

**COAL & ALLIED INDUSTRIES LTD**

**SUBMISSION IN RESPONSE TO:**

**ARTC HUNTER VALLEY ACCESS UNDERTAKING  
CAPACITY LOSS REVIEW**

**HUNTER VALLEY ACCESS UNDERTAKING 2012**

**DECEMBER 2012**

## Introduction and Summary Perspectives

Coal & Allied (**C&A**) welcomes the opportunity to comment on Australian Rail Track Corporation Limited's (**ARTC**) Capacity Loss Review Discussion Paper as relating to the Hunter Valley Rail Network Access Undertaking (**2012 HVAU** or **HVAU**).

C&A is appreciative of ARTC's attempt to outline the broad and complex range of issues that must be considered in developing and implementing a capacity loss review and allocation system. It should be noted that C&A's submission assumes a "steady state" environment of aligned port and track capacity across the coal chain, and does not seek to comment on, or propose mechanisms for addressing, the current and expected shortfalls between track and terminal capacity. Although it is critically important for the industry as a whole that the issue be addressed, this submission is focussed on responding to the questions raised in ARTC's Discussion Paper and the issue of how best to address capacity losses within the boundaries of actual track capacity from time to time.

In summary, C&A considers that the following key issues and principles must be thoroughly explored and discussed by industry as part of the process conducted by ARTC, and where accepted, must form the basis for any final system to be implemented:

1. Any track capacity loss allocation system must **deliver an incentive structure that seeks to maximise track system capacity availability and utilisation** for all Access Holders, rather than simply apportion losses. That is, C&A would prefer to view any system as a "**capacity performance management**" mechanism, rather than a loss allocation system. C&A considers this point to be particularly pertinent in an environment where indications are that track system capacity is likely to fall short of Port Terminal capacity for the next several years.
2. C&A has previously highlighted **a number of shortcomings in the operation of clause 11.6 of the IAHA**, including its potential impact on contractual alignment across the Hunter Valley Coal Chain<sup>1</sup>. C&A does not support the retention of clause 11.6 in its current form following the completion of ARTC's review under section 5.8 of the HVAU.
3. C&A believes that a "**whole of coal chain**" **approach must be considered** in developing a capacity performance management mechanism for the track system to ensure that there is practical alignment of capacity loss allocation mechanisms (i.e. the scale and timing of any capacity sanctions) for both the track system and Port Terminals for related events.
4. C&A agrees that **train cancellations are often the consequence of a previous incident or series of occurrences** that may or may not have resulted in actual capacity loss and,

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<sup>1</sup> See Coal & Allied's submission to the ACCC of 25 October 2010 in response the ACCC's consultation paper in relation to the then draft HVAU issued on 16 September 2010.

therefore, **should not be considered to be the optimal basis for measuring capacity loss, at least on a stand-alone basis.**

5. Accordingly, C&A is supportive of a detailed process to **investigate and develop the supporting system rules, policies and processes in order to use an alternative measure** – such as “*dump slots lost*” – as the basis of actual track system capacity loss. C&A proposes that the timeline for any investigation and review process should run for a minimum period of six months following the completion of ARTC's review under section 5.8 of the HVAU, and be followed by a further non-binding implementation and monitoring period of a six months before a decision is made on final implementation.
6. C&A is **supportive in principle of a track capacity performance management system that positions Access Holders as the accountable party for the performance failures of Train Operators**, providing the system is robust, objective and transparent, with avenues of appeal available to Access Holders in the event of a dispute.
7. For Access Holders, the **renegotiation of contractual terms and conditions with Train Operators is likely to be required** in order to transition to an operational performance framework that relies on a “capacity loss metric” other than the traditional measure of train cancellations. This may ultimately present a **significant obstacle to the successful adoption and implementation of a revised capacity loss mechanism** for many Access Holders. C&A is therefore of the view that **sufficient time must be allowed following an initial non-binding implementation period** for Access Holders to work with their Train Operator/s to arrive at revised commercial arrangements.
8. The rules and operating policies for any track capacity performance management system should **seek to preserve Access Holders' existing commercial arrangements with Train Operators as a first priority**, in order to prevent the effective socialisation or alignment of performance-based above rail contracts across Access Holders.
9. Any proposed capacity performance management mechanism **must be based on performance against realistic and dynamic assumptions of train cycle times across the network.**
10. C&A considers the **current capacity loss cap of two train paths as arbitrary** and is likely to be disconnected from actual capacity loss in many events, particularly as it applies to train cancellations, but also in the context of the proposed performance measure of dump slots lost. That being said, C&A is in favour of cap that is aligned with Port Terminal policy, is not so high as to have the potential to severely penalise producers, but also provides an incentive to promote the effective usage of track capacity. In short, C&A considers that the current cap of two paths per event may be too low, but that this issue requires further detailed consideration from an industry-wide perspective.

With track system losses effectively socialised amongst all Access Holders currently, C&A's clear view is that it is important for ARTC to investigate options for developing a capacity

performance management mechanism that will incentivise the effective consumption and utilisation of track access capacity by Access Holders. Furthermore, C&A does not consider cancellations to be the optimal measure of capacity loss within the coal chain and, therefore, sees limited value in retaining a capacity performance management mechanism that is based on cancellations, but only addresses 20% of all cancellations (i.e. clause 11.6 of IAHA). To that end, C&A is supportive of investigating alternate mechanisms that would increase Access Holder accountability for the performance of Train Operators, but believes that considerable additional work is required to develop a capacity performance management system that is robust, transparent and equitable, with aligned incentives/penalties between track and Port Terminals.

### **Requests for Comment**

***1. Should the incentive mechanism be based on train cancellations or some other measure (Some possible measures are discussed in section 5)? Should an event that leads to some other remedial action (eg a diversion) also be taken into account – if so how?***

C&A considers that the **use of cancellations as a stand-alone mechanism for track system capacity loss allocation, and as an incentive mechanism for the efficient consumption of track capacity, comes with significant shortcomings if not applied appropriately** (i.e. where root cause or impact on capacity is not identified, or train operators are able to apply or not apply cancellations in a manner that does not optimise coal chain capacity). C&A is of the view that train cancellations are today, and are likely to be in the future, a necessary component of coal chain operations that support effective delivery and achievement of daily and weekly coal haulage plans. This is particularly the case in an environment where planned train cycle times are often unreflective of actual cycle times, resulting in a need to cancel services in order to realign the plan. Furthermore, there can often be significant uncertainty as to whether train cancellations have actually resulted in genuine capacity loss due to the potential for remedial actions, such as diversions.

