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Our reference : 6694938

Mr John Feil
Executive Director
National Competition Council
PO Box 250
MELBOURNE VIC 3001

Dear Mr Feil

THE PILBARA INFRASTRUCTURE'S APPLICATION FOR DECLARATION OF PILBARA IRON ORE RAILWAYS

The Western Australian Government welcomes this opportunity to make a submission to the National Competition Council's (NCC's) public consultation process for The Pilbara Infrastructure's (TPI's) application for declaration of rail services in the Pilbara.

The Western Australian Government reiterates comments from its 2004 and 2005 submissions regarding the Mount Newman application that the State has long recognised the need for an efficient and effective rail access regime for Pilbara iron ore railways. The inclusion of third party access clauses in State Agreements places a clear obligation on companies entering such Agreements to carry the freight of third parties.

In addition to the State's own efforts to develop a haulage access regime in parallel, the NCC's consideration of this issue is an important part of developing an effective third party access policy for Pilbara iron ore railways.

The attached submission is a single response to the Robe River, Hamersley and Goldsworthy applications, and addresses the declaration criteria under section 44G of the *Trade Practices Act 1974*.

Yours sincerely

ERIC RIPPER MLA
DEPUTY PREMIER; TREASURER;
MINISTER FOR STATE DEVELOPMENT
29 APR 2008
Enc.

Submission to the National Competition Council

by the

Government of Western Australia

Application under Part IIIA of the *Trade Practices Act* 1974 for Declaration of the Services provided by Hamersley Iron Pty Ltd, Mount Goldsworthy Joint Venture Participants and Robe River Joint Venture railway facilities

April 2008

1 GENERAL COMMENTS

1.1 The Government of Western Australian (the Government) has a significant interest in The Pilbara Infrastructure Pty Ltd (TPI) applications for declaration of the services provided by the Robe River, Hamersley and Goldsworthy railway facilities. Firstly, the railways that are the subject of the declaration applications are covered by various (1960's and 1970's) State Government Agreement Acts (State Agreements). Secondly, the future operation and expansion of iron ore railways in the Pilbara will have a major influence on the development of the State's iron ore industry, and therefore the overall economic growth of Western Australia.

1.2 This submission covers all three applications for declaration made by TPI that are currently under consideration by the National Competition Council (NCC).

1.3 As stated in its October 2004 and May 2005 submissions to the NCC on the Mount Newman railway declaration application, the Government has long sought an efficient and effective rail access regime for the Pilbara iron ore carrying railways (Pilbara railways).

1.4 An effective rail access regime is required in order to give effect to the Government's intention for existing railway owners to provide access to their facilities on a commercial basis, striking a balance between the interests of existing infrastructure owners, potential access seekers and the broader community. Effective third party access to existing infrastructure is conducive to improved industry efficiency and competitiveness, by avoiding sub-optimal development and uneconomic duplication of rail infrastructure. This takes into consideration the adverse environmental and social impacts of unnecessary duplication of rail infrastructure, including land corridors, in the Pilbara.

1.5 There are a number of mechanisms to achieve effective access for third parties to services provided by means of the railways and hence their overseas markets. Ideally this can be attained through commercial negotiation between the railway owners and access seekers. This is the Government's preferred approach. The Government's concern is that, as with any monopoly infrastructure owner there is a clear and rational incentive to exercise market power and provide access to the market only on the monopoly provider's terms and conditions. The Government believes that the railways are effective natural monopolies when considering the transportation of small tonnages of bulk ores from the Pilbara hinterland to Pilbara ports and subsequently overseas markets. Hence, for a truly commercial outcome to be achieved, there is a need for an effective access arrangement which while enshrining the initial focus on commercial negotiations, provides a 'safety net' for access seekers should the negotiation process prove unsatisfactory (i.e. the Government endorses the principle of the negotiate/arbitrate framework).

1.6 The *Trade Practices Act 1974* (the Act) defines a "service" as a service provided by means of a facility and includes:

a) the use of an infrastructure facility such as a road or railway line;

b) handling or transporting of things such as goods or people;

c) a communications or similar service.

