



Submission to the Queensland Competition Authority

Standard Rail Connection Agreement

Anglo American Metallurgical Coal Pty Ltd

4 December 2012

Anglo American Metallurgical Coal Pty Ltd (**Anglo American**) appreciates the opportunity to provide a submission in response to the supplementary submission lodged by QR Network Pty Ltd (**QR Network**) on 12 November 2012.

1. Executive Summary

In summary, Anglo American is of the view that:

- (a) The process which QR Network has followed in submitting an additional submission on 12 November 2012 has not allowed the coal producers sufficient time to respond to the detail of Schedule 7;
- (b) There has been a long and detailed history of negotiations between QR Network, the coal producers and the relevant Government Departments which has led to an agreement on the Coal Dust Management Plan. Anglo American believes that it is inappropriate for Schedule 7 of the SRCA to impose obligations which are higher, different or additional to the obligations that industry have agreed to under the CDMP. We have outlined below a number of areas where we believe that the obligations in Schedule 7 of the SRCA are higher than, different from or additional to the CDMP. The most important include:
 - (i) the CDMP envisaged compliance with requirements of Government, however, clause 1.3(a)(iii) extends much further and requires coal producers to comply with any requirement that QR Network, acting reasonably, imposes on the coal producers;
 - (ii) a significant number of the provisions imposed specific obligations whereas in the CDMP the process envisaged was that QR Network would consult and collaborate with industry in determining what were the specific requirements. QR Network has not, in Anglo American's view consulted with industry and, therefore, it is inappropriate for the QCA to allow QR Network to impose these obligations by way of the SRCA;
 - (iii) the obligations in respect of the veneering of coal are significantly in excess of what were envisaged under the CDMP and impose significant costs on the coal producers;
 - (iv) Anglo American is particularly concerned about the power of QR Network to enter on to the coal producers' land without notice or prior consultation for monitoring purposes. Anglo American is of the view that QR Network does not need this power and strongly opposes its imposition through the SRCA. At the very least there need to be significant protections around notice periods and consent; and
 - (v) it is entirely inappropriate that QR Network can suspend and terminate access rights for noncompliance with the SRCA. This is not consistent with the CDMP and is significantly more than is needed by QR Network.
- (c) In Anglo American's view the only obligation that should be imposed upon coal producers under Schedule 7 is an obligation to use reasonable endeavours to comply with the CDMP and an obligation for ongoing consultation in respect of continuous improvement;
- (d) To the extent that QR Network has submitted that it is appropriate for the QCA to agree to the provisions of Schedule 7 because they are consistent with TFLs which

have either been signed or are currently being negotiated, Anglo American is of the view that the QCA should not take into account the terms of the TFL that have been provided to the QCA, as to the extent that any TFLs have been signed in the context of QR Network having monopoly power. That is, coal producers have signed, or are negotiating, those agreements in circumstances where there is a significant inequality of bargaining power. The QCA should independently consider the appropriateness of the provisions of Schedule 7 and in determining their appropriateness should take into account only the terms of the CDMP which is the product of a detailed consultation with coal producers and relevant Government Authorities; and

- (e) The QCA should either approve Schedule 7 in a form similar to that suggested by Anglo American in this submission or should require QR Network to lodge an amendment to the SRCA within 3 months in respect of the implementation of CDMP. The QCA should require that all TFLs be consistent with the provisions which are ultimately approved by the QCA. This is to ensure that the effectiveness of the approval by the QCA of the provisions implementing CDMP is not undermined by QR Network by-passing the approved provisions and entering into TFLs which are inconsistent with provisions approved by the QCA. To the extent that a TFL has been signed QR Network should have an obligation to re-negotiate those agreements to ensure they are consistent with the QCA approved provisions.

2. Background

In accordance with clause 8.4(a) of QR Network's 2010 Access Undertaking, QR Network has prepared a Standard Rail Connection Agreement (**SRCA**). The original SRCA was submitted to the Queensland Competition Authority (**QCA**) on 30 June 2010. Since this time, the QCA has issued a draft decision on the SRCA (dated June 2012), and QR Network has submitted a revised version of the SRCA (dated September 2012).

The SRCA requires compliance with the Coal Loss Mitigation Provisions (**CLMP**). In the original SRCA, detailed Coal Loss Mitigation Provisions were set out in Schedule 7. Following the QCA's draft decision, these detailed provisions were removed and replaced with the words "*[CLMP to be incorporated if applicable at the relevant time]*" (note: these words appear in schedule 8 of the resubmitted SRCA).

It is understood (though not specifically stated in the SRCA), that the purpose of the CLMP is to implement the provisions of QR Network's Coal Dust Management Plan, dated 22 February 2010 (**CDMP**). While the detailed CLMP was removed from the resubmitted SRCA, the QCA is still keen to understand how the CLMP implements the CDMP (if at all). To assist with this, Anglo American has prepared an analysis of Schedule 7 of the original SRCA, that compares the CLMP against the provisions of the CDMP. This analysis is contained in section 3 of this submission.

3. Detailed Analysis

The below table sets out the provisions of Schedule 7 of the SRCA (excluding pictures and diagrams), and assesses how each clause relates to the CDMP (if at all).

