

RAILWAY (BBI RAIL AUS PTY LTD) AGREEMENT BILL 2017

Second Reading

Resumed from 1 November.

HON PETER COLLIER (North Metropolitan — Leader of the Opposition) [3.59 pm]: I will just make a few comments on this bill. This is a little different—it is a new state agreement—so it is probably going to get a little more scrutiny, certainly from Hon Robin Chapple, I would imagine. I always value his input on this topic. Having sat over on that side for almost five years as Leader of the House, I appreciate his sincerity in ensuring that we get state agreements right, even though he may not agree with them. State agreements are a vital component in the development of the Pilbara. They are necessary to look after the community itself, not just the joint venture partners and the state. That community must and always does include the Aboriginal people, the traditional owners of the land upon which the project is being developed. That is why state agreements are an essential component of any development in the Pilbara region. Also, they are necessary to ensure that interconnected energy grids and, in this instance, rail access are dealt with in an appropriate fashion. We have seen some quite extensive development of the rail network in the Pilbara region, as well as conflicts in the interconnectedness of the rail system over various state agreements. There are also provisions for community facilities.

This agreement was signed by the former Premier, Colin Barnett, on 23 January 2017. As I understand, he did so having first consulted the then Leader of the Opposition, Mark McGowan. That was entirely appropriate given the fact that even though we were not technically in caretaker mode, we were close enough to being in caretaker mode, and that was a good action on the part of the former Premier. It is a joint venture between trust fund Nycos and Todd Corporation. They are an old respected family firm from New Zealand. Ultimately, we will be looking at over \$5.5 billion of investment and over 3 000 jobs during construction. In anyone's language, it is a very important project for the Pilbara and for Western Australia. As I have said, it will benefit not just the joint venture partners, but also the Pilbara region, the Aboriginal people and the entire Western Australian community, particularly communities in the Pilbara.

The bill basically sets out an agreement between the joint venture partners and the state government to establish the building of a railway to the port of Balla Balla. In short, it provides the avenue for the partners to have access to this area, the sole right to build a facility in the area, and the right to export 25 million tonnes of iron ore. This will provide the necessary security for the project to proceed. I will read from a media release sent out by BBI on the signing of an agreement with the former Premier on 23 January 2017. It captures quite succinctly the merits of the agreement. It states, in part —

A subsidiary of BBI Group Pty Ltd has today signed a State Agreement with the Western Australian Government to develop its multi-billion dollar Balla Balla Infrastructure Project. State Agreements have been used in Western Australia for more than 50 years to facilitate private sector development of the State's natural resources.

Western Australian Premier Colin Barnett and BBIG Chairman Jon Young signed the Agreement in an official ceremony today. The Agreement demonstrates confidence in the further development of Western Australia's iron ore sector.

The BBI Project is a multi-billion dollar development linking iron ore deposits in the Central Pilbara region with a new iron ore export facility at the Balla Balla port via a 162 kilometre purpose built railway. The initial capacity of the infrastructure is approximately 50 million tonnes of iron ore per year, however it has the capability to be increased in the future. This represents a new life for the historic Balla Balla port which was originally established in 1898.

Commenting on the State Agreement, Mr Young said Government support for the BBI Project through the State Agreement was crucial for BBIG to proceed with its development plans:

“The State Government has been very supportive throughout the State Agreement process and has demonstrated a real commitment to see this development proceed.”

“The signing of the State Agreement today is an important milestone for this multi-billion dollar project and the jobs it will create.”

“The BBI Project is positioned to be the next tier-one, low cost, large scale iron ore export infrastructure facility in the best address for producing iron ore in the world.”

“We are also pleased that the State Agreement contemplates the Flinders Mines Limited's (ASX: FMS) Pilbara Iron Ore Project as a potential foundation customer for the BBI Project. BBIG has a good relationship with FMS and will be working closely with FMS to seek a mutually beneficial solution to provide access to BBIG's infrastructure should FMS wish to utilise it.”

During the construction phase, the project will create approximately 3,300 construction jobs and more than 900 full time jobs once operations commence. BBIG estimates that the total royalties payable to the WA Government from customer mines over the life of the BBI Project could be in excess of \$4 billion, depending on future market conditions. BBIG is currently engaged with a number of parties that are potentially interested in the supply of iron ore sourced from the Central Pilbara region and or potential investment into the BBI Project. In addition, BBIG has secured other potential iron ore deposits in the Central Pilbara region capable of accessing the infrastructure.