C&A supports ARTC's view that any *"measure that discourages the appropriate use of cancellations and diversions...will be counterproductive"*, as this may ultimately encourage Train Operators to maintain services that should otherwise be cancelled, potentially increasing system capacity loss. In C&A's submission to the ACCC in October 2010, and in prior discussions with and submissions to ARTC, C&A has advocated for a monthly "scheduling cap" approach as an effective mechanism for managing capacity losses. In this regard, enclosed with this submission is an extract from the presentation which C&A made to ARTC in April 2010 in relation to a proposed "scheduling cap", or "scheduled path" track capacity performance incentive mechanism. The presentation discusses how the track mechanism may inter-relate with capacity allocation and performance accountability procedures at the Port Terminals to achieve contractual alignment across the Hunter Valley coal chain. The extract has been updated to reflect the final position under the IAHA and current PWCS procedures. Specific aspects of the proposed mechanism would need to be

re-considered and potentially modified in the context of the final form of the HVAU, as subsequently accepted by the ACCC, and in context of the current 'outbound' capacity management procedures at PWCS. However, **C&A remains of the view that a "scheduling cap" mechanism of the type outlined in the attachment warrants careful consideration as part of the current review process under section 5.8 of the HVAU.**

C&A may be supportive of an alternate mechanism, such as the proposed mechanism of measuring performance against dump slot achievement at the Port Terminals, but is of the view that insufficient detail is currently available to Access Holders on how such a mechanism could work. Furthermore, C&A believes that a comprehensive system design and consultation process is required before transitioning to any new measure. C&A recommends that a minimum period of six months is required to develop any new system – with representatives from the HVCCC, Port Terminals, Train Operators, ARTC and Access Holders – before moving to a trial process over a further six months. Following this period, Access Holders could then work with their respective Train Operators to confirm any required changes to above rail contracts.

***2. If cancellations are an appropriate measure, does the current approach for Train Operators to volunteer cancellations work effectively? If not, what alternative method for generating cancellations should apply?***

Although C&A does not consider train cancellations to be the most appropriate measure for determining track capacity loss, or for establishing a capacity performance management mechanism, C&A has generally been satisfied with the existing voluntary system as it relates to C&A's above rail service, but notes that this approach: (a) may not function as it currently does in an environment where the penalty for nominating a cancellation is potentially more significant than it is today; and (b) may not be practical and sustainable over the long-term, with each individual Access Holder's performance expectations of Train Operators likely to increase with each new or renewed rail haulage contract, such that Train Operators are likely to favour one Access Holder over another at any given time.

***3. Is it appropriate that Train Operators choose which train to cancel? If not, how should cancellations be chosen?***

C&A's view is that the HVCCC would provide an independent perspective on the most appropriate train/s to cancel at any given time to ensure coal chain capacity is maximised and should play some role in advising or nominating services to be cancelled. However, C&A also respects the right of Train Operators to cancel services that most appropriately meet their operational or commercial needs, and respects the right of Access Holders to negotiate market based contracts that have the potential to deliver competitive operational advantages.

C&A may be supportive of a system whereby the HVCCC (or ARTC) would have the ability to demand the cancellation of specific services if the capacity loss differential between two or more services exceeds a certain threshold, and to the extent that the capacity loss differential can be accurately quantified (e.g. the loss of [x] number of train paths, loss of [x] number of dump slots etc). C&A notes that there could be practical difficulties in applying this principle, but believes further investigation is warranted if ARTC, Access Holders or Train Operators are concerned with maintaining the alternative i.e. allowing Train Operators to nominate cancellations or other remedial actions that may favour one Access Holder over another to the detriment of coal chain capacity.

In any case, C&A is of the view that it should not be the cancellation of a particular Access Holders train that results in a (potential) loss of capacity allocation, but rather the resultant determination of the party at fault, and the assessment of capacity impact.

***4. Is the membership of the LRSG appropriate? If not, who should be represented and how?***

C&A considers the current membership of the LRSG to be appropriate whilst Access Holders are effectively represented by their Train Operators with incentives aligned via contractual terms and conditions. To the extent that a capacity performance management mechanism is implemented in the future that creates a misalignment between existing contractual measures and system performance measures, C&A considers that the membership may need to be reviewed. At a minimum, it will be necessary to ensure that adequate lines of communication exist between the LRSG and Access Holders, particularly those affected by capacity sanctions, with clearly defined procedures and rights to appeal to resolve disputes.

***5. Is the process for the assignment of responsibility for cancellations appropriate? Is there a better way?***

C&A is satisfied with the existing allocation process as it relates to train service cancellations, but C&A's position on this issue is likely to change if an alternative loss allocation mechanism is agreed in the future (e.g. loss attribution due to dump slots being missed) where there is a likelihood of more significant penalties or flow-on impacts than exist today. C&A believes that any capacity performance management system must be built off a comprehensive "delay accounting" model with detailed root cause analysis. C&A considers the HVCCC is likely to be best placed to administer and report on the system given its independent role within the Hunter Valley coal chain.

***6. Is the current informal approach appropriate, either under a continuation of the existing process or some new process appropriate? If not, what alternative should be adopted?***

C&A's view is that the current informal approach appears to have been broadly appropriate and effective in serving coal producers and Train Operators to develop and monitor performance based KPI mechanisms under existing commercial haulage contracts. C&A

recognises, however, that the current informal model is not perfect, and may not function as effectively in the future, without contractual obligations being placed on relevant participants and a strong framework of guiding principles/protocols. C&A does not propose a solution at this time, but considers this to be a key area of discussion and evaluation by industry as part of the ARTC review.