SRCA Schedule 7 – Coal Loss Mitigation Provisions

| Clause | Comment |
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| <p>1. COAL LOSS MITIGATION – GENERAL COAL LOADING, UNLOADING, PROFILING AND VENEERING OBLIGATIONS</p> | |
| <p>1.3 Meaning of “Preventing Coal Loss”</p> <p>(a) In the Coal Loss Mitigation Provisions, “Preventing Coal Loss” means taking all reasonable and practicable measures during the handling and loading of coal at the Transfer Facilities to prevent coal loss (including emissions of coal dust and spillage from wagons) during the transport of such coal by rail on the Connecting Infrastructure or the Network to satisfy (subject to Clause 1.3(b) of this Schedule 7) the standards, targets, levels or other measures (Standards) set for coal loss:</p> <p>(i) in accordance with all applicable Laws;</p> <p>(ii) in accordance with all requirements, instructions, guidelines, standards or other directions whether now or at any time in the future in effect issued or published by an Authority responsible for the administration of environmental Laws in Queensland; and</p> <p>(iii) as specified by QR Network, acting reasonably, from time to time (but only to the extent that QR Network applies, as far as reasonably practical, those standards, targets, levels or other measures to similar coal loading facilities),</p> <p>and references to “Prevents Coal Loss”, “Prevent Coal Loss” and “Prevention of Coal Loss” must be interpreted in a corresponding way.</p> <p>(b) If any one or more of the Standards referred to in Clause 1.3(a) of this Schedule 7 cannot be complied with without failing to comply with another</p> | <ul style="list-style-type: none"> • Clauses 1.3(a)(i)-(ii) are consistent with the CDMP. • However, clause 1.3(a)(iii) is <u>not</u> consistent with the CDMP. Section 3.2.2 of the CDMP provides that ‘<i>The Queensland coal industry is committed to mitigating coal dust from coal trains by working with members of the coal supply chain....This includes...complying with environmental policies, legislation, regulations, guidelines and procedures set by Government</i>’ (emphasis added). We note that the CDMP specifically limits this commitment to government policies, legislation etc. It does not include a commitment to comply with standards, targets, levels or other measures specified by QR Network from time to time. Anglo American does not believe that the requirement that QR Network must act reasonably in setting any Standards is sufficient to protect industry from QR Network requiring industry to comply with higher obligations than those required (and paying the additional costs of complying with the higher requirement). |

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| <p>applicable Standard, then as between those mutually inconsistent Standards:</p> <p>(i) Standards referred to in Clause 1.3(a)(i) of this Schedule 7 prevail over Standards referred to in Clauses 1.3(a)(ii) and (a)(iii) of this Schedule 7; and</p> <p>(ii) Standards referred to in Clause 1.3(a)(ii) of this Schedule 7 prevail over Standards referred to in Clause 1.3(a)(iii) of this Schedule 7.</p> | |
| <p>1.4 General obligation</p> <p>(a) Notwithstanding any other provision in the Coal Loss Mitigation Provisions, the Owner must, at all times, Prevent Coal Loss.</p> <p>(b) For the avoidance of doubt, the Owner will not be taken to have failed to Prevent Coal Loss in respect of the spillage of coal from a wagon during the transport of the coal by rail if the spillage is caused by the malfunction of the wagon's kwik drop doors.</p> <p>(c) Without limiting any other obligation of the Owner under the Agreement, the Owner must comply with:</p> <p>(i) all applicable Laws relating to coal loss (including the emission of coal dust);</p> <p>(ii) all requirements, instructions, guidelines, standards or other directions relating to coal loss (including the emission of coal dust) whether now or at any time in the future in effect which are binding on or which would customarily be observed by a reasonable and prudent owner or operator of facilities such as the Transfer Facilities (including any such things issued or published by an Authority responsible for the administration of environmental Laws in Queensland); and</p> <p>(iii) the Owner's obligations and the standards and requirements set out in this Schedule 7 (including the rail asset restrictions specified by QR Network from time to time),</p> <p>during the handling, loading and unloading of coal using the Transfer Facilities.</p> <p>(d) The Owner must supply any labour, materials, plant, equipment and</p> | <ul style="list-style-type: none"> • By cross referencing the definition of "Prevent Coal Loss" in clause 1.3, clause 1.4 effectively requires coal producers to take <i>'all reasonable and practicable measures during the handling and loading of coal at the Transfer Facilities to prevent coal loss...during the transport of such coal by rail on the Connecting Infrastructure or the Network to satisfy...the standards, targets, levels or other measures...set for coal loss.'</i> We note that the CDMP is a voluntary guideline (see section 1.3), and that the obligations of coal producers are limited by factors such as efficacy, practicality, cost and commercial factors. The CDMP does not oblige coal producers to <i>'take all reasonable and practicable measures'</i> to achieve the proposed coal dust mitigation activities highlighted in the CDMP. • The obligation in clause 1.4(a) of Schedule 7 imposes a 'hard' obligation to, at all times, prevent Coal Loss. In turn, clause 1.3(a) defines Preventing Coal Loss in a way which is broader than the aspirational target set out in the CDMP. By way of example the concept of 'Preventing Coal Loss' does not take into account the matters set out in section 1.3 of the CDMP which specifically states that the implementation of dust mitigation strategies will be influenced according to the: <ul style="list-style-type: none"> • prevailing business conditions at the time any decision is required; • effectiveness of the particular mitigation approach given technology and cost constraints; • timeframes required to implement mitigation strategies; • overall strategy undertaken given the specific characteristics underlying their contribution to dust; and • consideration of the impact on other supply chain participants. |