1.7 This definition can cover two broad approaches to third party rail access - haulage service provision and track access. In an effective haulage regime, the railway infrastructure owner provides a haulage service on agreed terms and conditions with a third party (the infrastructure owner remains the sole railway operator to ensure overall system efficiency). It is important to note that a haulage service model can only apply to vertically integrated railways. In a track access regime, the infrastructure owner's railway is accessed by a third party, which runs its trains and associated infrastructure resources on the existing infrastructure (the infrastructure then becomes effectively a multi-user railway). Although the two approaches offer different outcomes (i.e. a haulage service provides the Third Party with transportation of its ore and a track access agreement affords the Third Party the right to run its own rolling stock on the Provider's track) both are capable of producing an effective access outcome. More information on haulage regimes and track access is included at Attachment 1.

1.8 The adoption of third party access clauses in State Agreements dates back to the 1960s. Those State Agreements relate to the railways now held by BHP Billiton (BHPB) and Rio Tinto Iron Ore (RIO). These provisions clearly demonstrate the Government's intention that State Agreement companies carry third party freight (and passengers) subject to the provision that it does not unduly prejudice or interfere with their operations. Despite this clear statement of policy agreed by the State Agreement counterparties, no independent access seeker has ever been able to negotiate satisfactory access arrangements with a State Agreement company. It has been argued that this has demonstrated an unwillingness of infrastructure owners to meet their State Agreement obligations.

1.9 The Government has sought mechanisms to enhance the effectiveness of such provisions. This includes the development of the 1987 Rail Transport Agreement for the Mount Newman railway owned by BHPB and a Framework of Principles Agreement entered into by then Minister for State Development with RIO in 2002.

1.10 Subsequent to the sale of the (previously) State-owned Westrail freight business in 2000, and consistent with the competition policy agenda of the 1990s, the Government developed a track access regime legislated under the *Railways (Access) Act 1998* and the Railways (Access) Code 2000. This was initially applied to WestNet Rail; the operators of the State's southwest freight rail network. In the absence of any other effective regime, this regime was extended to cover the railway constructed under the 2004 TPI State Agreement Act.

1.11 The Government retains a keen interest in the declaration application process for the Pilbara iron ore railways. Track access through the Part IIIA process has the potential to achieve the Government's long held policy objective of allowing third parties to transport iron ore from the hinterland to port. The Government notes, however, the significant concerns expressed by infrastructure owners with respect to the possibility of providing track access and the consequential time consuming and resource intensive process that has taken place to date. The Government is concerned that such processes have not delivered the certainty that all parties seek and it is still unclear when a resolution is likely to be reached.

DEVELOPMENT OF A STATE-BASED ACCESS REGIME

1.12 In response to these concerns, and an approach from BHPB in January 2006, the Government is undertaking the development of a State-based haulage Regime (the Regime) for the Pilbara iron ore carrying railways (see Attachment 2). The objective of this process is to facilitate fair and reasonable third party access to the iron ore rail infrastructure in the Pilbara region whilst preserving the efficiency of the rail networks.

1.13 The aim of the Regime is to develop a simple and transparent framework under which haulage access to the Pilbara railways can be negotiated. Ultimately, the Regime will be capable of certification under Part IIIA of the Act. It is envisaged that the Regime will, at this stage, be applicable only to the haulage of iron ore and will not extend to other bulk ores, the loading and unloading of iron ore, the use of mining or port facilities, or shipping. For other bulk products third parties will need to negotiate haulage services under the existing State Agreement Act provisions.

1.14 The Regime will be consistent with the Competition Principles Agreement (1995) and will act as a safety net for commercial negotiation, encouraging and preserving this negotiation as a starting point. The Regime will feature a negotiate/arbitrate model with set timelines (consistent with the *Commercial Arbitration Act 1985 WA*), with haulage access seekers granted an enforceable right to negotiate access according to deadlines for completing particular phases of negotiation. Haulage access seekers will also have the right to opt-in and opt-out of Regime negotiations.

