



**QUEENSLAND BULK HANDLING**  
**COAL EXPORT TERMINAL, FISHERMAN ISLANDS**  
**BRISBANE, QUEENSLAND, AUSTRALIA**

## **Voluntary Access Undertaking**

Queensland Bulk Handling Pty Ltd

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## Background

- A Queensland Bulk Handling has a lease of land and a licence in relation to infrastructure comprising the Port Terminal Facilities at the Port Terminal to Queensland Bulk Handling.
- B Queensland Bulk Handling operates the Port Terminal Facilities utilising a Static Stockpile Capacity model and provides the Port Terminal Services at the Port Terminal.
- C Access Seekers seek access to the Port Terminal Facilities and the Port Terminal Services to export coal through the Port Terminal.
- D Queensland Bulk Handling proposes to seek a lease of additional land adjacent to the Port Terminal in order to deliver the Port Terminal Expansion.
- E Subject to the qualifications set out in paragraph 2 of this document, Queensland Bulk Handling has determined to operate within this Voluntary Access Undertaking when allocating any capacity at the Port Terminal Expansion from time to time.

## 1 OBJECTIVES

### Overall objective

- 1.1 The overall objective of this Voluntary Access Undertaking is to indicate the principles within which Queensland Bulk Handling will operate when granting to Access Seekers access to the Port Terminal Facilities and the Port Terminal Services provided by Queensland Bulk Handling at the Port Terminal.

### Primary objectives

- 1.2 The objectives of this Voluntary Access Undertaking are to indicate how Queensland Bulk Handling will:
  - 1.2.1 ensure that all Access Seekers to the Port Terminal Expansion are provided with an opportunity to gain access to the Port Terminal Facilities and the Port Terminal Services in a fair and non-discriminatory manner;
  - 1.2.2 achieve and maintain the economically efficient operation of, use of and investment in the Port Terminal, thereby promoting competition in the coal export industry and the overall supply chain.

## 2 QUALIFICATIONS

- 2.1 This Voluntary Access Undertaking is issued by Queensland Bulk Handling subject to the following qualifications:
  - 2.1.1 **(Voluntary Access Undertaking not static)** Queensland Bulk Handling may amend, replace, modify or withdraw this Voluntary Access Undertaking at any time in its absolute discretion and without notification to any person or entity. It is the responsibility of Access Seekers to enquire of Queensland Bulk Handling if this Voluntary Access Undertaking has been amended, replaced, modified or withdrawn.
  - 2.1.2 **(Tailored behaviour)** In relation to specific Access Seekers, Queensland Bulk Handling reserves the right to consider all relevant facts and circumstances and seek specific expert advice from external consultants and advisors and in appropriate cases, quarantine commercially sensitive information to an independent

expert appointed by Queensland Bulk Handling to make recommendations to it and its external consultants and advisors.

2.1.3 **(Responsibilities of Access Seekers)** In seeking access to the Port Terminal Expansion for Port Terminal Facilities and the Port Terminal Services, it is the sole responsibility of Access Seekers to:

- (a) obtain their own advice in relation to access issues instead of seeking to rely upon this Voluntary Access Undertaking;
- (b) raise with Queensland Bulk Handling any issues, questions or concerns that they may have in relation to access issues and/or this Voluntary Access Undertaking; and
- (c) provide all relevant information to Queensland Bulk Handling in relation to any issues, questions or concerns they may have regarding access issues and/or this Voluntary Access Undertaking.

### **3 ACCESS PRINCIPLES**

#### **Principles to be applied when allocating capacity**

3.1 Queensland Bulk Handling will apply the principles contained in paragraph 3.2 below when allocating any capacity at the Port Terminal Expansion to Access Seekers.

#### **Access principles**

3.2 Queensland Bulk Handling will allocate any capacity at the Port Terminal Expansion:

- 3.2.1 on a fair and equitable basis that does not discriminate between Access Seekers who are not relevantly different;
- 3.2.2 subject to all existing contractual or other obligations of Queensland Bulk Handling to any other person, including subject to the terms of any existing Access Agreements between Queensland Bulk Handling and its customers and Queensland Bulk Handling's lease and licence with Port of Brisbane Pty Limited, which take precedence;
- 3.2.3 on a basis consistent with:
  - (a) Queensland Bulk Handling's legitimate commercial interests;
  - (b) any obligations QBH may have under the Competition and Consumer Act , the QCAA and any other legislation dealing with competition or access regulation;
- 3.2.4 if it:
  - (a) is technically feasible according to recognised engineering and construction principles;
  - (b) would not endanger the safety of any existing users of the Port Terminal or persons working on or with the Port Terminal Facilities and would be considered consistent with the obligations of Queensland Bulk Handling under occupational health and safety legislation and all other legislation dealing with human safety; and
  - (c) would not endanger any aspect of the natural or built environment surrounding the Port Terminal.

