

## PRECIS OF JPPL'S COURT ACTION

1. The Writ details many examples of the State Government hindering or delaying the Port since 2001. When the Agreement was signed, all the contracting parties expected Stage 1 of the Port to be in operation by the end of 2005 at the latest. The Writ lists in some detail how the Government has managed to prevent the commencement of the Port Operations for what is likely to be at least ten years, being the most likely date, if the Court orders the Government to cooperate under the Agreement instead of hinder it.
2. Some examples of Government delay are:
  - (a) after the former Minister for Lands had initially approved the sale of land at James Point to JPPL in December 2000, it took until November 2003, almost three years later, for the new Minister for Lands to reveal to JPPL that the Government had changed its mind, and had not only refused to sell the Landcorp Land to JPPL, but refused to even lease it to JPPL;
  - (b) the Government refused JPPL access to the Landcorp Land to undertake geotechnical investigations for design work which the Department of Transport told JPPL it required, which refusal lasted for the entire term of the previous government. Without access, JPPL could not undertake the design of the Port properly;
  - (c) both Landcorp and the Fremantle Port Authority refused to sign forms enabling JPPL to apply for development approval in the Port Area to the Western Australian Planning Commission. Without their signature on the forms, JPPL was unable to validly apply for development approval at all. JPPL first applied for approval in 2004, and letters to various Ministers over the next two to three years, imploring them to direct Landcorp and FPA to sign the forms, were regularly ignored by the Ministers;
  - (d) letters to both Premiers Carpenter and Barnett raising concerns about the delays themselves took months to receive a response, and none of which undertook to prevent further delay;
  - (e) part of the process required an amendment to the Metropolitan Region Scheme ("MRS"), to make the Port Area an industrial zone, which can only be initiated and undertaken by the Government, not JPPL. JPPL first asked

the Government to initiate the amendment to the MRS in early 2001, but the MRS Amendment did not become effective until August 2009, about eight and half years later. The average length of an MRS Amendment would be about eighteen months from its initiation, not eight and half years;

- (f) the current Premier has repeatedly stated in public that the Agreement does not empower JPPL to develop a Container Facility, if it thought that the market demanded it. However, not only did JPPL's original Port proposal, accepted and endorsed by Cabinet in 1999, make repeated references to the provision of container facilities, the Government's own Information Brochure, circulated throughout the public in 2000/2001 to answer questions about what the Port would comprise of, referred to the provision of Container Facilities by JPPL. JPPL wrote a letter of concern on 20 January 2010 to the Premier about the manner in which he was misleading the public and Parliament by claiming otherwise, but the Premier has never responded to that letter at all, let alone to explain why he held that view. If the Government publicly states that it will not permit JPPL to develop a Container Facility, JPPL's ability to plan and develop a business which depends on it for its commercial viability is destroyed, because it cannot interest many prospective customers of the Port if it cannot confidently represent when the Container Facility will be available, let alone whether it will be available at all. Nor can it devote about \$15,000,000 to the cost of meeting environmental conditions and undertake final design work for the Stage 1 bulk and general facility, when the Government disputes JPPL's right to develop and operate a Container Facility.
3. The Writ details JPPL's many meetings with the Government between 2009 and 2011, in which JPPL pointed out the delays that the project was suffering at the hands of the Government, pushing out the estimates by when the Port could commence operation as each month went by, and in each case qualifying the estimate by saying that it depended on the Government becoming more co-operative, particularly in relation to its on-going refusal to acknowledge that JPPL had a right to develop a Container Facility.
  4. The Writ details examples of Ministers failing to provide responses by the time they said they would. It gives examples of a failure to respond at all to some

correspondence from JPPL. Throughout that entire period, no public servant or Minister involved in the matter suggested to JPPL that it had caused any delay. At no time did any public servant or Minister detail to JPPL what steps it could have taken to facilitate development. However, the Government did not do so consistent with its own obligations under the Agreement. At all such meetings, when estimates of likely commencement of operations far exceeded 30 June 2011, no public servant or Minister raised any objection or concern, or otherwise suggested that JPPL was at fault in some way.

5. In February 2009, an officer of the Department of Transport initiated contact with JPPL, to advise that the date by which operations had to commence was due to run out on 30 June 2009, and suggested that JPPL make a formal request for an extension of time, which would be granted. The request was sent almost immediately, and the consent was forthcoming within one week. Previously, the Government had taken up to 13 months to respond to such a request, prompting even demands from lawyers on behalf of JPPL for the Government to just respond.
6. In contrast to the approach taken in 2009, no officer of the Government initiated any contact with JPPL in February of this year to express any concern about the looming expiration of the period by when operations had to commence, and the Government raised it as an issue only after the date had expired.
7. When JPPL requested an extension of time by letter dated 18 July 2011, pointing out the numerous delays experienced at the hands of the Government, the Government responded by letter dated 2 September 2011, for the first time indicating that the delay was not acceptable to it, and without identifying precisely what JPPL could have done, but did not do, which caused the delay. Given the history of the matter, it is fair to characterise the Government's letter of 2 September 2011 as a tactical ploy to avoid granting JPPL an exclusive right to develop a port within the James Point area, as required by its Agreement.
8. As a consequence, JPPL has resolved to bring the unfortunate history of the matter to the attention of the Courts, to seek assistance from the judicial system. It seeks declarations to the effect that all delays have been caused by the Government, not JPPL, that JPPL is entitled to have further extensions of time by which it is to commence operations, and to compel the Government to honour its obligations under

the Agreement, including a declaration that JPPL is entitled to develop and operate a Container Facility, contrary to the statements by the Premier and Minister Buswell.

9. It has also sought damages from the Government incurred by the Government's delays, in breach of the Agreement.