***7. Is the current process sufficiently timely to be effective both from the perspective of the sanction being sufficiently proximate to the cause and also not so quick as to cause the Access Holder unintended consequences?***

C&A emphasised this point in our October 2010 submission to the ACCC. In summary, C&A is concerned that clause 11.6 is insufficient to facilitate alignment in the subsequent monthly period as it will not assist 'innocent' Access Holders unless they can secure matching port capacity in that subsequent month and does not protect contractual rights in the month that capacity is lost. The effect of clause 11.6 is, therefore, effectively a penalty/punishment on the Access Holder who was responsible for a cancellation rather than delivering additional useable paths to the other Access Holders. The net result of clause 11.6 in its current form is therefore likely to be a reduction in overall coal chain efficiency and throughput, hence C&A's support of a shift to an improved basis of measurement and allocation of capacity loss.

***8. Is it appropriate that a Train Operator must seek consent from an Access Holder for the assignment of responsibility to that Access Holder? If not, is some other mechanism suggested?***

Under the current cancellation review system, it is appropriate that the Train Operator engages with their customer to discuss the basis for the cancellation. Moving forward, and to the extent that Access Holders are not part of the LRSG, it is likely to be more appropriate for the HVCCC to manage enquiries with Access Holders (if the HVCCC is designated as the administrator of the system), with disputed incidents to be resolved via a defined protocol (which will need to be developed with care so that it establishes a robust and transparent dispute resolution process in which all parties can have confidence).

***9. Is it appropriate that an Access Holder can unilaterally refuse to accept the assignment of responsibility? If not, what alternative mechanism should apply, noting the issue of representation or lack thereof?***

It is not appropriate for Access Holders to unilaterally refuse to accept assignment; however, further to C&A's response at item 8 above, an appropriate process for disputing assignment of responsibility should be developed to ensure that Access Holders have an adequate means for representing their position to the LRSG and the HVCCC.

***10. If an alternative mechanism is proposed, what will be the consequences on the timing to provide an outcome?***

C&A considers the timing of the removal of train paths to be a critical component of any capacity performance management mechanism, as per comments at item 7 above. C&A emphasises that there must be consistency of timing between the proposed “loss allocation” mechanism for track capacity and the existing capacity management mechanisms in place at the port (in particular PWCS). This will ensure that producers are not doubly impacted for the same track capacity event through a mismatch in timing of track and Port Terminal capacity losses.

***11. Is there value in retaining a mechanism that applies to less than 20% of the cancellations?***

C&A is of the view that there is limited value in retaining a train cancellation mechanism that: (a) only addresses 20% of all cancellations; and (b) is based on a measure that ultimately may not reflect the true extent of actual capacity loss caused by Access Holders (i.e. actual loss will routinely be more or less than the two train path cap). Clause 11.6 of the IAHA as drafted is essentially punitive and does not achieve what C&A considers to be the critical objective of a capacity performance management system, which is to incentivise effective capacity utilisation. Please refer to C&A’s comments at item 12 for additional perspectives regarding this point.

***12. Is it desirable that the mechanism should apply responsibility to the Access Holder even where the Access Holder is not directly responsible for the loss of capacity?***

In theory, C&A is supportive of a capacity performance management mechanism that makes Access Holders directly accountable for the operational performance of their Train Operator/s. In practice, however, C&A recognises that introducing financial or other incentives/penalties associated with this principle (i.e. against specific KPI’s for threshold performance) into a long-term contract with a Train Operator is likely to be difficult for many Access Holders, particularly due to the timing of contract renewal/expiry for individual Access Holders. That being said, C&A is concerned with the status quo, whereby potential capacity losses caused by Train Operators are effectively socialised amongst all Access Holders, and does not believe that difficulties in adapting commercial contracting arrangements should be used as an impediment to driving change. C&A therefore sees value in working toward the development of a fair and equitable mechanism that could ultimately account for 80% of all train cancellations (i.e. combined Access Holders and Train Operator losses), acknowledging the potential disparity between cancellations and actual realised capacity loss.

***13. If a broader assignment is made to Access Holders, what sort of mechanism should apply, noting that the current mechanism is unlikely to be effective and the issues raised about the unilateral assignment of responsibility earlier? Who should make the decision as to which Access Holder should bear the sanction? Should there be an appeal mechanism?***



On the assumption that *assignment* in this context is referring to both: (a) the attribution of Train Operator caused losses directly to one Access Holder; and (b) the potential for the socialisation of Train Operator caused losses across more than one Access Holder; C&A is supportive of the principle, as per item 12 above, but believes significant consultation would be required (e.g. via a customer working group) in order to establish appropriate principles and policies for fair and equitable loss allocation. This would include a methodology for allocation which takes account of the operation of the 'capacity shortfall' provisions in clause 6 of the Access Holder Agreement, and does not lead to individual Access Holders being inappropriately penalised twice for the same losses under clause 6 and under any other allocation mechanism which is adopted.

With this in mind, and by way of example, C&A may be supportive of a mechanism that seeks to allocate actual capacity losses associated with the reported 60% of cancellations attributed to Train Operators via a segmented approach, such as attributing losses to all customers of a given Train Operator or all users of a particular class of train (e.g. 8500t vs 5500t). C&A considers that **extensive investigation would be required into assessing the practicalities of such a mechanism**, with C&A's support to be contingent on the successful resolution of issues such as: the terms or policies of any final loss allocation mechanism agreed under this system (i.e. dump slots lost, cancellations etc); accuracy and transparency in fault allocation; and how this system would interact with the proposed train path cap per event (currently two under clause 11.6).

In addition, of critical importance to any proposal to allocate currently socialised capacity losses more directly to Access Holders, will be determining the associated impact on Port Terminal capacity, both for affected Access Holders and Access Holders who are the direct or indirect cause of the capacity loss. For example, the socialisation of losses due to a significant event (e.g. a derailment) could result in net coal chain demand for a period dropping below the achievable throughput for that period, causing an unnecessary and artificial constraint on system output. C&A notes, however, that ad hoc train path usages could potentially overcome this issue.