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| <p>facilities required to enable it to properly perform its obligations under the Coal Loss Mitigation Provisions.</p> | <ul style="list-style-type: none"> • The phrase 'all reasonable and practical measures' is not apt to allow for the above listed considerations. • Anglo American believes that the only obligation in Schedule 7 should be an obligation to use reasonable endeavours to implement the CDMP. • If the QCA decides to retain the concept of "Preventing Coal Loss" then, at the very least, the QCA should amend the concept of Preventing Coal Loss to include the factors outlined in the CDMP. • Clause 1.4(c)(ii) should be removed because the obligation to comply with applicable Laws and requirements is dealt with in clause 1.3 and clause 1.4(c)(ii) operates so that if a coal producer has agreed to a TFL with QR Network and breaches that TFL then they are also in breach of the SRCA. It also has the effect of ensuring that any higher obligations and additional obligations which have been extracted from coal producers in TFLs will prevail even if the QCA approves a lower level of obligation in the SRCA. |
| <p>1.5 Obligation to install and operate Veneering Equipment</p> <p>(a) Without limiting any other obligation of the Owner under this Clause 1 of Schedule 7, the Owner must, at its cost:</p> <p>(i) install (or procure the installation of) suitable Veneering Equipment as part of the Transfer Facilities; and</p> <p>(ii) after the Veneering Equipment is installed:</p> <p>(A) operate (or procure the operation of) the Veneering Equipment; and</p> <p>(B) ensure an effective veneering agent is applied onto the exposed surface of coal loaded into wagons at the Transfer Facilities,</p> <p>for the purpose of Preventing Coal Loss during transport.</p> <p>(b) Without limitation to Clause 1.5(a)(ii)(B) of this Schedule 7, the Owner must comply with the Veneering Agent Testing Obligations.</p> <p>(c) Compliance with the Veneering Agent Testing Obligations by the Owner does not limit or restrict the Owner's obligations under any other provision of this Agreement and does not excuse any noncompliance by the Owner</p> | <ul style="list-style-type: none"> • Clause 1.5 mandates the installation and operation of veneering equipment. This goes significantly further than the requirements in the CDMP, which are voluntary and subject to limitations. For example, the CDMP states that: <ul style="list-style-type: none"> • the mitigation methods in the CDMP '<i>may not be applicable to all supply chain participants due to a variety of factors (such as location or operational characteristics). As such, the responsibility rests within individual organisations to identify the appropriate approaches for their operational requirements</i>' (see section 1.3); • '<i>once assured of the efficacy, practicality and economics of this approach, industry is committed to working with QR network to develop a coherent veneering strategy for appropriate implementation</i>' (see appendix B); and • '<i>the delivery and timing will be determined in close consultation between industry, DERM and QR Network</i>' (see appendix B). • It should also be noted that table 3.1.2 (which summaries the strategy to be implemented by the coal producers) lists the implementation of an 'effective veneering strategy in collaboration with QR Network' as a short to medium term obligation. |

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| <p>with its obligations under the Agreement.</p> | <ul style="list-style-type: none"> We note that the veneering provisions in the SRCA were not developed in close consultation with coal producers, and seek to limit the ability of coal producers to develop their own tailored veneering strategy. Clause 1.5(b) requires compliance with the Veneering Testing Obligations. We note that such testing obligations are not referred to in the CDMP. While the CDMP does contemplate the testing of coal for dustiness (see section 3.2.2 and appendix B), it does not extend to testing and reporting on the effectiveness of veneering agents. As far as Anglo American is aware there has been no consultation with the coal industry on the scope or standard of the Veneering Testing Obligations. [Peter to confirm.] |
| <p>1.6 Monitoring</p> <p>(a) Without limiting any other provisions of the Agreement, QR Network is entitled:</p> <p>(i) to enter and be upon the Owner's Land; and</p> <p>(ii) to access the Transfer Facilities (including the Veneering Equipment),</p> <p>to enable QR Network, from time to time:</p> <p>(iii) to verify compliance by the Owner with its obligations under this Clause 1 of Schedule 7; and</p> <p>(iv) to investigate the effectiveness of the Veneering Equipment (and its operation) or any other measures (including the veneering agent) used by the Owner in connection with any matters referred to in Clauses 1.4 or 1.5 of this Schedule 7,</p> <p>and the Owner must also provide any reasonable assistance requested by QR Network in respect of such matters (including, if requested by QR Network, providing evidence from the Owner's Quality Management System or other similar system verifying the Owner's compliance with the Coal Loss Mitigation Provisions).</p> <p>(b) For the avoidance of doubt, a reference to QR Network in Clause 1.6(a) of this Schedule 7 includes a reference to the employees, agents and contractors of QR Network and any third party authorised by QR Network.</p> <p>(c) If QR Network accesses the Owner's Land under Clause 1.6(a) of this</p> | <ul style="list-style-type: none"> Clause 1.6 is excessive. The CDMP does contemplate monitoring of dust mitigation activities. For example: <ul style="list-style-type: none"> section 4.1 describes the monitoring activities that QR Network is already undertaking; in section 3.4.2, QR Network states that it will implement '<i>reasonable system monitoring</i>' subject to the agreement of the Central Queensland coal supply chain; and section 5.2.2 refers to the recommendations of a report on 'slip failure' prepared by Katestone Environmental and Introspec Consulting. One of the recommendations was the development of procedures for '<i>regular random inspection of surface veneer application systems to ensure that the systems are fully operational and achieve full coverage of the coal surface in all wagons</i>'. However, the CDMP does not specifically state that QR Network should have the power to enter into private property, at any time and as often as it likes, in order to monitor privately installed and operated equipment. There are also significant issues in terms of the interface between QR Network entering onto the land of the coal producer without consent and without prior notice in respect of safety issues. Whilst clause 1.6(c) allows for the Owner (being the coal producer) to comply with reasonable health and safety requirements, a notified general policy will not be able to deal with any site specific issue which has arisen since the policy was notified. QR Network already monitors all trains via wayside monitoring equipment (see |