1.15 The Regime will include a rigorous and transparent dispute resolution process, which meets the Competition Principles Agreement requirements while maintaining commercial confidentiality. Both negotiating parties will be permitted to seek the opinion of the Regulator or refer any disputes to the Arbitrator. The dispute resolution procedure featured in the Regime incorporates a non-mandatory mediation mechanism, the ability of the Regulator to provide non-binding opinions, and the ability of the Third Party to not give effect to the Arbitrator's determination if it is of the opinion that it is not economic for it to obtain haulage under the terms and conditions of the determination. It will not be possible for the Arbitrator to alter any determinations made by the Regulator and parties will have rights of appeal of arbitrator decisions to the Supreme Court of Western Australia.

1.16 It is envisaged that the Regulator of the Regime will be the Economic Regulation Authority (ERA), who will be responsible for monitoring and enforcing both provider and third party compliance with the objectives of the Regime. The ERA will be permitted to carry out investigations into any behaviour it believes may hinder or prevent haulage or the making of a haulage agreement by either party and will perform an approval function of both the pricing and costing principles.

1.17 Although the Regime was initially developed between the Government and BHPB, it has received input from a number of stakeholders through targeted consultation with individual companies. A formal public consultation process is about to be undertaken.

1.18 The detail of the Regime is still being developed, and although it is a desirable outcome, there is no guarantee that the final Regime will be certifiable under Part IIIA of the Act. The Government therefore is not in a position to state that an effective regime exists at this time with respect to the facilities for which declaration is sought.

1.19 In its previous submissions in 2004 and 2005, the Government stated that:

a) the NCC consideration of this issue is an important part of developing an effective third party access policy for Pilbara iron ore railways; and

b) the Government is of the view that the service to which Fortescue Metals Group (FMG) is seeking access satisfies all of the criteria for declaration, as laid out in Part IIIA of the Act.

1.20 Whilst the Government is working towards better effecting the haulage obligations underpinning BHPB's (and RIO's) Agreement Acts, there is no guarantee that the State's efforts will result in a haulage regime being developed that ultimately would be legislated at the State level and capable of certification. As a result, the Government's position remains unchanged from that previously stated.

1.21 The remainder of this submission addresses specific comments on each of the Section 44G(2) criteria of the Act.

2 SECTION 44G(2)(A) OF THE ACT: THAT ACCESS (OR INCREASED ACCESS) TO THE SERVICE WOULD PROMOTE A MATERIAL INCREASE IN COMPETITION IN AT LEAST ONE MARKET (WHETHER OR NOT IN AUSTRALIA), OTHER THAN THE MARKET FOR THE SERVICE

MARKET FOR RAIL HAULAGE SERVICES

2.1 In response to the points raised by TPI, the Government:

a) agrees that where significant tonnages and distances are involved the economics of transporting bulk ores favour the use of rail transportation (the Government also wishes to emphasise that rail has significant advantages over road in terms of environmental and social impacts); and

b) reiterates its position put in the Mount Newman declaration process in that "rail transportation is a significant barrier faced by new producers. Existing producers, therefore, have a competitive advantage that they naturally wish to maximise. Owners of rail facilities therefore have both the ability and the incentive to exercise market power."

2.2 Should the below rail service associated with the Robe/Hamersley/Goldsworthy railway be declared, the Government is of the view that competition in the market for haulage services could be enhanced. However, even in the event of track access being provided, a haulage regime may be required to ensure that providers of haulage services supply those services on reasonable terms and conditions.

MARKET FOR IRON ORE TENEMENTS

2.3 The Government agrees that rail transport is a potential barrier to competition in the market for iron ore tenements. It should be noted, however, that this is subject to:

a) the tenements being close enough to existing railways to commercially justify any spur lines or other transportation arrangements which may be required to connect the tenement to the existing rail facility; and

b) the tenements being in the Pilbara hinterland (i.e. not being close enough to ports to make road transportation an economic alternative).

2.4 On the issue of whether BHPB and RIO, as vertically integrated companies, are in a position to and willing to exercise monopsony power, although the Government acknowledges the potential for this practice to occur, it is not aware of any circumstances where this has occurred.