As I said, that quite simply covers the agreement and its intent. The potential for the community is really extraordinary, given we are talking about thousands of jobs just in construction plus the investment of \$5.6 billion in infrastructure. In anyone's language, that will certainly benefit Western Australia and the local community. Having said that, it is important that we understand that any of these state agreements must take heed of Indigenous people, and respect the traditional owners of the areas, and also provide for communication and collaboration with the community, and include set criteria on any community participation plans. Clause 9 of the agreement, in the schedule to the bill, deals with community development plans. I appreciate that they cannot be particularly specific in this nature. Having said that, I find this very subjective in terms of community development plans. The clause reads —

- (1) In this clause, the term “community and social benefits” includes:
- (a) assistance with skills development and training opportunities to promote work readiness and employment for persons living in the Pilbara region of the said State;
 - (b) training and guaranteed employment for indigenous and non-indigenous persons living in the Pilbara region of the said State;
 - (c) regional development activities in the Pilbara region of the said State, including partnerships and sponsorships and local procurement of goods and services;
 - (d) contribution to any community projects, town services or facilities; and
 - (e) a regionally based workforce.

Again, in anyone's language, that is very subjective on the intent of the community development plans. I appreciate that the minister has oversight of those community development plans, but I would like some clarification from the minister about the process of the development of those community development plans. In what capacity will the local Aboriginal communities be involved; in what capacity will local communities be involved; and what right of appeal or process will members of those communities have on the community development plan? If we are going to sign state agreements, there must be an assumption that the community agrees with them, so that we do not have this Big Brother concept that Hon Robin Chapple sometimes alludes to. In this instance, I would desperately like to prove Hon Robin Chapple wrong and show that there is sufficient and adequate consultation with the local community. At face value, it appears that the community development plan provides for that, but the subjectivity surrounding the terminology in this clause questions whether that actually exists. Having said that, the Liberal Party is very supportive of this state agreement, evidently, and for all the above reasons, we will be supporting the bill.

HON JACQUI BOYDE (Mining and Pastoral — Deputy Leader of the National Party) [4.09 pm]: I rise this afternoon to indicate the National Party's support for the Railway (BBI Rail Aus Pty Ltd) Agreement Bill 2017. I am very pleased to do so, because I think that BBI has taken a very good approach to local engagement and has placed long-term benefits for the local community at the forefront of its negotiations. That should be applauded.

I want to go back to the comment that Hon Robin Chapple made about not supporting state agreements. I do not agree with that position. I believe that in the interests of community, the government should undertake state agreements. What I do not understand from the member's comments about not supporting state agreements and sovereign risk is that if we argue that governments should have state agreements, as I do—I think it is a good thing and governments should have state agreements; the community expects it—in the interests of the community and the larger state of Western Australia, I would argue that the government should have the opportunity to renegotiate and modernise those state agreements, which are essentially contracts. I think that the sovereign risk argument about state agreements is scaremongering to a degree. Sovereign risk is only ever suggested by the companies, because once we agree with a state agreement—this is the third one we have debated today—the argument is that, forever and a day, there can never be any sovereign risk because the government cannot at any point seek to change the state agreement.

Hon Robin Chapple: You can seek to change it, but you can't unilaterally change it.

Hon JACQUI BOYDELL: Of course there needs to be negotiation with the other party, and I agree with that. The other party also needs protection from the government making changes willy-nilly to a state agreement. I do not agree with that, but I fundamentally agree that a government should have the right to instigate the renegotiation of a state agreement on behalf of the people of this state. It is a myth to say, as has been suggested by others, that purely starting that conversation creates sovereign risk. Suggesting that sovereign risk comes about as a direct result of government decision-making and changes to the operating environment of businesses is drawing a bit of a long bow. Business is a risk. Businesses need risk management plans. They know that entering state agreements with government means that they should and will into the future undertake renegotiations of that contract. To argue that making that change is a sovereign risk is, at times, drawing a long bow. That argument is only ever run by the company: it is a sovereign risk to the state if we try to renegotiate anything that it does not agree with. Fundamentally, I do not think that that operates in the interests of the state.

Hon Robin Chapple: I would disagree with you.

Hon JACQUI BOYDELL: I know, which is why I find the member's position puzzling. However, I just wanted to put that on the record. I do not believe that that is the way the government should operate in the interests of the people it seeks to represent. At that point, it gives control to large corporations that think they have control over what the government of the day, which has been elected by the people, is entitled to do. I think that that is wrong. I think that putting forward the sovereign risk argument creates an environment of fear, which I do not agree with either. The asset is in the Pilbara. The companies cannot take it away. There is no sovereign risk to the companies, because they will continue to operate here. The most profitable section of their operations is in the Pilbara region. They will not remove all the infrastructure and investment that they have put in place in the Pilbara over many years because a government seeks to alter the state agreement. It is complete rubbish.