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| <p>Schedule 7, QR Network must comply with the Owner's reasonable health and safety requirements in relation to such access as notified by the Owner to QR Network.</p> <p>(d) QR Network will monitor the Owner's compliance with its obligations under this Clause 1 of Schedule 7 through, without limitation:</p> <p>(i) the installation of coal dust monitoring equipment at various locations on the Network;</p> <p>(ii) periodic assessment of the Owner's impact on coal fouling across the Network; and</p> <p>(iii) the periodic observation of:</p> <p>(A) the Owner's coal loading, profiling, veneering and other operations at the Transfer Facilities; and</p> <p>(B) trains loaded at the Transfer Facilities during transport.</p> <p>(e) QR Network must ensure that any coal dust monitoring equipment used by QR Network to monitor the Owner's compliance with its obligations under this Clause 1 of Schedule 7 are in proper working order and calibrated.</p> <p>(f) Within 10 Business Days after end of each month, QR Network will provide the Owner with a written report in respect of QR Network's monitoring of Owner's compliance with its obligations under this Clause 1 of Schedule 7 during that month (together with supporting information in respect of any non-compliance detected by QR Network).</p> | <p>section 4.1). Using such equipment in conjunction with train movement information, QR Network is able to determine whether the veneering activities of a coal producer are effective, and if they aren't, QR Network can raise the issue with the relevant producer.</p> |
| <p>1.7 Suspension of rights</p> <p>(a) Subject to Clause 1.7(b) of this Schedule 7, if the Owner fails to carry out an obligation under the Coal Loss Mitigation Provisions, QR Network may give the Owner a notice (Rectification Notice) requiring the Owner to:</p> <p>(i) in the case of any default which is capable of remedy:</p> <p>(A) remedy the default or provide to QR Network a program which is reasonably satisfactory to QR Network setting out the activities, and a timetable for undertaking those activities, required to remedy the default; and</p> | <ul style="list-style-type: none"> • Clause 1.7 is entirely inconsistent with the CDMP. The CDMP is a voluntary document that contemplates coal producers and QR Network working together to develop and implement coal dust management strategies as appropriate. The CDMP does not in any way contemplate that a failure or delay in implementing any of the identified coal dust management strategies will result in the suspension of interconnection / access rights. Coal producers acknowledge their obligations to comply with environmental laws, and further acknowledge that a failure to implement appropriate coal dust mitigation strategies may result in them causing environmental nuisance or harm and thereby contravening environmental legislation. However, the coal producers did <u>not</u> agree in the CDMP that their compliance activities would be tied to the continuation of their access rights and the operation of the SRCA. |

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| <p>(B) provide to QR Network a program which is reasonably satisfactory to QR Network setting out the activities, and a timetable for undertaking those activities, required to prevent the recurrence of the event or circumstance that resulted in default; and</p> <p>(ii) in the case of a default which is not capable of remedy, provide to QR Network a program which is reasonably satisfactory to QR Network setting out the activities, and a timetable for undertaking those activities, required to prevent the reoccurrence of the event or circumstance that resulted in the default,</p> <p>within the period (which must be at least 30 days) specified in the Rectification Notice.</p> <p>(b) QR Network must not give the Owner a Rectification Notice:</p> <p>(i) in respect of a Loading Breach in respect of a train unless the train is the second (or subsequent) train in any ten consecutive trains loaded with coal at the Loading Facilities in respect of which Loading Breaches have occurred; or</p> <p>(ii) in respect of a failure to comply with an obligation under the Coal Loss Mitigation Provisions if the failure was caused by an act or omission of QR Network, its employees, agents and contractors.</p> <p>(c) If the Owner does not comply with:</p> <p>(i) a Rectification Notice within the time required by the Rectification Notice; or</p> <p>(ii) a program provided by the Owner in compliance with a Rectification Notice,</p> <p>then QR Network may give the Owner a notice (Suspension Notice), suspending the Owner's rights under the Agreement and any other agreement to utilise, and to authorise or allow others to utilise, the Connecting Infrastructure for the passage of loaded coal trains.</p> <p>(d) A Suspension Notice must specify that it is a notice given under Clause 1.7(c) of this Schedule 7.</p> <p>(e) A suspension of the Owner's rights in accordance with Clause 1.7(c) of this</p> | <ul style="list-style-type: none"> • Clause 1.7 provides that the remedy for a default under the CLMP must be '<i>reasonably satisfactory</i>' to QR Network, and that QR Network will specify the period of time within which a default should be remedied. Once again, we note that the CDMP does not contemplate the coal producers being required to comply with the directions of QR Network. • In addition to the suspension rights, we note that clause 1(g) of Schedule 7 in conjunction with clause 18.1(l) of the SRCA, indicates that QR Network will have the right to immediately terminate the SRCA where QR Network has issued a '<i>suspension notice</i>' to the coal producer. Again, this is not the intent of the CDMP, and is not provided for anywhere in the CDMP. While QR Network has indicated that it will attempt to incorporate some coal dust mitigation provisions into its commercial agreements (see section 3.4.2 and appendix D), it is not suggested that such provisions would found a termination right, particularly a termination of access rights. |
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| <p>Schedule 7 will continue until the earlier of the following dates:</p> <ul style="list-style-type: none"> (i) if the relevant default is capable of remedy, the date that the Owner does the things specified in Clause 1.7(a)(i) of this Schedule 7; (ii) if the relevant default is not capable of remedy, the date that the Owner does the things specified in Clause 1.7(a)(ii) of this Schedule 7; (iii) if QR Network notifies the Owner of the cessation of the suspension, the date which QR Network notifies the Owner as the date on which the suspension will cease. <p>(f) If:</p> <ul style="list-style-type: none"> (i) QR Network exercises its right of suspension under Clause 1.7(c) of this Schedule 7; and (ii) the Owner disputes the exercise of that right by QR Network, the suspension will not take effect unless: <ul style="list-style-type: none"> (A) the Dispute is resolved in favour of QR Network during the period of the Dispute resolution process under Clause 17 of the Agreement (at which time, the suspension will take effect); or (B) the Dispute remains unresolved 30 days after the day the Owner gives QR Network a Dispute Notice under Clause 17.1 of the Agreement (at which time, the suspension will take effect despite the Dispute being unresolved). <p>(g) The exercise by QR Network of its rights and remedies under this Clause 1.7 of Schedule 7 does not limit or restrict QR Network from exercising, at any time, any other rights or remedies of QR Network in respect of the relevant default (including its rights of termination under Clause 18 of the Agreement).</p> | |
| <p>1.8 Reporting</p> <ul style="list-style-type: none"> (a) Within 15 Business Days after the end of each Quarter, the Owner must submit a written report (in the form reasonably required by QR Network) to QR Network in respect of any material noncompliance by the Owner with | <ul style="list-style-type: none"> • Neither section 3.2 nor Appendix B (i.e the sections of the CDMP that specify the coal dust mitigation strategies applicable to coal producers) makes any reference to coal producers having reporting obligations to QR Network. Anglo American therefore do not believe that clause 1.8 is required to implement the CDMP. |