***14. If a mechanism that allocates all losses to Access Holders is desirable, are there any Access Holder or Train Operator losses that should be excluded?***

As outlined above, C&A is of the view that most losses can be attributed (either wholly or via apportionment) providing the loss allocation method is built off a robust and comprehensive review process that includes representation from all relevant stakeholder groups.

***15. Is the AHA the most appropriate vehicle for dealing with the loss of coal chain capacity in light of Terminal loss allocation mechanisms? If not, what alternative vehicle should be used (if any)?***

C&A considers the AHA to be the most appropriate vehicle for assigning coal chain losses that are specific to track consumption (provided that the same mechanism applies across all AHAs via the current processes for the consistent adoption of 'Tier 1' provisions), with losses at the Terminals handled by mechanisms defined by the Terminals. Further to the response to item 10 above, C&A believes that: (a) the timing of any track access capacity loss must be consistent with the timing of capacity loss at the Terminal, both for the same event and to the extent that Terminal capacity was also impacted by the event; and (b) detailed investigation and process development will be required into any mechanism involving the socialisation of track capacity losses by a more defined means (e.g. the segmentation approach noted at item 13).

On this latter point, C&A is of the view that the resulting demand for track capacity during a period of proposed socialisation of capacity losses may need to be a determining factor in whether to restrict track access or not. This will ensure that capacity rights are not removed where the demand for track capacity would ultimately fall below coal chain capacity during the period, although as noted, C&A recognises that ad-hoc path usages are likely to provide a means for Access Holders to obtain additional capacity (following a “capacity sanction”) in a period of low coal chain demand.

***16. What role should ARTC play in identifying the responsible parties, determining the sanction and implementing the sanction? If ARTC is not to play one or more of these roles, who should perform the role?***

C&A believes ARTC should play a role as a participant in the LRSG and that the LRSG, in lieu of any new body to be proposed, is the appropriate vehicle for determining loss allocation. Furthermore, C&A considers the HVCCC as the most appropriate independent body to implement any capacity loss sanction (via planning), following formal advice of the loss allocation from the LRSG.

***17. If the AHA is used for an enhanced mechanism:***

***i) Who should allocate responsibility for capacity losses and how?***

***ii) What level of discretion should ARTC have to apply the recommendation of another body?***

***iii) What mechanism should be in place to resolve disputes, noting that ARTC may have limited ability to resolve the initial assignment of responsibility?***

At a high level, C&A is of the view that the LRSG is the appropriate body for investigating and attributing fault for capacity loss events, with the HVCCC likely to be the appropriate body to determine the actual capacity loss impact of an event. ARTC should formally advise Access Holders of the proposed loss, with advice to be provided to ARTC from the LRSG or the HVCCC as outlined in item 16. Ideally, the policies around loss allocation would be

robust, objective and transparent, such that ARTC would not have or require any discretion to alter the advice or recommendation from the LRSG. However, C&A recognises that Train Operators often hold contrary views on the root cause of capacity loss events and also hold concerns with the existing process whereby unresolved disputes default to the original position taken by the LRSG. Furthermore, C&A acknowledges that there is a likelihood that dissatisfaction with the existing process has the potential to increase substantially under a system where the penalties for causing a capacity loss could be greater in the future. Given the complexities with this issue, C&A can only recommend at this time that the dispute process is discussed further among a key stakeholder group as part of this ARTC review process and any future proposal to move to a revised capacity performance management mechanism.

***18. What other arrangements are required to give effect to the proposed mechanism apart from the AHA and how would this be achieved?***

For Access Holders, the renegotiation of contract terms and conditions with Train Operators are likely to be required. This may present a significant obstacle to the successful adoption and implementation of a revised capacity performance management mechanism that requires a shift away from the traditional mechanism of measuring Train Operator performance via train cancellations.

***19. Is the removal of Train Paths from an Access Holder's Capacity Entitlement the most appropriate sanction, or is there some better incentive, bearing in mind that it would need to be applied through the AHA if it is to apply to the Access Holder?***

C&A considers the loss of a limited number of train paths (although potentially more than the current cap of two per event) to be an appropriate sanction. C&A is in favour of cap that is aligned with Port Terminal policy, is not so high as to have the potential to severely penalise producers, but also provides an incentive to promote the effective usage of track capacity.

C&A may also be in favour of a system that could deprioritise the associated sanctioned capacity during a given period, with the potential for the capacity to be returned to the Access Holder if coal chain demand is low during the period. If C&A's recommended scheduled path approach is pursued, sanctions will not be required in most cases as the system is 'self-adjusting'.

***20. Would it be appropriate to attempt to make any removed Train Paths available to parties negatively affected by the event? If so, how might this be achieved in practice?***

C&A is supportive of a system that prioritises the compensation of parties that are clearly and directly affected by a capacity loss incident attributed to one Access Holder (or possibly several), via the reassignment of sanctioned capacity to the affected Access Holder/s. C&A's recommended 'scheduling cap' effectively delivers this result by capping the capacity

available to an Access Holder in a period (e.g. a month), ensuring that any direct capacity losses attributed to the Access Holder are incurred in the same period.

**21. Is the current cap on the number of Train Paths to remove appropriate? If not, what cap, if any, should apply, and why?**

As noted, C&A does not consider the current cap to be an appropriate level, but notes that a cap of some level is necessary to ensure that Access Holders are not severely penalised, particularly as this applies to Access Holders potentially being held accountable for the performance of Train Operators.

**22. How should the concept of materiality be applied? For example, should it apply only to a certain measure of losses from each event, or should losses be considered cumulatively over a period (eg a week or a month). If so, what level should be considered sufficiently material to trigger the imposition of a sanction?**

C&A's view is that capacity loss equivalent to one train path per event is likely to be a sufficient measure of materiality. It is not clear from the data presented, however, whether the administrative burden in assessing and determining losses at this threshold would outweigh the net capacity benefit to the coal chain. In addition, C&A has concerns with the concept of a *cumulative loss allocation system* due to the potential for large scale losses to accrue to Access Holders, but notes that a cap of some level will inhibit full loss allocation.