As alluded to by other members, the BBI Rail Aus Pty Ltd state agreement was signed in January 2017 by the former Liberal–National government. It was a good decision. It is of vital importance to our local communities in the Pilbara in my electorate. The project will be located between Karratha and Port Hedland and is expected to create over 3 500 jobs during construction and about 900 or 920 once it is operational. That is fantastic. The project involves the construction of 162 kilometres of railway capable of moving 50 million tonnes of iron ore a year and, hopefully, will open up neighbouring deposits that have been there forever and a day but have never been able to be mined because of a lack of infrastructure. It is a great thing. The state agreement has a term of 20 years, with the provision for an extension, which will provide some confidence in the ongoing operations. It creates a safe environment for the company to operate in. It also shows that Western Australia's Pilbara region has world-class resources that are still highly sought after and will be for a very long time to come.

The Balla Balla company has pledged to ensure that its workforce is based locally in Karratha and Port Hedland. The government cannot ensure that this continues to happen, but sealing the Karratha–Tom Price road is essential to the development of that residential workforce. The current government has pledged \$50 million towards that project, which should start next year. Under the Pilbara Cities initiative, significant funding was invested through the royalties for regions fund in Karratha in particular, and that has revitalised Karratha in a way that has not been seen in any other part of the state. It is a vibrant, liveable city. There is an opportunity for regional towns that have felt the downturn of the mining industry over recent years to start the recovery of local jobs and the local economy. That recovery will start with residentially based workforces and local employment, and local businesses having opportunities. The Balla Balla company should be applauded for its commitment to that. When local employment is available, the fly in, fly out workforce should be a thing of the past in the Pilbara. These towns do not want more FIFO camps; they want residents. They are ready for them. Residents, however, will not relocate without employment opportunities. On behalf of my National Party colleagues, I am very pleased to support this bill today.

The driver of the companies in this space towards a residentially based workforce is really important, and I think the Balla Balla company has undertaken to do that. I commend not only BBI's commitments to the community to have a regionally based workforce, but also clause 9 of the agreement, which relates to the community development plan. Hon Peter Collier put on the record some further clarification of that. It is a good thing. However, as I alluded to previously, there is no requirement for anyone other than the minister to see that community plan. I understand the need for privacy. Although this document may not be tabled, I would like figures to be provided so that we can see whether the company is meeting its obligations in this space, which I think is important as this project develops. This project is a new investment in the Pilbara. It will create jobs; there is no doubt about that. Hopefully, a large portion of those jobs will be locally sourced, provided that this government makes haste with the Karratha–Tom Price road. The National Party supports the bill and I look forward to seeing the benefits it provides to the surrounding towns in my electorate.

HON RICK MAZZA (Agricultural) [4.18 pm]: I rise to make a contribution to the Railway (BBI Rail Aus Pty Ltd) Agreement Bill 2017, which is a new state agreement. As has been pointed out, this is a 20-year agreement, with two 10-year options, giving it at least a 40-year life span. The capital expenditure will be about \$5.6 billion, which is a very significant sum. The investors are Todd Corporation Ltd of New Zealand, which I believe is

a family-owned company, and the minority shareholder, Nyco Pty Ltd, a self-managed superannuation fund. There is some pretty serious horsepower from private entities, particularly from a self-managed super fund.

I am sure that it is very welcomed infrastructure in the north west. Of course, as has been pointed out, the project will consist of 160 kilometres of railway line from the inland Pilbara iron ore project owned by Flinders Resources to stockyards near the port with a 40-kilometre-long conveyor loading system to the port and a total production of some 25 to 50 million tonnes a year. There will be the possibility of spur lines to other stranded mine sites. The Balla Balla port will also be using self-loading barges and will not need to be dredged, providing much simpler environmental approvals. The project will provide for 3 300 construction jobs, which, I am sure, will be very welcome in the Pilbara at this point in time, along with 900 operators once the project is up and running.

This is a good state agreement for Western Australia. The crossbench indicates that it will support it.

HON ROBIN CHAPPLE (Mining and Pastoral) [4.20 pm]: Unfortunately, not to spoil the record—I can see my colleague Hon Peter Collier chuckling—for a couple of reasons the Greens will not support the Railway (BBI Rail Aus Pty Ltd) Agreement Bill 2017. Firstly, it is a brand-new state agreement that puts in place constraints. It is interesting that this state agreement is not over the mine or the port; it is over only the railway line, which is an interesting divergence. Part of the reason that we are dealing with this bill is that there are problems with the Land Administration Act and the inability to operate in a manner that facilitates the rail line without a state agreement act.