2.5 The Government has no information to suggest that tenements in the vicinity of the railways are under developed and under priced (the NCC may wish to raise these issues with potential access seekers).

2.6 The Government agrees that, should a competitive haulage market be developed, it could increase competition in the market for tenements in the Pilbara. The Government does, however, note that in the Pilbara there are already a number of companies holding tenements and that, for example, the land area held by FMG under tenement is already greater than that held by BHPB.

PORT CAPACITY IN THE PILBARA

2.7 Some parties argue that current port capacity constraints in the Pilbara mean that, even if rail access is provided, it will not necessarily lead to enhanced competition in downstream markets as new market entrants will not be able to access the export market.

2.8 The Government recognises the importance of port infrastructure to the iron ore logistics chain. Without access to port infrastructure (whether through a common user or dedicated port facility), access to rail infrastructure alone would not result in a significant increase in competition in the downstream (or upstream) markets. It is also recognised that the current surge in iron ore demand has led to significant infrastructure (mine, rail and port) expansion plans that are placing pressure on all infrastructure providers (both private and publicly owned) to overcome capacity constraints.

2.9 The limits on third party access to port facilities do not mitigate the need for third party access to the services provided by rail infrastructure. Whilst significant increases in export volumes have resulted in current port facilities operating at or near capacity, the Government believes that a medium to long-term view should be adopted on this issue.

2.10 Successive State Governments have acknowledged the need for third party access to port facilities in the Pilbara through various State Agreement Act obligations.

2.11 The Government is currently investigating a range of options to meet medium and long-term demand for port capacity in the Pilbara. In meeting this challenge, a range of possible solutions are being examined, including the construction of new ports (Attachment 3) and the expansion of existing port facilities in the Pilbara (Attachment 4).

2.12 An ongoing policy objective will be to ensure that there are common use facilities available for relatively small tonnage bulk commodity exporters. For example, the recent announcement of the construction of a new public berth at Port Hedland is designed to accommodate the needs of small bulk ore exporters.

2.13 It is therefore the Government's conclusion that, while port capacity may be constrained in the short term, this is not an issue that planning and negotiation between the Government, its port authorities and exporters cannot resolve. In any event, the Government does not believe that current port capacity constraints diminish the requirement for effective third party access to Pilbara iron ore rail infrastructure. For these reasons, it is believed that the NCC should not examine issues of port access in deciding whether to declare the Pilbara iron ore railways.

3 SECTION 44G(2)(B) OF THE ACT: THAT IT WOULD BE UNECONOMICAL FOR ANYONE TO DEVELOP ANOTHER FACILITY TO PROVIDE THE SERVICE

3.1 In response to the points raised by TPI that each of the railways concerned are uneconomic to duplicate, the State Government agrees that the rail facilities sought through the declaration applications may not be served by economic alternative services as:

a) there is no alternative competitive transportation mode for tenements in the Pilbara hinterland (for some tenements holding large resources nearer the coast road transportation may be economic). The Government is of the view that on balance, road haulage should not be the preferred option for iron ore producers. Primarily the Government is concerned with the significant negative externalities that are associated with road haulage, which include environmental and social impacts. However, the Government does not wish to categorically rule out road haulage as a viable substitute for rail, so long as firms appropriately address the full costs of the approach;

b) with some exceptions (e.g. the BHPB and TPI railways south of Port Hedland) the railways are generally remote from one another and therefore have a 'captive' regional market; and

c) it is considered that only for large tonnages would it become commercially viable for a company to consider the construction of a railway in its own right. It is difficult to determine the quantities required for a new entrant to be able to feasibly duplicate an existing railway, as such considerations would also depend on the length of the railway concerned and whether the third party has access to existing port facilities (or will be required to build a new port). At 2007 iron ore prices, it is likely that tonnages in excess of 20 to 30 million tonnes per annum of quality grade ore are needed to potentially make it commercially viable for a producer to construct their own railway. Naturally, if the future iron ore price is below 2007 levels, a higher per annum production target is likely to be needed to make this viable.