## 4 PRICING PRINCIPLES

### Principles to be applied when setting price

- 4.1 Queensland Bulk Handling may apply the principles contained in paragraphs 4.2 and 4.3 below when setting the price to be charged by Queensland Bulk Handling to provide Access Seekers with access to the Port Terminal Expansion for Port Terminal Facilities and the Port Terminal Services.
- 4.2 The price charged by Queensland Bulk Handling to provide Access Seekers with access to the Port Terminal Expansion for Port Terminal Facilities and the Port Terminal Services may (in its absolute discretion) be based on:
- 4.2.1 the legitimate commercial interests of Queensland Bulk Handling;
  - 4.2.2 the interests of all persons who have rights to access the Port Terminal Expansion for Port Terminal Facilities and the Port Terminal Services provided by Queensland Bulk Handling;
  - 4.2.3 Queensland Bulk Handling's actual cost of providing access to the Port Terminal Expansion for Port Terminal Facilities and the Port Terminal Services and at a price that:
    - (a) generates expected revenue to Queensland Bulk Handling for providing access that is at least enough to meet the efficient costs of providing an Access Seeker with access to the Port Terminal Expansion for Port Terminal Facilities and the Port Terminal Services and includes a return on investment commensurate with the regulatory and commercial risks involved;
    - (b) allows for differential pricing when it aids efficiency; and
    - (c) provides incentives to reduce costs or otherwise improve productivity as ascertained solely by Queensland Bulk Handling based on accepted accounting and economic principles.
- 4.3 In accordance with section 168A(c) of the QCAA, Queensland Bulk Handling must not set terms and conditions that discriminate in favour of its upstream operations, except to the extent that the cost of providing access to other Access Seekers is higher.

## 5 GENERAL PROCEDURE

### Written request to be made by Access Seeker

- 5.1 If an Access Seeker wishes to access the Port Terminal Expansion for Port Terminal Facilities and the Port Terminal Services, the Access Seeker must:
- 5.1.1 make a written request to Queensland Bulk Handling setting out all relevant information including (among other things):
    - (a) the corporate and ownership structure of the Access Seeker;
    - (b) the financial position and credit worthiness of the Access Seeker;
    - (c) the skills or experience of the Access Seeker;
    - (d) the Static Stockpile Capacity attributable to the Port Terminal Expansion that is required by the Access Seeker;

- (e) the time or times at which access to the Port Terminal Expansion is required;
  - (f) details concerning life of mine plan at the time or times at which access to the Port Terminal Expansion is required;
  - (g) provide full details of entitlements to rail capacity from Queensland Rail Limited to have coal transport from the mine to the Port Terminal by Rail. This can be expressed as conditional upon obtaining an entitlement to have a quantity of coal handled by QBH;
  - (h) estimated volumes of throughput over the time or times at which access to the Port Terminal Expansion is required; and
  - (i) description of each type of coal (including coal quantities such as moisture content, “stickiness”, and contamination levels and any special requirements the Access Seeker has in relation to its coal, including any special equipment or particular Handling processes)
- 5.1.2 Pay a non-refundable application fee to Queensland Bulk Handling that will be determined from time to time to reflect the administrative cost to Queensland Bulk Handling of processing the application.
- 5.1.3 Pay a non-refundable fee towards the costs of the Front End Engineering Design (FEED) of any Port Terminal Expansion.
- 5.2 Within seven (7) days after receipt by Queensland Bulk Handling of a written request by an Access Seeker, in accordance with paragraph 5.1.1 above, the Access Seeker acknowledges and agrees that Queensland Bulk Handling will notify Port of Brisbane Pty Limited of the request particulars relating to clauses 5.1.1(d) and 5.1.1(e).

**Additional information**

- 5.3 In response to a request being received from an Access Seeker in accordance with paragraph 5.1 above, Queensland Bulk Handling may require the Access Seeker to provide any additional information reasonably required by Queensland Bulk Handling (at its absolute discretion) to consider and process the Access Seeker's request.

**Appointment of independent expert**

- 5.4 Queensland Bulk Handling reserves the right (in its absolute discretion), in appropriate cases, to quarantine commercially sensitive information as well as market sensitive information not publicly available to be obtained from Access Seekers in accordance with paragraphs 5.1 and 5.3 above to an independent expert appointed by Queensland Bulk Handling to make recommendations to it and its external consultants and advisors.