**23. In proposing any mechanism, respondents should identify any benefits or disadvantages in relation to consistency with the mechanisms of the Terminal Operators in terms of timing and alignment of the change in capacity that results.**

As noted in earlier responses, C&A believes that the alignment of track access capacity loss with Port Terminal access is critical where the same event has caused the loss e.g. a load point failure that results in a delay to vessel loading. C&A recognises that substantial detailed design work will be required to implement this in practice.

**24. Respondents are encouraged to develop their own alternatives, or if they endorse one of the options in this section, to provide such additional input as they feel appropriate to develop the concept into a scheme that could be practically implemented.**

C&A is broadly supportive of the proposed introduction of a capacity loss measurement system that is based on performance against an allotted dump station slot time, but as noted C&A believes that significant consultation with industry (via a working group) and a minimum trial period of six months is required before moving to the new measure to ensure that: all stakeholders are clear on the impact and procedures associated with the new system; and to allow sufficient time for Access Holders to engage with Train Operators in order to review commercial arrangements within contracts that are likely to be impacted by the change.

**25. Who should allocate UFs to Access Holders?**

C&A has concerns with the UF concept, particularly as it may not reflect true capacity loss within the coal chain as a system, but rather reflect theoretical capacity loss within the track system only. That is, it appears to only measure performance against potential cycle times, which could ultimately be difficult to achieve for a variety of reasons unrelated to Access Holders. The concept may also be extremely difficult to implement with Train Operators given the degree of inherent system variability and doesn't appear to allow for remedial actions to immediately recover lost capacity like a dump-slot measure would (e.g. dynamically reallocating slots). That being said, C&A would be supportive of further investigation into the concept.

**26. Should a cap apply to the mechanism? If so, what value should the cap have, or how should it be determined?**

C&A considers that an appropriate cap should provide an incentive for Access Holders to utilise system capacity effectively, while at the same time ensuring that material damage is not inflicted on any one Access Holder due to a large scale capacity loss event (whether individual or via socialisation). As noted, the proposed cap of two train paths per event appears arbitrary and C&A is supportive of reviewing this level as part of the investigation into a wider mechanism that would deal with capacity losses caused by Access Holders and Train Operators.

**27. Should the mechanism be subject to an appeal process? If so, is a different appeals mechanism required from the current dispute resolution process in the AHA, who would be the adjudicator and how would the process work?**

The capacity loss mechanism should be subject to an appeal process, with a written appeal by an Access Holder to be reviewed by the LRSG and a final ruling by the HVCCC in the event of disagreement between parties.

**28. In formulating their proposal, respondents are encouraged to consider how their proposal might be tailored to expedite acceptance by other stakeholders and the ACCC.**

C&A is not in favour of expediting acceptance at the expense of a thorough process to design the relevant systems and procedures, and ensure effective consultation and engagement with industry.

**Attachment 1 – Extracts from C&A's 2010 presentation - updated to reflect final position under the Indicative AHA and current PWCS procedures**

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Extracts from C&A's 2010  
presentation - updated to  
reflect the final position under  
Indicative AHA and current  
PWCS procedures

7 December 2012

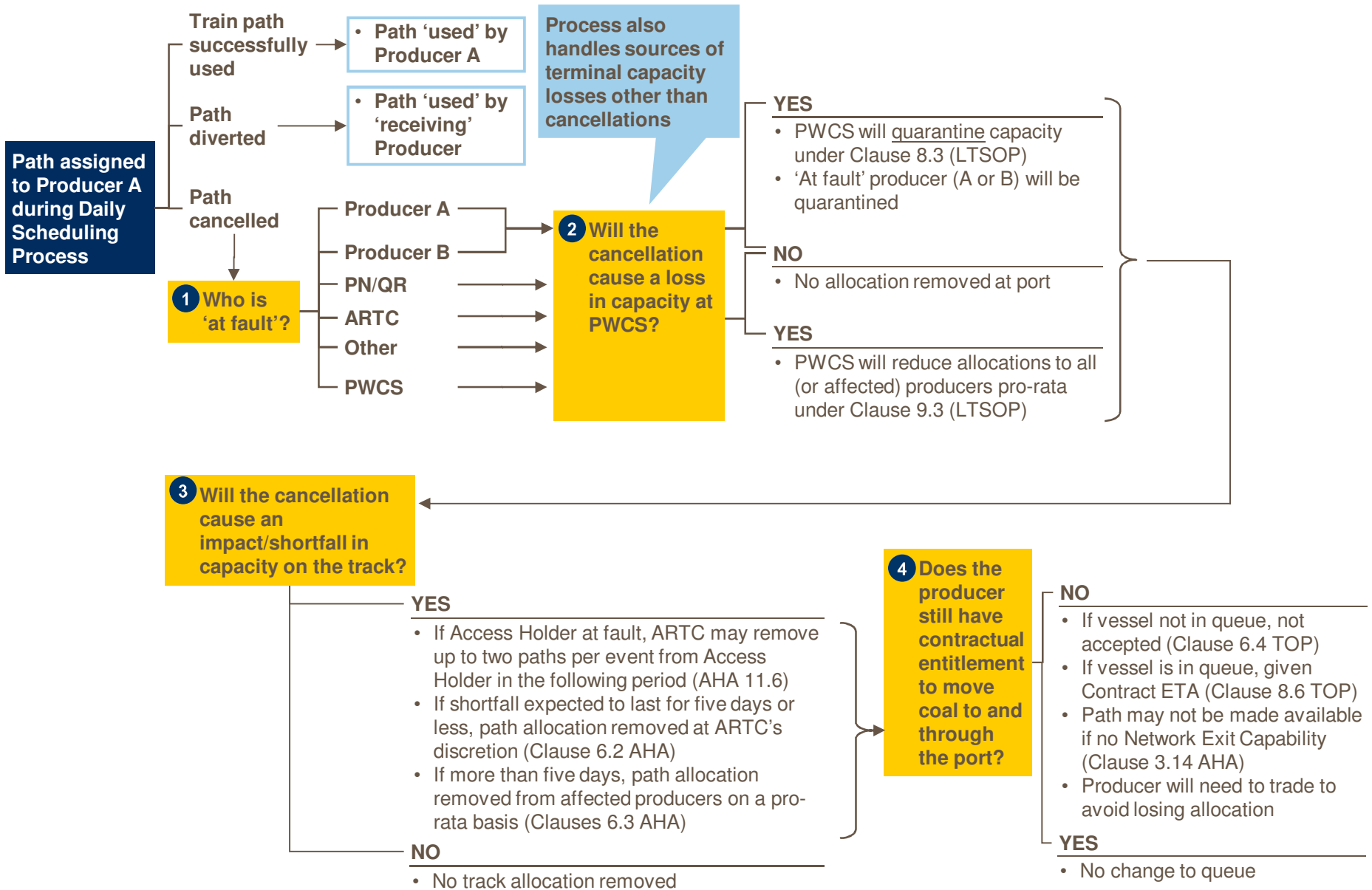
# Under the current PWCS and ARTC contracts, four key questions are asked to manage capacity shortfalls

