

Western Australia

# **Oil Refinery (Kwinana) Agreement Amendment Bill 2016**

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Western Australia

LEGISLATIVE ASSEMBLY

**Oil Refinery (Kwinana) Agreement Amendment  
Bill 2016**

**A Bill for**

**An Act to amend the *Oil Refinery (Kwinana) Agreement Act 1952*.**

The Parliament of Western Australia enacts as follows:

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1    **1.       Short title**

2           This is the *Oil Refinery (Kwinana) Agreement Amendment*  
3           *Act 2016*.

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 *Oil Refinery (Kwinana) Agreement*  
11           *Act 1952*.

12   **4.       Section 2 amended**

13           In section 2 before the 1<sup>st</sup> alphabetical definition insert in  
14           numerical order:

15  
16           ***2016 variation agreement*** means the agreement a copy of  
17           which is set out in Schedule 3;

18  
19   **5.       Section 3A deleted**

20           Delete section 3A.

21   **6.       Section 3D inserted**

22           After section 3C insert:

23  
24           **3D.     2016 variation agreement**

25           (1)   The 2016 variation agreement is ratified.

- 1 (2) The implementation of the 2016 variation agreement is  
2 authorised.
- 3 (3) Without limiting or otherwise affecting the application  
4 of the *Government Agreements Act 1979*, the 2016  
5 variation agreement operates and takes effect despite  
6 any other Act or law.

7 **7. Schedule 3 inserted**

8 After Schedule 2 insert:  
9

10 **Schedule 3 — 2016 variation agreement**

11 [s. 2]

12

13 **2016**

14

15 **THE HONOURABLE COLIN JAMES BARNETT**

16 **THE STATE OF WESTERN AUSTRALIA**

17 **and**

18 **BP REFINERY (KWINANA) PROPRIETARY LIMITED**

19 **ACN 008 689 763**

20

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23 **OIL REFINERY (KWINANA) AGREEMENT 1952**

24 **RATIFIED VARIATION AGREEMENT**

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[Solicitor's details]

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**THIS AGREEMENT** is made this 5<sup>th</sup> day of October 2016

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**BETWEEN**

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9 **THE HONOURABLE COLIN JAMES BARNETT** MLA, Premier of the  
10 State of Western Australia, acting for and on behalf of the said State and  
11 instrumentalities thereof from time to time (the "**State**") of the first part,

12

**AND**

13

**BP REFINERY (KWINANA) PROPRIETARY LIMITED**  
14 ACN 008 689 763 of Level 17, 717 Bourke Street, Docklands, Victoria,  
15 (hereinafter called the "**Company**" in which term shall be included its  
16 successors and permitted assigns) of the second part.

17

18

**RECITALS:**

19

**A.** The parties to this Agreement are now the parties to the agreement  
20 (herein called the **1952 Agreement**) dated 3 March 1952, the execution  
21 of which by the State was ratified by the *Oil Refinery Industry*  
22 *(Anglo-Iranian Oil Company Limited) Act 1952* (now known as the *Oil*  
23 *Refinery (Kwinana) Agreement Act 1952*), as varied by:

24

(a) the agreement dated 10 November 1953;

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(b) the agreement dated 23 November 1953;

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(c) the agreement dated 10 September 1954;

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(d) the agreement dated 22 December 1955;

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(e) the agreement dated 1 June 1956;

29

(f) the agreement dated 3 October 1956;

- 1 (g) the agreement dated 26 March 1959;  
2 (h) the agreement dated 1 June 1962;  
3 (i) the agreement dated 8 April 1965;  
4 (j) the agreement dated 4 October 1965;  
5 (k) the agreement dated 19 November 1975;  
6 (l) the agreement dated 21 October 1985 which was ratified by the *Oil*  
7 *Refinery Industry (Anglo-Iranian Oil Company Limited)*  
8 *Amendment Act 1985*.

9 The 1952 Agreement as so varied is hereinafter referred to as the  
10 "**Principal Agreement**".

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

13 **THE PARTIES AGREE AS FOLLOWS:**

14 **1. Ratification and operation**

- 15 (1) This Agreement, other than this clause, does not come into operation  
16 except in accordance with subclause (2).
- 17 (2) This Agreement, other than this clause, comes into operation on the day  
18 on which it is ratified by an Act of the Parliament of Western Australia  
19 ("**Operative Date**") unless, before that day, it terminates under  
20 subclauses (4) or (5).
- 21 (3) The State must introduce in the Parliament of Western Australia before  
22 31 December 2016 a Bill to ratify this Agreement and must endeavour to  
23 secure its passage as an Act.
- 24 (4) If by 31 December 2017 this Agreement has not been ratified by an Act  
25 of the Parliament of Western Australia then, unless the parties to this  
26 Agreement otherwise agree, this Agreement terminates on that day and  
27 no party hereto will have any claim against any other party hereto with  
28 respect to any matter or thing arising out of, done, performed, or omitted  
29 to be done or performed under this Agreement.
- 30 (5) The parties agree that if the Principal Agreement is otherwise determined  
31 in accordance with its provisions on a day prior to the Operative Date,  
32 then this Agreement shall also terminate on and from that day and no

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1 party hereto will have any claim against any other party hereto with  
2 respect to any matter or thing arising out of, done, performed, or omitted  
3 to be done or performed under this Agreement.

