



Proposed Amendments to the DBCT Terminal Regulations

1. Background

Dalrymple Bay Coal Terminal Pty Ltd (the **Operator**) has requested DBCT Management Pty Ltd's (**DBCTM**) consent to proposed amendments to the DBCT Terminal Regulations (**Terminal Regulations**). In accordance with sections 6.2(a)(2)(B) and (C) of the DBCT Access Undertaking, DBCTM writes to inform all stakeholders that it consents to the Operator's proposed changes to the Terminal Regulations. DBCTM provides the following detailed reasoning to explain why it has provided its consent.

DBCTM expects that the proposed changes to the Terminal Regulations will facilitate the following outcomes:

- Increased ability for an Access Holder to identify where a service provider is not meeting its contractual obligations;
- Access Holders will be incentivised to ensure railing capability supports variability in parcel and vessel nominations;
- Maintain a turn of arrival approach to shipping, subject to the miner having confirmed ability to: produce coal, load coal onto trains, and transport the coal to DBCT;
- More efficient use of DBCT and the Dalrymple Bay Coal Chain (**DBCC**);
- Access Holders exercising reasonable endeavours to ship evenly; and
- More accurate information being provided to the Operator in a timely manner.

2. Supply chain performance

The following discussion relates to the proposed changes to regulations 2.2(b), 2.3 and 3 of the Terminal Regulations.

DBCT's Access Holders have previously expressed concern that the Operator's current approach to ordering and planning trains does not facilitate throughput, efficiency or transparency. The Terminal Regulations currently in effect require the Operator to order only the trains that are offered to DBCT and prioritise above rail asset allocation to earliest arrived vessels.

The results of this inefficient and opaque process may include:

- Higher waiting times for all producers shipping from DBCT;
- Damage to the global reputation of the DBCT supply chain;
- Possible loss of seaborne coal market share; and
- A higher average cost of operation for all miners.

To improve efficiency and transparency, the proposed amendments to the Terminal Regulations will remove the ambiguity around which rail plan should be considered the Operator's "order" for trains.



The Operator will now order trains up to available terminal capability without regard to constraints advised by other service providers by 0800 hours each Monday and this will be considered the “order”. Any subsequent railing plan produced by the Operator based on constraints advised by rail freight providers will not be considered the order. Removing this source of ambiguity will minimise the possibility of the Operator inadvertently under-ordering trains in comparison to the collective railing capability of all Access Holders.

Rail freight providers will also no longer be required to provide trains to DBCT in accordance with strict vessel turn of arrival. Vessels will be loaded in turn of arrival if the required coal is able to be produced and loaded on a train, and the coal is able to be transported to the terminal when required by the Operator.

The ILC has confirmed that the proposed changes to the Terminal Regulations will address the most urgent issues causing loss and inefficiency in the supply chain.

Compliance with section 6.2(c) of the DBCT Access Undertaking – Regulations 2.2(b), 2.3 and 3

Relation to Operational Issues (section 6.2(c)(1))

The proposed changes relate to operational issues. The Operator has an important role in its capacity as the appointed Rail Coordinator, acting on behalf of DBCT’s Access Holders. The proposed amendments will modify an existing operational process to improve the delivery of trains to the terminal.

Operate equitably as a whole (section 6.2(c)(2))

Trains will be ordered by the Operator in accordance with a transparent process. All Access Holders and Rail Freight providers seeking to deliver coal to DBCT will be required to adhere to the same rail planning process.

Consistency with the DBCT Access Undertaking and Access Agreements (section 6.2(c)(3))

The proposed amendments do not introduce any additional subject matter beyond what is currently subject to the Terminal Regulations. Further, the proposed amendments to the Terminal Regulations do not change the way the Access Undertaking or Access Agreements work. In satisfying the criteria required by section 6.2(c) of the DBCT Access Undertaking, these changes are consistent with the DBCT Access Undertaking and Access Agreements

Reasonably Necessary (section 6.2(c)(4))

At its September 2018 Board Meeting, ILC Board Members (inferring that the current rail ordering process was causing poor throughput) unanimously directed ILC Management to “review the rail ordering process to ensure it does not allow for socialisation of the rail fleet at the expense of those who have contracted peaking above and below rail capability”.

Inefficient rail ordering practices are also a contributing factor to increased vessel wait times and vessel queues (discussed further below in regulation 2.4). Addressing the rail ordering process also assists to address the more visible issue of vessel queues. The Operator and ILC management have both recommended these changes in order to improve the efficiency of both DBCT and the DBCC. After considerable engagement with stakeholders, DBCTM agrees that these changes to the Terminal Regulations are necessary to improve the efficiency of DBCT and the DBCC.