## Key questions in any Capacity Management System

Key Question	Considerations
<p><b>1 In the event of a train path cancellation, who is at fault?</b></p>	<ul style="list-style-type: none"> <li>• Process already in place which looks at root cause of each cancellation and assigns fault – live run coordinators assess every two hours</li> <li>• Rules can be much better defined so all cancellations are clearly and transparently accounted for</li> </ul>
<p><b>2 Will the cancellation result in a loss of throughput at the Terminal?</b></p>	<ul style="list-style-type: none"> <li>• PWCS clearly has the obligation to remove allocation if capacity loss was caused by a Customer (Clause 8.3 LTSOP)</li> <li>• If the cancellation was at the fault of PWCS or due to force majeure, PWCS can reduce all (affected) Producers' allocation on a pro-rata basis (Clause 9.3 LTSOP)</li> </ul>
<p><b>3 Will the cancellation result in a Capacity Shortfall on the track?</b></p>	<ul style="list-style-type: none"> <li>• Current draft AHA requires ARTC to inform Producers and HVCCC of any track capacity shortfalls (Clause 6.1 AHA)</li> <li>• ARTC can then remove path allocation either at their own discretion (Clause 6.2 AHA) or on a pro-rata basis across affected Producers (Clause 6.3 AHA)</li> <li>• Currently, under Clause 11.6 of the AHA, ARTC can then reduce allocation in following months from the Producer who had the initial cancellation</li> </ul>
<p><b>4 Does the producer still have contractual entitlement and rail capacity to move coal to and through the port?</b></p>	<ul style="list-style-type: none"> <li>• PWCS can reject the Application of a vessel if the Producer does not have sufficient contractual entitlement to move the coal to and through the port (Clause 6.4 PWCS TOP)</li> <li>• For vessels in the queue, if there is no longer any contractual entitlement to move the coal to the port, the ship will be given a Contract ETA for the following month (Clause 8.3(b) PWCS TOP)</li> <li>• In addition, ARTC are not obliged to make paths available if there is no Network Exit Capability for that train, i.e. no entitlement to move coal through the port (Clause 3.14 AHA)</li> <li>• Producer could trade allocation if possible, otherwise it is 'lost' and they are still liable for the TOP charge on those tonnes</li> </ul>



## Current Capacity Management System – Flow Diagram



# The current system of performance accountability falls short of promoting optimal use of the coal chain


## Issues with the current Performance Accountability mechanism

Desired characteristic	Elaboration	Issues with current mechanism
<b>1 Clear and fair attribution of fault</b>	<ul style="list-style-type: none"> <li>Performance impact should be sheeted home to the 'root cause', which may be different to whose train was actually cancelled (i.e. separate 'at-fault' from 'affected')</li> </ul>	<ul style="list-style-type: none"> <li>Capacity shortfalls on the track are allocated at ARTC's discretion, or on a pro-rata basis across affected producers, with no consideration of fault</li> </ul>
<b>2 Timely capacity management to protect contractual rights</b>	<ul style="list-style-type: none"> <li>'Lost' capacity should be measured and allocated to the 'at fault' party at the time it happens, and any adjustments to allocations/capacity should be made immediately, to the extent practicable, to protect contractual rights</li> </ul>	<ul style="list-style-type: none"> <li>Clause 11.6 involves the removal of paths in months following the cancellation – Does not, of itself, address the system capacity shortfall</li> <li>There is no mechanism to compensate affected Producers, such as by reallocating paths removed from at-fault Producers</li> </ul>
<b>3 Encouragement of 'best practice' behaviour</b>	<ul style="list-style-type: none"> <li>Producers should be able to capture upside of performing at best practice, not be limited to average observed practice – failing to do so removes the ability/incentive to capture the upside in the system</li> </ul>	<ul style="list-style-type: none"> <li>Producers who perform well are not entitled to any surplus Capacity which may arise from temporary removal of Base Path Usages from Producers who perform poorly</li> </ul>
<b>4 Full and flexible allocation of spare capacity</b>	<ul style="list-style-type: none"> <li>Service Providers should allocate as much of the 'spare capacity' (i.e., unplanned losses) to producers as possible</li> <li>Producers should have responsibility for managing all of the capacity they are effectively paying for</li> </ul>	<ul style="list-style-type: none"> <li>Spare capacity required in the System is decided by ARTC</li> <li>Producers are only allocated 'used' capacity and pay for their pro-rata share of the spare capacity, with no consideration of how much spare capacity they actually 'consume'</li> </ul>

# Clause 11.6 is a penalty system only; it does not solve the underlying capacity shortfall issue

## Key Concerns – Treatment of Capacity Shortfalls with Clause 11.6

- In addition to any train paths lost due to cancellations in a given month, a Producer could also have paths removed in the following months (i.e., they could be penalised twice)
- The removal of paths in subsequent months does not, of itself, address the system capacity shortfall issue arising from the initial cancellation
- There is no mechanism to compensate Producers impacted by the cancellations, such as by reallocating paths removed from at-fault Producers
- As a result, exercising clause 11.6 will adversely impact the Coal Chain Capacity of the system as a whole and lead to a suboptimal outcome



**Clause 11.6 currently acts to penalise Producers for cancellation of scheduled Services; however, this penalty comes as a cost to the coal chain as a whole**