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| <p>an obligation of Owner under the Coal Loss Mitigation Provisions.</p> <p>(b) Without limiting Clause 1.8(a) of this Schedule 7, as soon as reasonably practicable (and in any event, within one Business Day) after the occurrence of any of the following events, the Owner must submit a written report to QR Network providing reasonable details in respect of the event:</p> <p>(i) the breakdown of, or the inability to operate, any Veneering Equipment;</p> <p>(ii) any damage to the Network in connection with any non-compliance by the Owner with its obligations under the Coal Loss Mitigation Provisions;</p> <p>(iii) any event arising in connection with any non-compliance by the Owner with its obligations under the Coal Loss Mitigation Provisions which interferes, or may interfere, with the proper functioning or operation of the Network;</p> <p>(iv) any event that results, or is likely to result, in the Owner being unable to perform a material obligation under the Coal Loss Mitigation Provisions.</p> | |
| <p>1.9 Continuous improvement</p> <p>The Parties must meet at least once each Quarter to discuss:</p> <p>(a) the effectiveness of the then current practices for preventing coal loss; and</p> <p>(b) new or modified practices which could be implemented to improve the prevention of coal loss.</p> | <ul style="list-style-type: none"> • Clause 1.9 is generally consistent with the CDMP. The CDMP clearly contemplates discussions between industry participants to develop and improve coal dust mitigation strategies. For example, Appendix B the CDMP: <ul style="list-style-type: none"> • refers to coal producers developing effective veneering strategies '<i>in close consultation with QR Network</i>'; and • includes an obligation for coal producers to '<i>review and modify existing train loading procedures to capture revised and new work practices adopted during the review of existing work practices</i>'. • As outlined above Anglo American is of the view that the only obligations which should be imposed on coal producers in accordance with Schedule 7 is reasonable endeavours to implement the CDMP. It would also be appropriate to retain clause 1.9 in terms of the parties being required to consult with one another in respect of practices which could be implemented. |

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| <p>2. VENEERING EQUIPMENT</p> | |
| <p>2.1 Description of Veneering Equipment</p> <p>Veneering Equipment is equipment for the application of a veneering agent to the exposed coal surface of loaded wagons at the Transfer Facilities to suppress coal dust and consisting of, inter alia:</p> <p>(a) water and veneering agent storage tanks and associated pumping systems;</p> <p>(b) a dosing system with adjustable control to achieve the desired solution strength;</p> <p>(c) a shower bar to apply veneering agent to the coal profile;</p> <p>(d) a control system facilitating autonomous operation including sensors for locomotive and wagon identification and movement thereof; and</p> <p>(e) a connection point for connection to the load-out control system to ensure it functions only during loading operations,</p> <p>and which complies with the specifications in Clause 2.2 of this Schedule 7.</p> | <ul style="list-style-type: none"> As noted above, the CDMP does not contain any specific specifications or requirements relating to veneering equipment. The CDMP appears to contemplate that individual producers will be responsible for identifying, and where practical, implementing operational and technical solutions for dust mitigation. At most, such solutions would be developed and implemented in collaboration and consultation with QR Network. The requirements for the new equipment specified in clause 2 have not been developed in consultation with industry and appear to limit the ability of the industry to develop their own mine specific solutions. |
| <p>2.2 Specification for Veneering Equipment</p> <p>(a) The Owner is required to ensure that the Veneering Equipment is installed such that it integrates effectively with Owner's loading methodology and operations at the Transfer Facilities.</p> <p>(b) The Veneering Equipment will be able to function in all weather conditions and be connected to the 240 Volt power service at the Transfer Facilities. The Veneering Equipment will not be sheltered (unless the supplier of the Veneering Equipment requests and provides this) and will be open to all conditions experienced at Transfer Facilities. The Veneering Equipment is to be a stand alone system that requires no input from the train load-out console operator except, if necessary, to turn on or off the Veneering Equipment, prior to or after loading. The Veneering Equipment is to also ensure locomotives, locomotive windscreens, other ancillary equipment and wagon components are not sprayed.</p> <p>(c) The Veneering Equipment must:</p> <p>(i) be fully automatic in its operation including start-up and</p> | <ul style="list-style-type: none"> See response for clause 2.1 above. In addition, Anglo American is of the view that the specific obligations are not appropriate. For example, there is no need for Veneering Equipment to be fully automatic and there are other options available in respect of the installation of Veneering Equipment. |