3.2 Furthermore, the State Government notes the difficulty in assessing rail infrastructure capacity due to the information asymmetries that exist between the infrastructure owners and access seekers (and interested parties). The Government recognises that determining the capacity of the Hamersley/Robe River/Goldsworthy facilities will be the source of much contention between the infrastructure owners and access seekers. The Government does not believe it can add value to the discussion by providing estimates of capacity.

3.3 It is acknowledged that lost system flexibility could be a major issue for rail infrastructure owners under the track access approach. The Government believes that it is essential that the design of any regime should endeavor to minimise the likelihood of this occurring. It should be noted that the State's draft haulage regime attempts to address this by ensuring the haulage services supplied to the Third Party by the Provider maintain the rail owners' safety and operational standards.

3.4 Lastly, the State Government reiterates the position stated in its 2004 submission, supported by independent expert advice then provided to the Government, which demonstrated that the expansion of a railway to a double-tracked facility would be a more cost effective (and efficient) solution than two or more rail facilities operating in parallel to the existing track.

4 SECTION 44G(2)(C) OF THE ACT: THAT THE FACILITY IS OF NATIONAL SIGNIFICANCE

4.1 The Pilbara region is the source of the majority of iron ore produced in Western Australia and Australia. The two major groups in the Western Australian industry today are RIO (which controls Hamersley Iron and the Robe River Joint Venture) and BHPB. Together they account for 98% of the State's production.

4.2 Rail systems are an integral part of iron ore production in the Pilbara, which accounts for 95% of Australia's production of the commodity. In the financial year 2006/07, the value of Western Australian iron ore increased to a new record of $15.75 billion. During this period, Western Australia produced approximately 258 million tonnes, of which 97.3% was exported to markets in Asia. China is the major consumer of Western Australia's iron ore exports, accounting for over half (54%) of the total amount shipped in 2006/07 (Source: Department of Industry and Resources, Western Australia).

4.3 The iron ore sector is a major contributor to Western Australia's economy, employment and regional development. It is the second largest industry contributor to the State's economy, behind only the petroleum sector. Royalties received by the State from this industry amounted to approximately $851 million for the financial year 2006/07 The industry generates significant export revenue, pays substantial taxes to the Australian Government and is a major driver of regional development in the north west of Australia through the significant employment and social benefits it brings to communities in the Pilbara.

4.4 The outlook for the iron ore industry remains very positive, with major expansions to significantly increase annual production capacity being proposed and undertaken by companies. It has been predicted that the State's iron ore production could triple over the next twenty years.

4.5 The Government therefore believes that the facilities for which declaration are sought are of national significance due to their size (both length and capacity), the importance of their role in the iron ore trade and the economic impact associated with the product that they transport.

5 SECTION 44G(2)(D) OF THE ACT: THAT ACCESS TO THE SERVICE CAN BE PROVIDED WITHOUT UNDUE RISK TO HUMAN HEALTH OR SAFETY

5.1 It is noted that, if any of the railways covered by these declaration applications become subject to third party haulage or track access arrangements, they would have to comply with the State's *Rail Safety Act 1998*.

5.2 It should be noted that, in the context of the State's proposed rail haulage regime, it is considered desirable that the infrastructure owner's safety standards should be applied to any third party's infrastructure that directly interfaces with the infrastructure owner.

5.3 The Government is of the view that track access could also be provided without undue risk to human health or safety.

6 SECTION 44G(2)(E) OF THE ACT: THAT ACCESS TO THE SERVICE IS NOT ALREADY THE SUBJECT OF AN EFFECTIVE ACCESS REGIME

6.1 The Government notes that TPI considers that the facilities for which declaration is sought are not currently (or likely to be) subject to an effective access regime.