**Ringfencing of commercially sensitive information**

- 5.5 Queensland Bulk Handling will ringfence from its vertically integrated entities actual and potential confidential and commercially sensitive information as well as market sensitive information not publicly available obtained from Access Seekers in accordance with paragraphs 5.1 and 5.3 above.

**Decision in Relation to Access**

- 5.6 Queensland Bulk Handling will notify the Access Seeker and Port of Brisbane Pty Limited of its decision in relation to an application made under clause 5.1.1 including details of its assessment of the application.

**Requirement to enter into Access Agreement**

5.7 If:

5.7.1 there is spare capacity at the Port Terminal Expansion;

5.7.2 the granting of access to the Access Seeker and the Port Terminal Expansion is in accordance with the principles of access contained in paragraph 3 above;

5.7.3 Queensland Bulk Handling is satisfied (in its absolute discretion) with:

(a) the written request submitted by the Access Seeker in accordance with paragraph 5.1 above; and

(b) any additional information provided by the Access Seeker to Queensland Bulk Handling in accordance with paragraph 5.3 above,

then Queensland Bulk Handling may negotiate (in its absolute discretion) with an Access Seeker with a view to entering into an Access Agreement that is consistent with:

5.7.4 the Access Seeker's request under paragraph 5.1 above;

5.7.5 this Voluntary Access Undertaking, including the access principles contained in paragraph 3 above and the pricing principles contained in paragraph 4 above, and contains the provisions required as set out in clause 6.2.

## **6 ACCESS AGREEMENTS**

### **Requirement for Access Agreement**

- 6.1 Queensland Bulk Handling will only provide an Access Seeker with access to the Port Terminal Expansion for Port Terminal Facilities and Port Terminal Services after Queensland Bulk Handling and the Access Seeker have entered into an Access Agreement on terms and conditions satisfactory to Queensland Bulk Handling within a timeframe acceptable to Queensland Bulk Handling (in its absolute discretion).

### **Issues to be addressed in Access Agreement**

- 6.2 An Access Agreement may address (among other things) the following issues:
- 6.2.1 the timing and term of access to the Port Terminal Expansion for Port Terminal Facilities and the Port Terminal Services;
  - 6.2.2 Queensland Bulk Handling's and the Access Seeker's general rights, obligations and responsibilities;
  - 6.2.3 the costs and charges to access to the Port Terminal Expansion for Port Terminal Facilities and the Port Terminal Services;
  - 6.2.4 the security required to be provided by the Access Seeker to Queensland Bulk Handling;
  - 6.2.5 the basis of any sale and transfer of ownership of coal while at the Port Terminal Expansion and provisions relating to the blending of coal;
  - 6.2.6 the vessel requirements to allow Queensland Bulk Handling to load the vessel, outloading operations and provisions relating to the berthing of vessels;
  - 6.2.7 a policy for allocating any capacity at the Port Terminal Expansion from time to time;
  - 6.2.8 a policy for queuing and ordering priority for access to the Port Terminal Expansion for Port Terminal Facilities and the Port Terminal Services;
  - 6.2.9 the degree of exclusivity or non-exclusivity of access to the Port Terminal Expansion for Port Terminal Facilities and the Port Terminal Services;
  - 6.2.10 detailed indemnity, liability and insurance requirements and obligations;
  - 6.2.11 a detailed mechanism for resolving disputes between the parties; and
  - 6.2.12 a requirement that the Access Seeker must observe the Port Requirements, as they exist from time to time, as a condition of access to and the right to have its coal handled at, the Port Terminal.

### **Access Agreement constitutes the entire agreement**

- 6.3 To avoid any doubt, once signed by the parties, an Access Agreement constitutes the entire agreement between Queensland Bulk Handling and an Access Seeker and overrides this Voluntary Access Undertaking and severs any reliance by an Access Seeker upon any conduct engaged in or representations made by Queensland Bulk Handling preceding the entry into an Access Agreement.



## 7 NOTICES

7.1 Any notice or communication to be given to Queensland Bulk Handling by an Access Seeker under this Voluntary Access Undertaking must be given in writing and sent in one of the following ways:

7.1.1 Delivered or posted to Queensland Bulk Handling and marked for the attention of the department or officer at its address set out below.

7.1.2 Faxed to Queensland Bulk Handling at its fax number and marked for the attention of the department or officer set out below.

Name: Queensland Bulk Handling  
Address: PO Box 348, Wynnum Central, Queensland 4178  
Fax number: +61 7 3895 1170  
Attention: Port Operations Manager

## 8 DISPUTES

8.1 If any dispute arises during the negotiation of access between an Access Seeker and Queensland Bulk Handling (**Dispute**) then either party may give to the other party to the Dispute and to Port of Brisbane Pty Ltd notice in writing (**Dispute Notice**) specifying the Dispute.

