

Western Australia

Railway (BBI Rail Aus Pty Ltd) Agreement Amendment Bill 2021

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Western Australia

LEGISLATIVE ASSEMBLY

**Railway (BBI Rail Aus Pty Ltd) Agreement
Amendment Bill 2021**

A Bill for

**An Act to amend the *Railway (BBI Rail Aus Pty Ltd) Agreement
Act 2017*.**

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Railway (BBI Rail Aus Pty Ltd) Agreement*
3 *Amendment Act 2021*.

4 **2. Commencement**

5 This Act comes into operation as follows —

- 6 (a) sections 1 and 2 — on the day on which this Act
7 receives the Royal Assent;
8 (b) the rest of the Act — on the day after that day.

9 **3. Act amended**

10 This Act amends the *Railway (BBI Rail Aus Pty Ltd) Agreement*
11 *Act 2017*.

12 **4. Section 3 amended**

13 (1) In section 3 delete the definition of ***Agreement***.

14 (2) In section 3 insert in alphabetical order:

15
16 ***2020 variation agreement*** means the agreement a copy
17 of which is set out in Schedule 2;

18 ***Agreement*** means the scheduled agreement —

- 19 (a) as varied from time to time in accordance with
20 its terms; and
21 (b) as varied by the 2020 variation agreement;
22

23 **5. Section 4 amended**

24 After section 4(1) insert:

25
26 (1A) The 2020 variation agreement is ratified.
27

s. 7

RAILWAY (BBI RAIL AUS PTY LTD) AGREEMENT 2017
RATIFIED VARIATION AGREEMENT

[Solicitor's details]

THIS AGREEMENT is made this 10 day of September 2020

BETWEEN

THE HONOURABLE MARK McGOWAN, BA, LLB, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time ("**the State**") of the first part,

AND

BBI RAIL AUS PTY LTD ABN 44 604 857 392 of Level 3, 151 Macquarie Street, Sydney, New South Wales ("**the Company**") of the second part,

AND

TODD PETROLEUM MINING COMPANY LIMITED NZBN 9429040945767 of Level 15, The Todd Building, 95 Customhouse Quay, Wellington, New Zealand, **TODD OFFSHORE LIMITED** NZBN 9429030115989 of Level 15, The Todd Building, 95 Customhouse Quay, Wellington, New Zealand and **TODD MINERALS LIMITED** NZBN 9429030762596 of Level 15, The Todd Building, 95 Customhouse Quay, Wellington, New Zealand (each a "**Guarantor**" and collectively "**the Guarantors**") of the third part.

RECITALS

A. The State, the Company and the Guarantors are the parties to the agreement dated 23 January 2017 ratified by and scheduled to the *Railway (BBI Rail Aus Pty Ltd) Agreement Act 2017* and which is referred to in this Agreement as the "**Principal Agreement**".

B. The parties wish to vary the provisions of the Principal Agreement on the terms and conditions set out in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Ratification and operation

- (1) This Agreement, other than this clause, does not come into operation except in accordance with subclause (2).
- (2) This Agreement, other than this clause, comes into operation on the day on which it is ratified by an Act of the Parliament of Western Australia ("**Operative Date**") unless, before that day, it terminates under subclauses (4) or (5).
- (3) The State must introduce in the Parliament of Western Australia before 30 September 2020 or a later date agreed between the parties to this Agreement, a Bill to ratify this Agreement and must endeavour to secure its passage as an Act.
- (4) If by 30 June 2021 this Agreement has not been ratified by an Act of the Parliament of Western Australia then, unless the parties to this Agreement otherwise agree, this Agreement terminates on that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (5) The parties agree that if the Principal Agreement is otherwise determined in accordance with its provisions on a day prior to the Operative Date, then this Agreement shall also terminate on and from that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

2. Variations of the Principal Agreement

The Principal Agreement is varied as follows:

- (1) in clause 1 by deleting the word "and" after the definition of "SRL spur line Operation Date" and inserting the following definitions after the definition of "this Agreement", "hereof" and "hereunder":

"Variation Agreement" means the variation agreement made on or about 16 September 2020 between the Honourable Mark McGowan, Premier of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time, the Company and the Guarantors; and

s. 7

- 1 "Variation Date" means the date on which clause 2 of the Variation
2 Agreement comes into operation;
- 3 (2) in clause 11(1) by deleting "31 March 2019" and substituting
4 "31 March 2022";
- 5 (3) by inserting after clause 11(5) the following new subclause:
- 6 "(6) The provisions of clause 27 shall not apply to this clause.";
- 7 (4) in clause 12(6) by deleting "1 October 2019" and inserting
8 "1 October 2022";
- 9 (5) by inserting after clause 19(4) the following new subclause:
- 10 "(5) The Company acknowledges that nothing in this Agreement
11 shall be taken to limit the rights of the State to enact general
12 legislation in substitution for or modification of, in whole or
13 in part, the provisions of this Agreement (including clauses 9
14 and 10) relating to local participation."; and
- 15 (6) in clause 28(2) by deleting "The" and substituting "After the Variation
16 Date, the";

EXECUTED as a deed.

SIGNED by **THE HONOURABLE**)
MARK McGOWAN)
in the presence of:) [Signature]

[Signature]

Signature of witness

NADEEN LYN ROBERTS

Name of witness

EXECUTED by **BBI RAIL AUS**)
PTY LTD ABN 44 604 857 392 in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by)
authority of its directors:)

[Signature]

.....

Signature of director

JONATHON TERENCE YOUNG

.....

Full name of director (block letters)

[Signature]

.....

Signature of director

NICHOLAS CURTIS

.....

Full name of director (block letters)

EXECUTED by **TODD**)
PETROLEUM MINING)
COMPANY LIMITED)
NZBN 9429040945767 in accordance)
with section 180 of the *Companies*)
Act 1993 (New Zealand) by authority)
of its directors:)

[Signature]

.....

Signature of director

CHRISTOPHER BRIAN HALL

.....

Full name of director (block letters)

[Signature]

.....

Signature of director

JONATHON TERENCE YOUNG

.....

Full name of director (block letters)

s. 7

EXECUTED by TODD)
OFFSHORE LIMITED)
NZBN 9429030115989 in accordance)
with section 180 of the *Companies*)
Act 1993 (New Zealand) by authority)
of its directors:)

[Signature]

.....

Signature of director

MICHAEL JOHN TODD

.....

Full name of director (block letters)

[Signature]

.....

Signature of director

HENRY ALEXANDER BRYAN TAIT

.....

Full name of director (block letters)

EXECUTED by TODD MINERALS)
LIMITED NZBN 9429030762596 in)
accordance with section 180 of the)
Companies Act 1993 (New Zealand))
by authority of its directors:)

[Signature]

.....

Signature of director

CHRISTOPHER BRIAN HALL

.....

Full name of director (block letters)

[Signature]

.....

Signature of director

JONATHON TERENCE YOUNG

.....

Full name of director (block letters)