6.2 The Government wishes to reiterate its position outlined in its May 2005 submission to the NCC. The inclusion of third party access clauses in State Agreements clearly demonstrates the Government's long sought policy objective that Agreement companies carry third party freight, provided it does not unduly prejudice, or interfere with, their operations. Relevant extracts from the State Agreements include:

a) Robe River "...operate their railway in a safe and proper manner and where and to the extent that they can do so without unduly prejudicing or interfering with their operations hereunder carry freight and transport the passengers of the State and of third parties on the railway subject to and in accordance with by-laws (which shall include provision for reasonable charges)".

b) Hamersley "...transport the passengers and carry the freight of the State and of third parties on the railway ... PROVIDED THAT in relation to its use of the said railway the Company shall not be deemed to be a common carrier at common law or otherwise"

c) Goldsworthy "...operate their railway in a safe and proper manner and where and to the extent that they can do so without unduly prejudicing or interfering with their operations hereunder carry freight and transport the passengers of the State and of third parties on the railway subject to and in accordance with by-laws (which shall include provision for reasonable charges)".

6.3 However, to date, no independent access seeker has been able to negotiate satisfactory access arrangements with these Agreement companies. It is difficult to conclude therefore, that these State Agreement rail access provisions have been effective.

6.4 These State Agreement Acts were executed well before access regulation had developed to any material degree in any industry in Australia. The third party access provisions contain relatively high-level obligations and lack the detail required to bring about third party access. It is, therefore, not surprising, in hindsight, that those State Agreement access provisions have not proven to be an effective vehicle for any new market entrants. In an attempt to reverse this trend, and due to the fact that the Government has introduced an effective track access regime for WestNet Rail and the Public Transit Authority (PTA), the most recent Agreement Act, the TPI State Agreement, is based on the State Rail Access Code (2000) and accordingly provides a regime for track access.

DEVELOPMENT OF A STATE-BASED HAULAGE REGIME

6.5 As previously stated, the Government is endeavoring to develop a Regime that will provide haulage for iron ore that would effectively offer a service with similar characteristics to that which TPI claim they intend providing to Third Parties.

6.6 If the proposed State-based Regime was enacted, the Government believes that the additional declaration of the below rail service (i.e. track access) under Part IIIA:

a) would not result in a material increase in competition in the market for iron ore tenements. In this instance the competitive outcome TPI refers to would be realised by the haulage service provided under the State Regime, and therefore declaration would not achieve a *material* increase in competition in the relevant market; and

b) may result in a material increase in competition in the market for haulage services. This is subject to the caveat of TPI's ability to compete with the haulage service provided under the State Regime (as previously discussed).

6.7 While the proposed Regime will offer third party access to haulage services on fair and reasonable terms, it is nevertheless recognised that considerable barriers exist to the Regime's ultimate implementation. The final Regime will require Government approval and subsequent enactment in legislation, with any required amendments or additions to existing legislation also requiring Government approval. Furthermore, it is not anticipated that the final Regime will be unilaterally implemented across all rail infrastructure in the Pilbara. This will therefore require the mutual consent of the State Agreement Act companies.

7 SECTION. 44G(2)(F) OF THE ACT: THAT ACCESS (OR INCREASED ACCESS) TO THE SERVICE WOULD NOT BE CONTRARY TO THE PUBLIC INTEREST

7.1 As in previous submissions, the Government believes that third party access will ensure that the Pilbara iron ore industry maintains its competitive edge internationally, and strengthen its share of the global market. Effective access arrangements may contribute to an increase in the volume of iron ore available for the export market by helping to avoid unnecessary infrastructure duplication and facilitating investment in production.

8 DURATION OF DECLARATION

8.1 As the Government stated in its submission on the Mount Newman declaration application, an appropriate duration for declaration would be 20 years. This timeframe encompasses an average mine life, provides for long-term security to both infrastructure owner and third parties, and allows for the write down of large capital expenditures.

8.2 Within this timeframe access seekers and infrastructure providers should be able to negotiate the term of the agreement appropriate to a case-by-case assessment

ATTACHMENT 1

APPLICATION OF TRACK ACCESS VERSUS HAULAGE REGIME

The Government's proposed haulage regime differs from a track access regime on the following basis.

1. A haulage regime gives the service provider full control over its operational and safety standards, including maintaining its rail network flexibility. Under a track access approach third parties may impact upon such control.

