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Ms Lauren Mesiti
Committee Clerk
Standing Committee on Legislation
Legislative Council
Parliament House
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Dear Ms Mesiti

**INQUIRY INTO THE *PILBARA PORTS ASSETS (DISPOSAL) BILL 2015* –
DEPARTMENT OF TREASURY QUESTIONS ON NOTICE FROM 3 MAY 2016
HEARING**

I refer to the hearing attended by Department of Treasury (Treasury) representatives on 3 May 2016, regarding the inquiry into the *Pilbara Ports Assets (Disposal) Bill 2015* conducted by the Standing Committee on Legislation (Committee). At the hearing a number of questions on notice were identified, requiring responses from Treasury by 12 May 2016.

Treasury's responses are provided below.

1. *What specific provisions in the Western Australian Land Authority Act 1992 and the Port Authorities Act 1999 will not be applicable by virtue of the protections created in clauses 18(3) and (4) of the bill?*

Response:

Clauses 18(3) and 18(4) of the Bill do not dis-apply any sections of the *Port Authorities Act 1999 (PA Act)* or the *Western Australian Land Authority Act 1992 (WALA Act)*. Rather:

- (a) clause 18(3) confers protections which are similar to those that exist under the PA Act and the WALA Act; and

- (b) clause 18(4) provides that, unless a Ministerial direction under clause 18(1) of the Bill provides otherwise, nothing in a Ministerial direction under the Bill affects any requirement to obtain Ministerial approval under the PA Act and the WALA Act.

In respect of clause 18(3):

- (a) The functions and powers of the Pilbara Port Authority (PPA) are specified in the PA Act. The PPA, in performing its functions, must act in accordance with prudent commercial principles and endeavour to make a profit (section 34(1) of the PA Act). The Minister for Transport is empowered to issue directions to the PPA with respect to the performance of its functions (section 72 of the PA Act). The PPA, a subsidiary of PPA and a person performing functions under the PA Act are not liable for having done, or omitted to do, a thing in compliance with such a direction (section 78(1)(b) of the PA Act).
- (b) A similar regime applies to the Western Australian Land Authority (LandCorp) under the WALA Act (see sections 16, 17 19, 24, 24D of the WALA Act).
- (c) The Bill confers additional functions and powers on PPA (see, for example, clause 15 of the Bill) and “associated agencies” (which may include LandCorp if LandCorp was to own or manage an “associated SC asset”, being an asset that, in the Minister's opinion, is associated with a port asset (clause 4 of the Bill)).
- (d) The Minister responsible for the Bill is empowered to issue directions to PPA and LandCorp (if LandCorp is an associated agency) for the purposes of a disposal under clause 10 of the Bill (clause 18(1) of the Bill). Clause 18(3) of the Bill therefore protects PPA and LandCorp (if LandCorp is an associated agency) from liability from complying with a direction under the Bill, in a similar manner to section 78 of the PA Act and section 24D of the WALA Act.
- (e) By way of example, if the Minister responsible for the Bill was to direct PPA to do something that was not consistent with its obligation to endeavour to make a profit, then PPA would be protected from liability from complying with that direction pursuant to clause 18(3).

In respect of clause 18(4), by way of example, if the Minister responsible for the Bill was to direct PPA under clause 18(1) of the Bill to grant a lease of the Utah Point Bulk Handling Facility (Utah Point BHF), then unless that Ministerial direction specified otherwise, PPA would still be required to seek the approval of the Minister for Transport to grant the lease under section 28 of the PA Act.

2. *I should most probably refer you to a government submission to the EPA for EPA Bulletin 131, where that was the driver. I have a problem when you are going to privatise a facility that actually had a social development parameter as well as an economic parameter. I am just surprised that you were not particularly aware of that.*

Response:

Treasury was aware of the key factors and drivers related to the establishment of Utah Point BHF. To be clear, Utah Point BHF was approved in 2006 on the basis that it would address increased congestion and vessel demurrage costs at existing PPA public berths (1, 2 and 3); address increasing port throughput growth; facilitate iron ore and other commodity exports by junior miners; and also provide social and environmental benefits by alleviating dust pollution, noise issues and reduce heavy road train traffic through the town of Port Hedland.

As part of the approval process for the construction of Utah Point BHF, environmental approvals were sought which examined proposed dust emissions. A consequential benefit of the construction of Utah Point BHF was a reduction in the dust emissions near populated areas on Port Hedland, Environmental Protection Authority (EPA) Report 1311, 2009 (dated after the approval to construct Utah Point) states at page 17:

“Although the EPA notes the proposal will lead to some local improvement in air quality and reduction in noise levels in the west end of Port Hedland, the EPA emphasised that it would not result in improvements in the overall area of Port Hedland where dust and noise impacts were already of concern ...”.