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| <p>shutdown sequences/process;</p> <p>(ii) be capable of being fully integrated within the Owner's loading methodology;</p> <p>(iii) recognise when a train is about to commence loading;</p> <p>(iv) spray / treat all loaded coal wagons loaded at the Transfer Facilities;</p> <p>(v) not spray any locomotive or remote control unit, regardless of its position in a train consist;</p> <p>(vi) not spray the space between the loaded wagons in a train consist;</p> <p>(vii) not spray once a train has finished loading, or no coal train is present;</p> <p>(viii) not come into contact with any piece of rolling stock during the loading and spraying operations;</p> <p>(ix) have a spray apparatus built from Poly pipe;</p> <p>(x) have a spray apparatus that is at all times at least 4.2m above rail level;</p> <p>(xi) be able to spray wagons moving at varying train speeds, but typically at a train speed of between 0.6km/h and 0.8km/h;</p> <p>(xii) if a train is required to stop during the loading operation, have 120 second timeout capability and the spray system will recommence normal operation on the next wagon, and the partly sprayed wagon will be counted as treated; and</p> <p>(xiii) be capable of regular maintenance to maintain its operating capability.</p> | |
| <p>2.3 Veneering Agent Testing Obligations</p> <p>(a) The Owner must only use a veneering agent that achieves nil measured dust lift off for the coal loaded at the Transfer Facilities when subjected to the following testing requirements:</p> <p>(i) test coal samples must be prepared with a moisture content equivalent to the typical "as loaded" moisture for the relevant coal</p> | <ul style="list-style-type: none"> • As noted above, the specific Veneering Agent Testing obligations are not described in the CDMP. While the CDMP does contemplate the testing of coal for dustiness (see section 3.2.2 and appendix B), it does not extend to testing and reporting on the effectiveness of veneering agents. • Anglo American is also of the view that the coal producer should not be forced to pay for the requirement of producing product performance documentation from a NATA |

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| <p>type;</p> <p>(ii) test coal samples must be placed in a test tray and then surface sprayed at the rate of one litre per square metre with the veneer agent in water solution and at the supplier's nominated product:water ratio;</p> <p>(iii) test coal samples must then be subjected to simulated rail transport travel time and summer weather conditions (that is, each treated sample tray must:</p> <p>(A) be weighed;</p> <p>(B) then placed for four hours in an oven preheated at 30 – 35 degrees Celsius;</p> <p>(C) then placed in the wind tunnel at an angle of 35 degrees; and</p> <p>(D) then exposed to a wind speed of 20 metres per second (72 km/hour) for eight hours)),</p> <p>and then weighed to determine the mass of dust removed.</p> <p>(b) The Owner must provide product performance documentation from a NATA accredited laboratory or from another laboratory acceptable to QR Network that independently assesses the effectiveness of the Owner's proposed veneer agent to prevent emissions from coal loaded at and transported on trains from the Transfer Facilities including details of the testing methodology and the test results for the Owner's proposed veneer agent.</p> <p>(c) The Parties acknowledge and agree that a veneering agent that achieves nil measured dust lift off during testing may not behave in the same manner when used in practice.</p> | <p>accredited laboratory.</p> |
| <p>3. COAL LOADING, UNLOADING, PROFILING AND VENEERING</p> | |
| <p>3.1 Coal Loss Management</p> <p>(a) The significant strategies to achieve this obligation are loading, profiling and veneering wagons in accordance with the Standards, and implementation timeframes, provided under the Coal Loss Mitigation Provisions. This includes, without limitation:</p> | <ul style="list-style-type: none"> • We note that clauses 3.1(a) and (b) repeat the provisions of clause 1.1(b) and (c) of the SRCA. We therefore refer to our response to those provisions set out above. • Clause 3.1(c) goes beyond the requirements of the CDMP. That is, there is no specific obligation in the CDMP for coal producers to have a quality management system that extends to covering coal loading, unloading, profiling and veneering. |