I will talk a little bit about the project. Although we totally support it, a few things stick out like the proverbial for me. I remember an agreement in this place in which FMG, after having been denied access to the BHP rail lines, brought in as part of its agreement over rail the categorical notion, via itself and members of Parliament, that it would always allow third parties to use its rail line. We have to remember that when Roy Hill wanted to cross the FMG rail line—just cross it, not use it—FMG said no and that cost the corporation a further \$120 million to go around the rail line. Having witnessed a corporation that said, “We will honestly allow other people to use our rail line—not a problem”, renege on its deal a few months later by not allowing another mining corporation to cross its rail line for personal and financial interest, I sometimes wonder whether this rail line will be a multiuser facility, which I absolutely support and commend. But will that be the case at the end of the day?

I am reminded of one state agreement act when I was a member of the Town of Port Hedland involving BHP and a small and remote ore body that BHP said would never produce more than X million tonnes and therefore it would use fly in, fly out workers and not local people because it would not be a large enough operation to support a full-time workforce based at Newman. Initially, the project was expected to produce one million tonnes but at the end of the year the production was 10 million tonnes with a massive workforce, all of which ended up being FIFO. I tend to treat the information we receive from major mining corporations with a degree scepticism, if not a pinch of salt. Having worked for major corporations—two of them in the Pilbara—I am mindful of the information we had within the corporation. Quite clearly, we knew our direction and it was not the one provided to this place or the government of the day.

This bill will ratify a state agreement for BBI Rail Australia and Todd Petroleum Mining Company Limited, Todd Offshore Limited and Todd Minerals Limited relating to the development of a railway in the Pilbara and to modify applicable railway laws. We know that we are dealing with not just this particular rail line but any rail line that is developed under this agreement; spur lines and others will be covered by it. Although initially it is a very small rail project, it could become extremely large with spur lines and other directions under the agreement. If we look at the map associated with the agreement, which is on page 78, we can see that it is limited to the current proposals before us in the BBI agreement, but those could expand quite dramatically.

I have talked at length with the City of Karratha and it is very, very supportive of this measure. Again, I mirror the concerns raised by the Leader of the Opposition that unfortunately the community development plan has not been well explained throughout the process. The agreement was executed by the previous government on 23 January. I was going to ask a question about passing a bill through Parliament that was signed by a former Premier. That is a really interesting thing about how we do agreements. The agreement is already there; we are just ratifying it via Parliament. As has been said, it was agreed to by the former Premier. It is a 20-year agreement with provisions for two 10-year extensions. The initial minimum capacity is 50 billion tonnes of iron ore per annum—I am sure that that is supposed to be 50 million tonnes of iron ore per annum because if it were 50 billion tonnes, we would have used up all the iron ore in the Pilbara; my notes are not quite correct—but not less than 25 million tonnes per annum. The project can expand with the minister’s approval to include spur lines to carry more ore. There is no limit within that expansion provision. Open access is intended but could change to haulage services—that is, carrying ore for third parties—if approved by the Australian Competition and Consumer Commission. That is where it gets really interesting. Anybody who has had the privilege of reading Hon Dee Margetts’ thesis on the national competition policy and how it applies to the mining industry would know that the Australian Competition and Consumer Commission has been very critical of state agreement acts. The project involves approximately

160 kilometres of a standard heavy-gauge rail that will connect Flinders Mine to the port from the rail stockyard to the Balla Balla port boundary. Two 20-kilometre conveyors connect the mine to the rail and these are not covered by the state agreement act; they are covered by miscellaneous licences. The port will be managed by the Pilbara Ports Authority and will have the capacity of not less than 50 million tonnes of iron ore per annum and is designated to be multiuser. Having said that, I note that again the port is not covered by this bill. I understand from a speech in the other place that the transportation of ore is to be by barges to vessels to be automated to reduce transshipment costs. I have a problem about that componentry. As we know, already at Port Hedland and out of Wickham, specifically, the whole cargo-loading process has led to massive death of the inshore reef systems due to the suspended iron ore contained within water columns that move around quite dramatically in that area. I hope that at some stage we will have a better understanding of how that will be managed, especially barge transshipment where there is off-loading from a barge to a large ore carrier out in the ocean where there will be spillage. As we know, iron ore sucks all the oxygen out of the ocean and all the oxygen out of reef systems.

Debate interrupted, pursuant to standing orders.

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