3. Reasonable endeavours to ship evenly

The following discussion relates to section 2.4 of the proposed Terminal Regulations (as amended).

An Access Holder that does not exercise reasonable endeavours to ship its annual contract evenly may cause delays to another Access Holder that is exercising reasonable endeavours to ship evenly. The drafting of regulation 2.3 in the current approved version of the Terminal Regulations did not provide adequate guidance for Access Holders or the Operator on how regulation 2.3(a)(ii) (which is consistent with clause 3.5 of the DBCT Standard Access Agreement) should be interpreted and applied.

To address this lack of clarity, the Operator has proposed a guideline to be codified in the Terminal Regulations. This guideline will be applied in most situations where an Access Holder is deemed to not be exercising reasonable endeavours to ship evenly. The guideline is the culmination of a successful 22+ month trial. The Operator and DBCTM conducted many rounds of consultations with Access Holders which resulted in substantial refinement of the circumstances in which regulation 2.3(a)(ii) would be deemed to be triggered. By April 2018, the Operator successfully began to trial applying regulation 2.3 in accordance with an approach developed in consultation with Access Holders. This approach is the approach now set out in regulation 2.4.

In summary, the Operator will assess the Access Holder's vessel and parcel nomination patterns over a rolling three-month period. If an Access Holder has exceeded 100% of its Annual Contract Tonnage (pro-rated) during that three-month period, the vessel will be reprioritised to the first day of the following month.

Compliance with Section 6.2(c) of the DBCT Access Undertaking – Regulation 2.4

Relation to Operational Issues (section 6.2(c)(1))

The changes relate to operational matters. The extra clarification provided by the addition of proposed regulation 2.4 provides an operational guideline in relation to vessel nominations, and how those vessels would be treated operationally.

Operate equitably as a whole (section 6.2(c)(2))

The process for determining if a shipper is not exercising reasonable endeavours to ship evenly is transparent and clearly defined. The process will be applied in the same way to all Access Holders and by extension, rail freight providers. The process was developed in consultation with Access Holders and in particular, the assessment of even shipping over a three month rolling period was ultimately selected to ensure that Access Holders with smaller Annual Contract Tonnages were not disadvantaged.

Consistency with the DBCT Access Undertaking and Access Agreements (section 6.2(c)(3))

The proposed amendments do not introduce any additional subject matter to the Terminal Regulations and do not change the way the Access Undertaking or Access Agreements work. The current Terminal Regulations already contain a right for the Operator to de-prioritise vessels where an Access Holder is nominating vessels at a rate that exceeds its contractual entitlement. New regulation 2.4 provides further guidance regarding the circumstances where this right will be used by the Operator.



Inclusion of Regulation 2.4 remains consistent with clause 3.5 of the DBCT Standard Access Agreement. DBCTM is therefore satisfied that the criteria in section 6.2(c)(3) of the DBCT Access Undertaking is satisfied.

Reasonably Necessary (section 6.2(c)(4))

In December 2017, Maritime Safety Queensland (**MSQ**) and the Australian Maritime Safety Authority (**AMSA**) made it clear to DBCTM and the Operator that the relevant government departments expected the coal industry to modify its approach, on the basis that long wait times and inefficient vessel queues were viewed unfavourably due to the following concerns:

- Appearance that the coal industry is unable to properly and responsibly manage its supply chains;
- Environmental concerns;
- The impact on the natural attractiveness of the ocean environment; and
- In the event of a tropical cyclone and subsequent port closure, there are safety concerns associated with a large number of vessels leaving the port in an orderly manner.

Further, a steelmaker which purchases substantial quantities of coal from DBCT has raised concerns on numerous occasions with DBCTM that long wait times and vessel queues at DBCT cause substantial impacts to their own business.

The Operator has recommended the inclusion of clause 2.4 to further improve the efficiency of DBCT and the DBCC. The recommended changes are the result of extensive consultation with stakeholders and a successful 22+ month trial. The guideline contained within the proposed regulation 2.4 has been effective in encouraging Access Holders to exercise reasonable endeavours to ship evenly over a sustained period of time.

The inclusion of the well-refined clause 2.4 are critical measures to address the concerns of various stakeholders who have previously expressed frustration with the extended vessel waiting times and inefficient queue levels at DBCT. These stakeholders include, but are not limited to government agencies, coal end-users and Access Holders. After considerable consultation with stakeholders, DBCTM agrees the proposed changes to the Terminal Regulations are reasonably necessary to improve the efficiency of DBCT and the DBCC.