The PPA continues to engage with relevant environmental authorities, including through annual reviews of licence conditions. These annual reviews provide an ability to monitor contemporary information and flexibility to respond. This may include further design and structural improvements to the Utah Point BHF over time, if determined necessary through licensing processes, to achieve improved air quality in the long term. PPA's commitments include Environmental Management Plans for Utah Point BHF in line with the requirements of AS/NZS ISO 14001 *Environmental Management Systems*. These plans address air quality amongst other factors. PPA is currently consulting with the Department of Environment Regulation in relation to a separate environmental licence for Utah Point. These discussions include agreeing on a stringent dust monitoring regime.

3. *Following on from those points: you must have made some calculation even to get to this point. I accept there will be a further process in terms of developing a retention value for comparing the bids against. But to get to this point to spend—what is it?—the \$6 million or \$8 million that you are spending on the sale process, you must have done some calculation of what you believe is the retention value versus the purchase value, and that must have included a calculation of what the return to the state to date has been on Utah Point. Am I correct or not?*

Correct.

Are we able to get what that value is that you have calculated to date has been the return to the state?

The historical return to the state, yes, when I talked about the supplementary—we have provided some of that information previously, I think up to last financial year.

Yes, \$146 million in revenue.

There is some additional, more recent information that is included in the Pilbara Ports Authority submission. Taking into account all of that, we will provide, as a supplementary response, current information providing as much as we can.

Response:

Treasury previously provided the 2015-16 summary financial information on Utah Point to the Estimates and Financial Operations Committee in February 2016. Updated actual financial results for 2015-16 to March 2016 follow.

2015-16 Financial Results to March 2016

Revenue: \$85.2 million (including Port Improvement Rate (PIR) of \$1.9m)

Expenditure: \$50.2 million comprising –

- Maintenance: \$10.8 million (inclusive of replacement of parts)
- Depreciation: \$11.2 million
- Corporate overheads: \$10.6 million (all support functions (Executive, Port Development, occupational health and safety, environmental management, finance, human resources etc) – overhead based on apportionment of revenue
- Interest: \$3.9 million
- Utilities: \$6.7 million
- Other: \$7.1 million

Operating Margin: \$34.9 million (including PIR)

It is important to note that the above financial results include three revenue items which will not transfer to the future lessee, namely pilotage, tonnage, and the port improvement rate, all of which would remain as a revenue

source for PPA. Berthage, wharfage, shiploader and facility charges would be transferred as revenue sources for the lessee.

Economic consultant HoustonKemp was engaged by the Department of Finance in April 2016 to consider Utah Point BHF pricing and whether appropriate returns were being made by PPA having regard to the risk profile of the asset. It found that the return on assets for the financial year 2016 (including forecast data for the period 1 January 2016 to 30 June 2016) will be 11.8% and that the cumulative project internal rate of return since the time of commissioning the facility to 30 June 2016 is 13.6%.

The below table shows HoustonKemp's calculated rates of return from 2012-13 to 2015-16.

	2012/13	2013/14	2014/15	2015/16
Return on Assets	6.3%	26.3%	28.8%	11.8%
Internal Rate of Return	5.9%	10.7%	13.7%	13.6%

Source: "HoustonKemp Economic Review of Prices at Utah Point (April 2016)", (Table 2, page 21)

4. *So, BHP has got quite a large area for that tunnel. If the tunnel was to be upgraded, or rebuilt, or a dual tunnel capacity was put in there for greater transfer of fines ore across the facility, and that impeded the operations of Utah Point, that would be just stiff bickies for Utah Point?*

Response:

Clause 44(2) of the Bill provides that the Bill does not prejudice or in any way affect any right or obligation of a party to a Government Agreement. Clause 44 would therefore apply to the rights and obligations of BHP Billiton and relevant joint venturers in respect of the under harbour tunnel from Nelson Point to Harriet Point on Finucane Island under the Mt Newman State Agreement.

The consequences of any alteration of the under harbour tunnel on the future Utah Point BHF lessee will be detailed in the transaction documents to be negotiated and executed by the State, PPA and future lessee.

I trust that the above information is of assistance to the Committee.

Yours sincerely



Richard Mann
EXECUTIVE DIRECTOR
STRATEGIC PROJECTS AND ASSET SALES

12 May 2016