# Proposed alternative method involves capping the number of paths a Producer can schedule in a given allocation period

## Proposed Performance Accountability method – Capping Scheduled Paths

### Concept

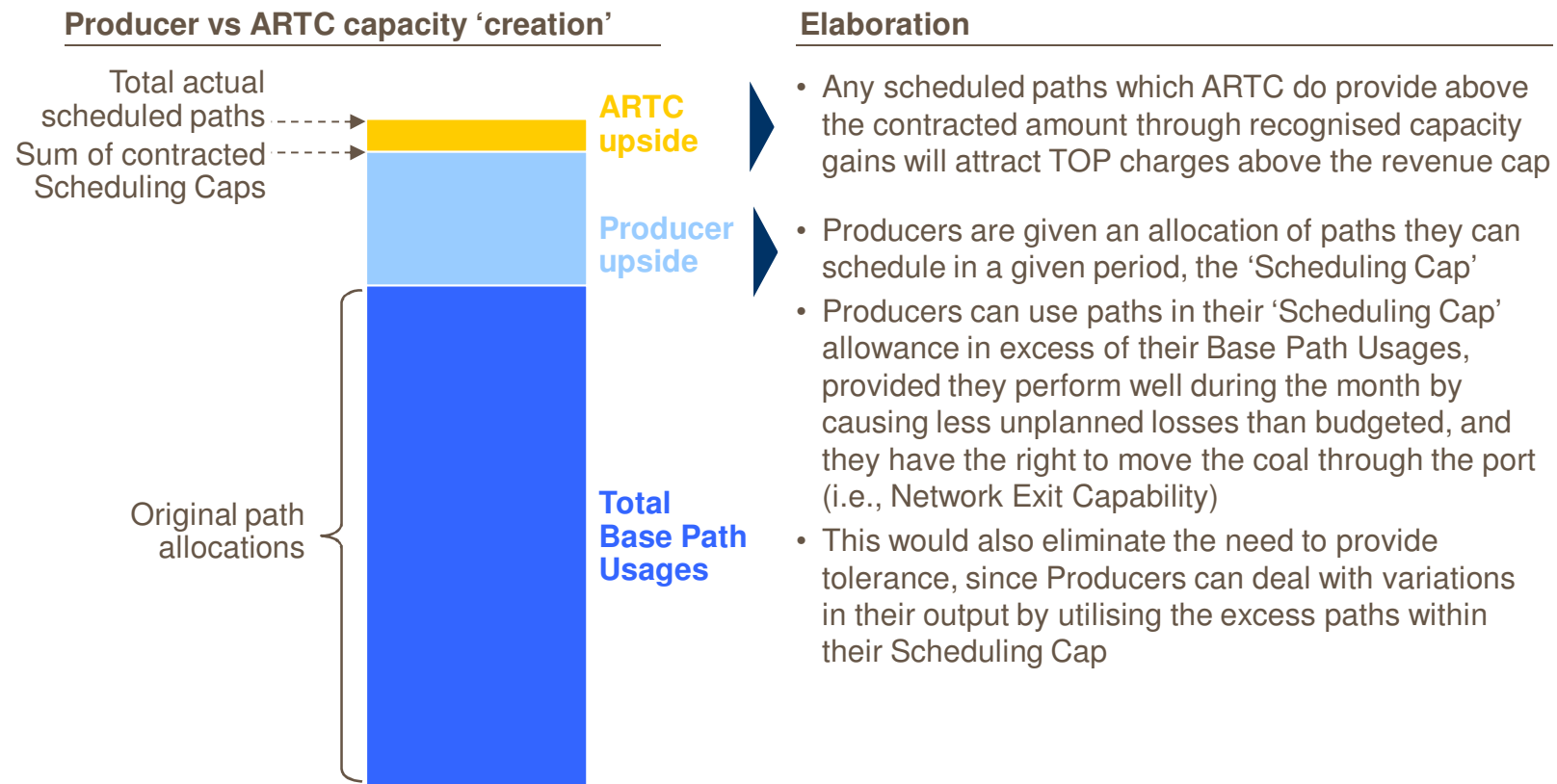
- A limit is placed on the number of times a Path Usage can be scheduled by an Access Holder within an allocation Period (with some exceptions)
- The limit, or 'Scheduling Cap', is the sum of the Access Holder's Base Path Usages, Tolerance Cap, and their share of the System's budgeted Unplanned Losses, which are expected to occur given the System Assumptions
- If an Access Holder causes a number of path cancellations above their allowed tolerance or allowance of unplanned losses, then the number of paths they can actually use in that allocation period is reduced, while their TOP obligation remains unchanged