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| <ul style="list-style-type: none"> (i) meeting Queensland Department of Environment and Resource Management's targets for coal dust emissions; (ii) no parasitic or fugitive coal (other than coal dust to standard) escaping from wagons; and (iii) meeting height and weight requirements to protect below rail assets. <p>(b) The Owner as the loading practitioner has the primary responsibility to ensure that wagons are loaded, profiled and veneered in a manner that Prevents Coal Loss.</p> <p>(c) The Owner must be able to demonstrate its compliance with its obligations through its Quality Management System.</p> <p>(d) The Owner must consider current best industry practice with respect to Preventing Coal Loss when choosing an appropriate loading methodology. Best industry practice at this date of this Agreement includes matters such as:</p> <ul style="list-style-type: none"> (i) operating procedure review and training to reduce the sources of coal loss; (ii) Quality Management System procedures and reporting to enable a 'lessons learnt' approach; (iii) inbound wagon identification system to determine class of wagon about to be loaded; (iv) inbound overload detection devices to measure the tare weight of each incoming wagon; (v) batch weighing system to load the correct amount of coal into each wagon; (vi) telescopic loading chute to profile the load in each wagon or, as an interim measure until such a chute is operating effectively, a suitable profiling blade on the exit side of the load-out; (vii) outbound overload detection devices to measure the gross and bogey weights of each outgoing wagon; (viii) volumetric scanning to measure the profile of each outgoing | <ul style="list-style-type: none"> • Clause 3.1(d) is consistent with the intent of the CDMP, as this clause requires coal producers to consider current best industry practice with respect to preventing coal loss (as opposed to mandating what aspects of best industry practice must be implemented). |
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| <p>wagon; and</p> <p>(ix) veneering spray stations on exit side of load-out (after profiling has been achieved).</p> | |
| MANAGEMENT OF COAL LOADING | |
| <p>3.2 General Management of Coal Loading</p> <p>(a) The Owner, in loading wagons at the Transfer Facilities, must comply with:</p> <p>(i) the wagon design maximum load and volume for wagons loaded at the Transfer Facilities;</p> <p>(ii) the requirements for Preventing Coal Loss specified by QR Network from time to time; and</p> <p>(iii) the rail asset restrictions specified by QR Network from time to time.</p> <p>(b) The Owner must ensure the design of the Transfer Facilities and its adoption of suitable loading and unloading methodologies each achieve the following:</p> <p>(i) loading to an appropriate profile and clearance to Prevent Coal Loss en route to the unloading facilities; and</p> <p>(ii) Prevent Coal Loss from the wagons after exiting the Transfer Facilities.</p> <p>(c) The Owner must ensure that coal is loaded into wagons in a manner which ensures that the coal (including coal dust) cannot leave the wagon until it is unloaded from the wagon at an unloading facility.</p> | <ul style="list-style-type: none"> • Clause 3.2(a)(ii) requires coal producers to comply with any requirements for preventing coal loss specified by QR Network from time to time. Such broad rights for QR Network to set coal loading requirements are not provided for in the CDMP. We therefore do not believe that this clause is appropriate, particularly without the industry consultation and coordination envisaged in the CDMP. • Clause 3.2(b) is consistent with the CDMP to the extent that it requires coal producers to develop their own loading and unloading methodologies to prevent coal loss in transit. • Clause 3.2(c) goes beyond the requirements of the CDMP. This clause suggests that coal producers have an obligation to <u>ensure</u> that coal is loaded so that <u>no</u> coal at all can leave a wagon until it is unloaded at an unloading facility. However, coal producers are not in a position to ensure that this will occur. For example, section 5.4 of the CDMP specifically acknowledges that an average of 300kg per train of coal is lost from the Kwik-Drop doors on the coal wagons. In addition section 5.2 of the CDMP further recognises that '<i>wagon vibration and other operational impact forces are factors that may result in slip failure or other movement of the surface of coal during transport</i>' and that such slip failures may lead to coal dust emissions. |
| <p>3.3 Loading - Overhead Bins and coal profiling</p> <p>(a) The Owner must ensure the loading methodology (including the approach to coal profiling) chosen by the Owner Prevents Coal Loss. The Owner must demonstrate to QR Network that its adopted loading methodology Prevents Coal Loss and complies with the rail asset restrictions specified by QR Network from time to time.</p> <p>(b) Without limitation to the Owner's obligations regarding the loading methodology, the Owner must (unless agreed by QR Network in its</p> | <ul style="list-style-type: none"> • Clause 3.3 is consistent with the CDMP to the extent that it provides for individual coal producers to review and develop their own loading methodologies to prevent coal loss (as opposed to having such methodologies mandated by QR Network). • Clause 3.3(b) appears to set far more specific coal profiling requirements than are contemplated in the CDMP. For example, Appendix B of the CDMP simply states that '<i>the profile must be a flat top surface and spillage over the ends and sides must be avoided</i>'. That said, the CDMP does contemplate the development of "<i>an effective veneering strategy in close consultation with QR Network</i>", and such a |

