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		<p>Asciano cannot accept liability for losses it did not cause. Nor can Asciano accept liability for the actions of people it has no direct contractual relationship with and may have no direct course of action against pursuant to which it can recover any losses it may incur as a result of this indemnity.</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> <p>Thus Asciano submits that this clause is highly prejudicial and unfair to the Operator and should be deleted from the Standard Access Agreement. .</p>
12.3	<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 its request for amendments to clause 12.3 have not been adopted and repeats its comments from its June submission. Asciano is seeking that the QCA reconsider these comments</p> <p>Asciano notes that its conditions of carriage between itself and its customers are typically confidential documents. It is not appropriate for Queensland Rail to seek a clause such as this or for the QCA to endorse such a clause 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>
13.6	<p>Claims in Respect of Non-Provision of Access – this clause only allows a claim for non-provision of access if the total number of train services cancelled in a month is greater than 10 per cent.</p>	<p>Clause 13.6 d) allows Queensland Rail to avoid liability for non-provision of access unless more than 10 per cent of services are cancelled.</p> <p>This clause 13 shifts Queensland Rail's risk of non-performance to access holders even though access holders cannot manage this risk. Clause 13.6 d) should be deleted</p>

Clause Reference	Outline of Clause	Asciano Position
15.6	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 as it is currently drafted.</p> <p>Asciano requests that the words “such consent not be unreasonably withheld or delayed” be added to the end of clause 15.6(b).</p>
17	Security – this clause requires the Operator to provide Security which may be called upon in certain circumstances	<p>Asciano notes the amendments to clause 17.1 with respect to the obligation to provide security being determined “having regard to the Parties’ financial capability” of the Operator or Access Holder as the case may be. However, given the cost of security, the subjective nature of the words “financial capability” and the adverse impact recourse to security can have for a Party (especially if recourse was not justified in the circumstances, Asciano requests the inclusion of more objectively measurable standards of “financial capability” and a restriction on recourse where an amount is disputed as follows.</p> <ul style="list-style-type: none"> ○ ○ in the case of 17.2(a)(i), to confirm for the avoidance of doubt that Queensland Rail may not call on the Security where the Operator has disputed the amount; and ○ 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"> ▪ Queensland Rail has issued a demand that the Operator indemnify it; and ▪ The Operator has refused to do so.
21.2	Relinquishment of Access Rights – this clause requires a relinquishment fee to be paid if a path is relinquished except in circumstances where prior to the relinquishment date (i.e. six months) the path has been contracted to a new access holder.	<p>As currently structured the relinquishment fee allows Queensland Rail to potentially double dip, collecting a relinquishment fee based on access charges foregone and then some time after the relinquishment date having the potential to resell the path to a new user.</p> <p>Asciano believes that if any relinquished path is subsequently utilised by another access holder then the relinquishment fee should be adjusted to reflect the fact that the revenue</p>

Clause Reference	Outline of Clause	Asciano Position
		<p>that Queensland Rail had lost from the path had been offset.</p> <p>More broadly Asciano believes that the relinquishment fee is in itself unbalanced.</p>
21.4	Termination where no access rights remain	This clause should be clarified as there may be circumstances where an access holder has no scheduled paths but continues to operate ad hoc trains. In these circumstances the access agreement should not be terminated.
22.2(c)	Assignment by the Access Holder – under clause 22.2(c), the Access Holder 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 discharged 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 approach should apply to both Queensland Rail and the Access Holder under the Standard Access Agreement.</p>
22.3	Assignment by Operator – this clause states that the operator cannot assign all or part of its obligations under this agreement.	<p>Asciano believes that the Operator should have the option to assign its rights and obligations under the agreement if prior consent is sought from Queensland Rail (where this consent cannot unreasonably be withheld if the assignee is operationally and financially capable of meeting the obligations.</p> <p>This would be no different to current access agreements where operators have assignment rights.</p> <p>In instances where a single party is both the Access Holder and Operator section 22 may be confusing as the Access Holder can assign rights but the Operator cannot assign rights.</p>
28	Definition of “Repeated Breach”	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.

6 CONCLUSION

Overall Asciano supports comment in submissions by other parties to the QCA's Draft Decision on the Queensland Rail 2015 DAU where these comments are seeking:

- increased requirements for Queensland Rail to maintain and improve service standards and service levels
- increased requirements for Queensland Rail to improve transparency, accountability, flexibility and customer focus; and
- the extension of a more prescriptive access tariff approach to other Queensland Rail lines.

More broadly in relation to the QCA's Draft Decision on the Queensland Rail 2015 DAU Asciano remains concerned that an unbalanced approach to risk remains in the DAU, particularly in the Standard Access Agreement. Asciano believes that risks should be borne by whichever party is best able to control the risk. Asciano seeks that in the Final Decision the QCA more evenly balance risks between parties such that risks are borne by whichever party is best able to control the risk.