### Details of Implementation

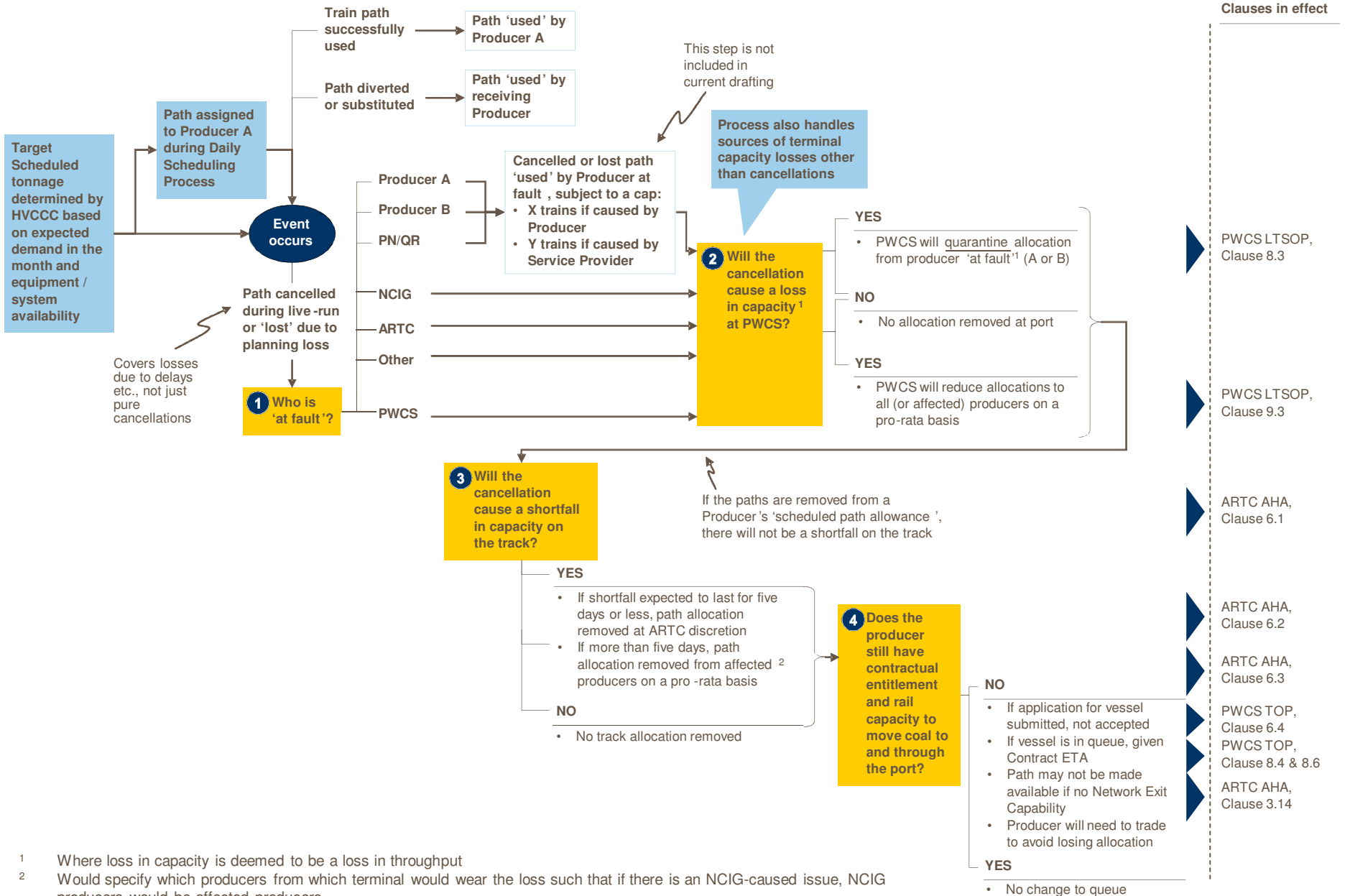
- An Access Holder is deemed to have 'consumed' one of the paths in their Scheduling Cap if:
  - they schedule a path which is used
  - they schedule a path which is cancelled, or rescheduled in the Daily Train Plan during live-run, but only where the Access Holder is deemed to be the 'at fault' party (with a  $\pm 6$  hour leeway)
- The number of times an Access Holder can schedule paths in a given Period is NOT reduced if that path is then used by another producer, or cancelled at the fault of another producer. In this case, the receiver or producer who caused the cancellation will be deemed to have used the path
- Producers are allowed to trade paths within their Scheduling Cap with other Producers
- An Access Holder may schedule paths above the cap if ARTC has created a recognised capacity gain, after consultation with the HVCCC, and consumption of that path will not impact on the rights of other users. In this case, ARTC may gain additional revenue above their revenue cap for providing the additional scheduled paths
- An Access Holder may schedule paths above the cap if it is deemed to be required to complete a cargo or otherwise promote the efficient operation of the coal chain. In this case, ARTC may remove allocation from the 'at-fault' Access Holder in the following month and transfer that allocation to those affected

# The 'Scheduled Path' approach will allow both Producers and ARTC to capture upside from increased system capacity

## Capturing upside for system capacity created on the track



# Capacity Management using the 'Scheduled Path' approach – Flow Diagram



<sup>1</sup> Where loss in capacity is deemed to be a loss in throughput

<sup>2</sup> Would specify which producers from which terminal would wear the loss such that if there is an NCIG-caused issue, NCIG producers would be affected producers

# The proposed mechanisms could be implemented relatively simply by including an additional clause in the contracts and amending a few others

## Implementing the 'Scheduled Path' approach in the contractual arrangements

- § The 'Scheduled Path' approach could be implemented with the addition of a clause which limits the amount of allowed planned paths to a Scheduling Cap, provided cancellations consume the cap of the Producer at-fault.
- § Other clauses may require minor changes in order to apply the approach, including:
  - Removing the provisions in clause 11.6, since the proposed method obviates the need for them
  - Updating the True-Up test in Schedule 2 to reflect the Scheduling Cap allowance which ARTC will provide
  - Extending clause 3.3 such that the definition of Producers' individual tolerances take into account the Monthly Tolerance Cap
- § As suggested by the ACCC, clauses related to the management of capacity in the system should also be included in the Access Undertaking, to ensure they are applied consistently across Producers, ultimately promoting Contractual Alignment

# Effective Capacity Management mechanisms, however, will rely on implementing a rigorous and transparent delay accounting system

## Developing a Delay Accounting System

### The need for Delay Accounting

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- The industry must be capable of properly measuring performance of producers and coal chain components before applying a particular capacity management mechanism. E.g., if capacity loss or gain is caused by a producer, they can be rewarded or penalised for over- or under-performance
- Delay accounting systems are currently being refined for outbound system by PWCS

### Designing good business rules to support Delay Accounting

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- 1 Drive back to root cause.** Any delay should be tied back to the root cause, instead of only describing the 'symptoms' – e.g., 'late train', 'dumper unavailable'
- 2 Be exhaustive & comprehensive.** Business rules must account for every minute of every day, and clear methodologies must exist to quantify tonnes for every event, for both live-run and planning gains and losses
- 3 Ensure transparency and integrity.** Clear, objective rules will facilitate buy-in and streamline reporting processes
- 4 Implement reporting systems.** Ensure systems are in place to provide all the data necessary to facilitate business rules and to report back to industry participants
- 5 Introduce dispute resolution mechanisms.** Clear procedures for dealing with differences of opinion will encourage buy-in from industry