2. Under the haulage regime, all locomotives and wagons hauling third party product are the same as those used by the Provider. Track access, on the other hand, could lead to third parties using less efficient rolling stock over the railway, thus potentially impacting overall system efficiency.

3. In the Pilbara context, because the Provider of the haulage service (i.e. BHPB/RIO) is a vertically integrated mining company, rail capacity would be assessed on a system wide basis (i.e. the mine-rail-port logistics chain), whilst issues concerning rail capacity under a track access approach would be assessed against only the below rail infrastructure.

4. In terms of pricing, the Regulator will be able to determine an above and below rail charge under a haulage regime, whilst under track access the Regulator can only determine a below rail charge.

5. In general, a haulage regime cannot be applied to a railway where the owner of that railway does not also operate an above rail business. This would be the case for the State's southwest freight rail network. Where the owner of a railway does own and operate the above rail assets, rail access to third parties could be provided by either a haulage regime or the track access approach.

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Our reference : 5835
6416015

Hon P H Costello MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

FORTESCUE METALS GROUP APPLICATION TO ACCESS BHP BILLITON'S MOUNT NEWMAN RAILWAY LINE

As you are aware, the Western Australian Government has a significant interest in Fortescue Metals Group Limited's (FMG's) application and the potential ramifications of declaration for the future economic development of the Pilbara iron ore industry. Our interests have been outlined in the two submissions we have made to the National Competition Council (NCC).

The major objective of the State has been to secure effective and efficient access regimes and to do so as quickly as possible. Expediting the resolution of this matter will provide certainty to existing and potential iron ore producers and be of public benefit. While the State continues to support the objective of declaration and an access outcome that is speedily given effect, we are concerned that the current declaration process and likely associated legal challenges may lead to protracted delays and complications.

Accordingly, the State recently commenced discussions with BHP Billiton (BHPB) with a view to the parallel development of a State-based access arrangement for haulage services, capable of being certified under Part IIIA of the Commonwealth's *Trade Practices Act 1974* (TPA).

BHPB has now indicated that it is prepared to work immediately with the Western Australian Government, in good faith, to develop a State-based access regime for haulage services, with the objective of making it certifiable under Part IIIA of the TPA. The Western Australian Government and BHPB will in the first instance investigate modifying the State's existing Rail Transport Agreement to achieve this objective.

The State Government is of the view that an access regime that meets these requirements would balance the needs of access seekers, while not adversely impacting on the efficiencies of the existing rail infrastructure providers. The certification process will achieve an outcome, which is in all important respects, consistent with declaration.

Such an outcome will maximise the net benefit of the access regime and ensure that the comparative advantage created by the Pilbara iron ore industry's current world class transport operations will continue into the future.

Yours sincerely

ERIC RIPPER MLA
DEPUTY PREMIER; TREASURER;
MINISTER FOR GOVERNMENT ENTERPRISES;
MINISTER ASSISTING THE MINISTER FOR PUBLIC SECTOR MANAGEMENT

cc Hon Chris Pearce MP, Parliamentary Secretary to the Treasurer.

ATTACHMENT 3

GOVERNMENT MEDIA STATEMENT

Fri 19 January, 2007
Portfolio: Planning and Infrastructure

MAJOR NEW IRON ORE PORT PLANNED FOR PILBARA

A preferred site has been recommended for the Pilbara's next major iron ore port. Planning and Infrastructure Minister Alannah MacTiernan said that if iron ore exports grew as predicted, they could exceed the capacities of existing ports at Dampier, Port Hedland and Cape Lambert within a decade.

"With iron ore exports potentially growing from 235 million tonnes (mt) a year, to as much as 595 mt over the next 10 years, we could need a major new iron ore port as early as in six years' time if the high growth scenarios are realised," Ms MacTiernan said.

"While the capacity of existing ports could potentially be expanded from 240mt currently, to about 540mt, estimates for possible future export demand are as high as 890mt by 2025.

"That is why the Government has begun the process of selecting a site for a new port with a capacity of more than 300 mt, or about three times Port Hedland's current throughput.

"A preliminary study by independent consultants examined six possible sites and identified Ronsard Island, about 80km west of Port Hedland, as having the most potential.