8.2 The Access Seeker acknowledges that where relevant to a Dispute, Queensland Bulk Handling will provide a copy of its decision and details of its assessment of the application to Port of Brisbane Pty Ltd.

8.3 Unless otherwise agreed by both parties any Dispute will be referred within 10 Business Days of the giving of the Dispute Notice to a senior executive of Queensland Bulk Handling (or his or her nominee), a senior executive of the Access Seeker (or his or her nominee) and a senior executive of Port of Brisbane Pty Ltd (or his or her nominee) for resolution.

8.4 If the parties fail to agree, or if a party refuses to meet the following provision will apply. Queensland Bulk Handling may refer the Dispute to a professional with qualifications appropriate to the matter under dispute appointed by the Chapter Chairperson of the Institute of Arbitrators and Mediators Australia or the Chairperson's nominee. The person to whom the Dispute is referred (the Expert) acts as expert and not as an arbitrator. In the absence of manifest error the Expert's decision is final and binding on the parties. The Expert must provide his opinion in writing within seven days after the Dispute was referred to him, or a longer period to which all parties agree, acting reasonably. The Expert may investigate, call witnesses and take advice of other experts the Expert deems appropriate. The costs of referring the Dispute to an Expert and the Expert's costs are to be shared equally by the Access Seeker and Queensland Bulk Handling and Port of Brisbane Pty Ltd. Each party must pay its own costs. At any hearing conduct by the Expert each party may appear personally, or be represented by any person including a qualified legal practitioner.

## 9 MISCELLANEOUS

### Approvals and consents

- 9.1 Unless this Voluntary Access Undertaking expressly provides otherwise, Queensland Bulk Handling may give or withhold an approval or consent in its absolute discretion and subject to any conditions determined by it.

## 10 Definitions and interpretation

### Definitions

- 10.1 In this Voluntary Access Undertaking, including in the background to this Voluntary Access Undertaking, the following definitions apply:

**Access Agreement** means an agreement between Queensland Bulk Handling and an Access Seeker under which Queensland Bulk Handling provides to the Access Seeker access to the Port Terminal Facilities and the Port Terminal Services.

**Access Seekers** are persons who seek access, or increased access, to the Port Terminal Facilities and Port Terminal Services.

**Competition and Consumer Act** means the *Competition and Consumer Act 2010* (Cth).

**Port Requirements** means any policies, rules, regulations or notices in force relating to the use of any part of the Port Terminal or the Port of Brisbane, enacted or published from time to time by any government authority or Port of Brisbane Pty Ltd, or by any other entity having control or authority in relation to all of the part of the Port Terminal or the Port of Brisbane.

**Port Terminal** means the terminal operated by Queensland Bulk Handling at the Port of Brisbane, Queensland.

**Port Terminal Expansion** means the project to expand the Port Terminal Facilities by the leasing of additional land at the port together with the construction of stockpiles and all associated infrastructure and additional legal rights and obligations.

**Port Terminal Facilities** means:

- (a) the coal handling export facility;
- (b) the rail unloading facility;
- (c) the shiploading facility; and
- (d) the related machinery and infrastructure,

operated by Queensland Bulk Handling for the purposes of providing the Port Terminal Services at the Port Terminal.

**Port Terminal Services** means the coal storage and handling services, including the management, supervision, labour and clerical services, provided by Queensland Bulk Handling at the Port Terminal.

**QCAA** means the *Queensland Competition Authority Act 1997* (Qld).

**Queensland Bulk Handling or QBH** means Queensland Bulk Handling Pty Ltd (ACN 010 284 509) of Coal Export Facility, Bulk Terminal Road, Port of Brisbane, Queensland, Australia and its successors and assigns.

**Static Stockpile Capacity (SSC)** means the quantity in tonnes of coal stockpile capacity.

**Voluntary Access Undertaking** means the principles contained in this document according to which Queensland Bulk Handling will operate when granting to Access Seekers access to the Port Terminal Facilities and Port Terminal Services.

### Interpretation

- 10.2 In the interpretation of these Access Guidelines, the following provisions apply unless the context otherwise requires:
- 10.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Voluntary Access Undertaking.
  - 10.2.2 A reference in this Voluntary Access Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
  - 10.2.3 A reference in this Voluntary Access Undertaking to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced.
  - 10.2.4 A reference to a paragraph is a reference to a paragraph in this Voluntary Access Undertaking.
  - 10.2.5 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
  - 10.2.6 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
  - 10.2.7 A word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other genders.
  - 10.2.8 A reference to the word 'include' or 'including' is to be interpreted without limitation.