4. Provision of accurate information

The following discussion relates to proposed new regulation 2.7.

New regulation 2.7 provides that after completion of vessel loading, the Operator will make a statement/sequence of events relating to the planning of each vessel available to the co-shippers who have loaded coal onto that vessel. The transparency resulting from provision of a statement of planning events to co-shippers is expected to result in more accurate information being provided to the Operator's planners. Supply of better information to the Operator's is expected to result in increased plan robustness and a reduction in the amount of plan rework required of the Operator's planners.



Compliance with Section 6.2(c) of the DBCT Access Undertaking – Regulation 2.7

Relation to Operational Issues (section 6.2(c)(1))

The changes relate to improving the operational information being provided to the Operator and co-shippers. With the introduction of new regulation 2.7, it is expected that with better information, the Operator will be able to construct better operational plans and rail orders.

Operate equitably as a whole (section 6.2(c)(2))

The information from each vessel will be available to all co-shippers on that vessel. Access Holders who participate in co-shipping are unable to opt out of having the vessel and rail planning information shared. The same process for sharing Access Holder information will be applied equally to all Access Holders whose buyers elect to take coal from multiple Access Holders on the same vessel and by extension, rail freight providers used by such Access Holders.

Consistency with the DBCT Access Undertaking and Access Agreements (section 6.2(c)(3))

The proposed changes to the Terminal Regulations are intended to give the Operator a clear mandate to provide information already collected by the Operator in performing its role to all Access Holders who co-ship on a single vessel. DBCTM notes that the Access Agreements do not contain confidentiality provisions. The Access Undertaking does contain confidentiality provisions but only in respect of information exchanged during negotiations under section 5 of the DBCT Access Undertaking or any other part of the Access Undertaking. DBCTM does not consider that the information involved is information collected by DBCTM under the Access Undertaking but rather is information that is operational in nature only and that is being collected directly by the Operator in the performance of its role. As such, the amendments are not inconsistent with either the Access Agreement or the DBCT Access Undertaking and these changes therefore satisfy the requirements of section 6(c)(3).

Reasonably Necessary (section 6.2(c)(4))

The Operator has recommended these changes in order to allow it to provide relevant vessel planning information to co-shippers. Previously, the Operator considered that it did not have a clear mandate to share information between co-shippers and would therefore only do so with each affected Access Holder's consent. This was administratively burdensome, often delaying and generally preventing information sharing. If the Operator is unable to provide relevant vessel planning information to co-shippers on a vessel, it is unlikely that any improvement in information provision will occur. The inability to introduce such transparency is likely to cause the Operator to continue the practise of developing flawed plans.

5. Non-substantive changes

The Operator has made various tidy-ups and clarifications to match current operations and logistics practise including:

- Regulation 3.1 – Adjusting the deadline for Access Holders to submit forecast utilisation advice to suit current practise;
- Regulation 4.4 – Improves the Operator's ability to require coal provided to meet the "Agreed Specification";



- Regulation 7.1 – If requested by the Access Holder, the Operator will enter into a confidentiality agreement to protect the Access Holder’s confidential information;
- Schedule 2(5) – requiring that important planning information be provided seven days prior to railing rather than shipping; and
- The Operator has added multiple definitions to the Terminal Regulations to support the various changes that have been proposed.

DBCTM considers each of these non-substantive changes are necessary to give effect to the specific changes outlined above and therefore also satisfy the criteria in section 6.2(c) of the DBCT Access Undertaking.

6. Consultation

In accordance with the DBCT Access Undertaking section 6.2(a)(1), DBCTM conducted an extensive consultation process with Access Holders, Access Seekers, Rail Operators and Aurizon Network (noting there are presently no Expansion Parties). In total, two rounds of consultations were conducted by DBCTM.

The first round of consultations included the release of a discussion paper and wording for the proposed amendments to the Terminal Regulations, individual meetings by request and a consultation forum arranged by DBCTM. The discussion paper was drafted by DBCTM and sought detailed feedback from stakeholders.

In total, during the first round of consultations, DBCTM received 15 individual items of written feedback, conducted 11 individual meetings and hosted 12 attendees at the consultation forum.

The second round of consultations included the re-release of the discussion paper, updated wording for the proposed amendments to the Terminal Regulations and individual meetings by request.

In total, during the second round of consultations, DBCTM received 14 individual items of written feedback and conducted 16 individual meetings either in person or by teleconference.