"The Pilbara Port Study independently reached the conclusion that Ronsard Island was the site with the greatest potential to satisfy multiple users at the necessary scale.

"Previous studies and views expressed by industry have also identified Ronsard Island as a preferred site for a large new iron ore port."

The Minister said the study, by Worley Parsons, investigated sites at Cape Preston, West Intercourse Island, Cape Lambert, Cape Thouin and Sherlock River, as well as Ronsard Island.

The consultants identified Sherlock River (Depuch Island) as the next best site.

However, heritage issues at this site would have made obtaining the necessary approvals difficult.

Factors that were considered to assess the suitability of sites for a new iron ore port included:

- proximity to likely areas of iron ore mining expansion;
- potential environmental impacts;
- capacity to meet the future needs of the industry;
- proximity to supporting infrastructure;
- the availability of construction materials;
- concerns with geology and geotechnical issues;
- concerns with potential flooding;
- the relative degree of shelter; and
- the relative development costs of providing basic infrastructure

Further investigation of environmental, heritage, marine, coastal engineering, geological and geotechnical issues would now be undertaken to confirm its suitability.

The Government would consult with stakeholders including industry, local government and indigenous communities during these investigations.

"Areas within a new port would be set aside for major iron ore companies to build and manage their own infrastructure, as in Dampier and Port Hedland," Ms MacTiernan said.

"There would also be areas for common-user berths for smaller companies and other shipping, overseen by a port authority, possibly a combined Pilbara Port Authority."

ATTACHMENT 4

PRESSURE MOUNTS ON PORT FACILITIES

Rashelle Predovnik
WA Business News, 13 March 2008

Most of Western Australia's major shipping ports have undergone major expansion projects in recent years, as they endeavour to cope with rapidly growing demand for their services.

And the pace of growth shows no sign of slackening.

With existing ports at Fremantle, Geraldton and Port Hedland approaching their capacity, the state government has started planning more ambitious plans.

These include 'outer harbour' developments at Cockburn Sound and Port Hedland and the construction of a new port at Oakajee, north of Geraldton.

Port Hedland is Australia's highest tonnage port with throughput expected to significantly exceed 200 million tonnes by 2010.

Its main user is BHP Billiton IronOre, which will be joined this year by new producer, Fortescue Metals Group, which is building its own wharf.

The proposed multi-user outer harbour is currently in the concept design phase and includes the construction of jetties off the northern shore of Finucane Island and a separate shipping channel.

Subject to approvals, construction of the outer harbour could commence within three years and defer the need for a completely new port in the Pilbara, potentially at Ronsard Island, for another 10 years.

Expected to be operational in the first half of 2009, a new public berth is also under way to free up access on existing public berths and provide access for emerging iron ore juniors.

Aspiring iron ore producers in the Pilbara include Atlas Iron and Aurox Resources.

A multi-user copper and zinc concentrate storage shed, which will be underwritten by CBH Resources, Moly Mines, Straits Resource and Prairie Downs, is projected to be complete by 2009.

The Pilbara's other main port is located near Dampier, and services resources giants Rio Tinto Iron Ore and Woodside Petroleum.

Rio is in the midst of a major expansion of its Cape Lambert facilities.

Geraldton Port's iron ore export capability is set to increase substantially with its recently completed Berth 5 projected expected to almost quadruple the tonnage of iron ore it currently exports.

The recently completed berth project is the second major upgrade at the Geraldton port in the past five years.

Although the government has to date invested more than $300 million in port, road and rail infrastructure to lift Geraldton's capacity, delays caused by bottlenecks are an ongoing issue.

The debate surrounding the deep water Oakajee port and its associated rail lines continues as Midwest Corporation Ltd and Murchison Metals Ltd compete in a tender process following the release of a Request for Proposal document last month.

It is anticipated Oakajee will initially handle 45mt of iron ore exports annually.

Construction is due to start in late 2009 and operations by 2012.

At Fremantle, 10 per cent annual growth in container trade means the existing 'inner harbour' is expected to reach capacity by 2015.