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| <p>absolute discretion) comply with the following requirements:</p> <p>(i) Prevent the loading of coal to the very edges and ends of the wagons leaving sufficient “freeboard” (i.e: - not loaded to top of wagon side) at the sides and ends of loaded wagons to Prevent Coal Loss. See Figure 1 below.</p> <p>(ii) The method of loading must ensure that loading is even over the length and width of each wagon up to the maximum allowable height as specified by QR Network from time to time (currently 3950mm above rail level). However, achieving loading to this height and shape is ultimately dependant on the density of coal being transported.</p> <p>(c) A suitable profiler must be used to profile the coal so as to result in a loaded wagon with a coal profile that optimises the effectiveness of veneering agents applied in order to Prevent Coal Loss. Without limiting the type of profile that the Owner may adopt, an appropriately designed and maintained telescopic loading chute can achieve a ‘garden-bed’ profile (standard loading profile as shown in Figure 2 below.) to mitigate the risk of coal lift-off and to optimise the effectiveness of veneering agents applied in order to Prevent Coal Loss. Figure 2 - Top of loaded coal wagon showing ‘Garden Bed’ style profile.</p> <p>(d) The loading chute and associated skirts must achieve a slope on the side of the load less than the natural angle of repose of the coal and must ensure the product is not left on the wagon sills (side and end).</p> | <p>strategy may include the development of profiling specifications. However, in this case, the specifications were developed without adequate consultation.</p> |
| <p>PROTECTIVE MEASURES</p> | |
| <p>3.4 General Protective Measures</p> <p>(a) The Owner must ensure that the following protective measures are integrated into the operation of Transfer Facilities including:</p> <p>(i) veneering agent application (or other similar dust control measures) must be managed so as not to damage electrical contractors or the like and suitable QR Network endorsed shields may have to be installed on nearby overhead traction equipment to ensure this is achieved;</p> <p>(ii) suitable storage capacity of product and water to ensure the</p> | <ul style="list-style-type: none"> Again, while the CDMP provides for coal producers to implement veneering strategies, it leaves it up to the coal producers to decide on those strategies and does not specify in detail how the veneering equipment is to operate. Clause 3.4(a) specifies much more detail than appears in the CDMP. To the extent such details are required to be specified, they should be developed in consultation with coal producers. |

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| <p>availability of veneering agent application with a suitable safety factor;</p> <p>(iii) suitable bunding and other risk mitigation of storage tanks to comply with environmental regulations to ensure no loss of product during filling or possible leakage situations, and no interruption to veneering operations; and</p> <p>(iv) suitable maintenance and cleaning procedures to ensure reliable operation and cleanliness of all equipment and assets in or adjacent to or passing through the Transfer Facilities.</p> | |
| <p>3.5 Power Supply</p> <p>The Owner must ensure the design of the Transfer Facilities provides for the supply of power adjacent to the loading facilities, including where applicable, the provision of a power supply on the departure side of the load out suitable for use by an overload removal system, the Veneering Equipment and a load profiling system consistent with this Agreement and Schedule 7.</p> | <ul style="list-style-type: none"> The CDMP makes no reference to the provision of a power supply adjacent to loading facilities. This is clearly a separate operational requirement for QR Network. |
| <p>3.6 Loading from End Loaders (or similar)</p> <p>The CDMP stipulates targets and deadlines for front-end loading phase out. The front-end loading of coal is not to occur after those deadlines. The Owner must not permit the loading of coal onto wagons from front-end loaders. But if a target or deadline is applicable to the Owner for the phase out of front-end loading as specified in the CDMP, then the Owner is obliged to phase out front-end loading of coal by no later than that target or deadline.</p> | <ul style="list-style-type: none"> Clause 3.6 states that '<i>the CDMP stipulates targets and deadlines for front-end loading faze out</i>'. This appears to be incorrect. The CDMP does not appear to mention front-end loading faze out at all. |
| <p>Wagon OVERLOAD and Profile Management</p> | |
| <p>3.7 Overload Detection and Overload Removal Devices</p> <p>The Owner must comply with the requirements not to overload and to remove any overloaded coal, including the prevention of spillage and clearance of excess coal from wagons, as set out in the QR Network Transfer Facilities Requirements.</p> | <ul style="list-style-type: none"> The CDMP does not appear to set any mandatory requirements in relation to removing overloaded coal. However, it does identify the use of equipment designed to accurately weigh the coal loaded into wagons (thereby minimising dust lift off and spillage). We also note that the "Transfer Facilities Requirements" referred to in clause 3.7 are not defined, and therefore it is unclear what they entail. |
| <p>3.8 Clam shell style loading</p> <p>Clam shell style loading operations are not acceptable for new coal loading facilities.</p> | <ul style="list-style-type: none"> The CDMP makes no mention of "clam shell style loading operations". Anglo American is not sure that QR Network should be imposing such a requirement and, in any event, is of the view it should not be imposed without the consultation and |

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| | collaboration envisaged under the CDMP. |
| <p>3.9 Parasitic and fugitive coal removed from wagons</p> <p>Unless otherwise agreed by QR Network, the Owner must use reasonable endeavours to remove any visible coal that has fallen onto wagon sills and surfaces or running gear immediately after the coal is loaded, in order to avoid the risk of coal falling off the wagon during transit.</p> | <ul style="list-style-type: none"> Appendix B does provide for coal producers to introduce "sill brushes" <i>'to remove excess coal on wagon sills'</i> and thereby minimise <i>'parasitic coal that dislodges and falls of the wagon during transit'</i> – so the CDMP does contemplate the use of devices for clearing excess (or parasitic) coal. However, this is not mandatory, and will be a "mine-by-mine decision based on individual site need". Also, the CDMP does not contemplate the removal of coal from running gear. Overall, this clause seems consistent with the reasonable endeavours obligation in clause 3.9. |
| <p>3.10 Kwik Drop Doors (KDDs)</p> <p>The Owner is responsible for the type of coal loaded into the wagons. The Owner must also ensure that coal fineness and moisture content will not facilitate coal loss via the KDDs during transportation from the Transfer Facilities to the unloading facility.</p> | <ul style="list-style-type: none"> As noted above, it is not possible for the coal producer to ensure that there is no loss of coal via the Kwik-Drop Doors. An investigation by Aurecon Hatch found that coal type and rank was just one of many factors that could potentially cause coal loss via the Kwik-Drop Doors (see section 5.4). |