4 **2. Variations of the Principal Agreement**

5 The Principal Agreement is hereby varied as follows:

6 (1) in clause 1 by inserting in the appropriate alphabetical positions the  
7 following new definitions:

8 **Minister** means the Minister in the Government of Western Australia for  
9 the time being responsible for the administration of the *Oil Refinery*  
10 *(Kwinana) Agreement Act 1952*;

11 **Variation Agreement** means the variation agreement made on or about  
12 7 October 2016 between The Honourable Colin James Barnett, Premier  
13 of the State of Western Australia acting for and on behalf of the said State  
14 and its instrumentalities from time to time and the Company;

15 **Variation Date** means the date on which clause 2 of the Variation  
16 Agreement comes into operation;

17 (2) in clause 4 by:

18 (a) inserting "and" at the end of paragraph (ii) of subclause (r);

19 (b) inserting "(including usual conservancy dues)" after "usual  
20 charges" in paragraph (iii) of subclause (r);

21 (c) deleting "and" at the end of paragraph (iii) of subclause (r); and

22 (d) deleting paragraph (iv) of subclause (r);

23 (3) in clause 5 by:

24 (a) deleting "Treasurer" and substituting "Minister" in subclause (e);

25 (b) deleting "Treasurer" and substituting "Minister" in subclause (f);

26 (c) deleting "a permanent residence is erected" in subclause (n) and  
27 inserting:

28 "is situated the following improvements:

29 (i) accommodation, recreation or administration facilities and  
30 associated buildings; or



- 1 (ii) maintenance workshops existing within 100 metres of  
2 facilities of the type listed in paragraph (i) above";
- 3 (d) inserting after "State" in subclause (r):
- 4 "and for the avoidance of doubt reference to:
- 5 (i) an Act includes the regulations for the time being in force  
6 thereunder; and
- 7 (ii) an Act or regulations includes the amendments to that Act  
8 or regulations and also any Act or regulations passed in  
9 substitution therefor or in lieu thereof";
- 10 (e) deleting paragraph (i) of subclause (t) and substituting the  
11 following new paragraph:
- 12 "that, subject to paragraph (ii) of this subclause, this Agreement  
13 will expire on 1 January 2050; and";
- 14 (f) deleting subclause (u);
- 15 (g) inserting after clause (x) the following new subclauses:
- 16 "(ya) **Local industry participation plan**
- 17 (i) In this clause, the term "local industry participation  
18 benefits" means:
- 19 (a) the use and training of labour available within  
20 the said State;
- 21 (b) the use of the services of engineers, surveyors,  
22 architects and other professional consultants,  
23 experts, specialists, project managers and  
24 contractors available within the said State; and
- 25 (c) the procurement of works, materials, plant,  
26 equipment and supplies from Western  
27 Australian suppliers, manufacturers and  
28 contractors.
- 29 (ii) The Company acknowledges the need for local  
30 industry participation benefits flowing from this  
31 Agreement.

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- 1 (iii) The Company agrees that within 3 months after the  
2 Variation Date it shall prepare and provide to the  
3 Minister a plan which contains:
- 4 (a) a clear statement on the strategies which the  
5 Company will use, and require a third party as  
6 referred to in paragraph (vii) to use, to  
7 maximise the uses and procurement referred  
8 to in paragraph (i);
- 9 (b) detailed information on the procurement  
10 practices the Company will adopt, and require  
11 a third party as referred to in paragraph (vii)  
12 to adopt, in calling for tenders and letting  
13 contracts for works, materials, plant,  
14 equipment and supplies and how such  
15 practices will provide fair and reasonable  
16 opportunity for suitably qualified Western  
17 Australian suppliers, manufacturers and  
18 contractors to tender or quote for works,  
19 materials, plant, equipment and supplies;
- 20 (c) detailed information on the methods the  
21 Company will use, and require a third party as  
22 referred to in paragraph (vii) to use, to have  
23 their respective procurement officers promptly  
24 introduced to Western Australian suppliers,  
25 manufacturers and contractors seeking such  
26 introduction; and
- 27 (d) details of the communication strategies the  
28 Company will use, and require a third party as  
29 referred to in paragraph (vii) to use, to alert  
30 Western Australian engineers, surveyors,  
31 architects and other professional consultants,  
32 experts, specialists, project managers and  
33 consultants and Western Australian suppliers,  
34 manufacturers and contractors to services  
35 opportunities and procurement opportunities  
36 respectively as referred to in paragraph (i).

- 1 It is acknowledged by the Company that the  
2 strategies of the Company referred to in  
3 paragraph (iii)(a) will include strategies of the  
4 Company in relation to supply of services, labour,  
5 works, materials, plant, equipment or supplies for  
6 the purposes of this Agreement.
- 7 (iv) At the request of either of them made at any time  
8 and from time to time, the Minister and the  
9 Company shall confer as to any amendments desired  
10 to any plan provided under this Clause and may  
11 agree to the amendment of the plan or the provision  
12 of a new plan in substitution for the one previously  
13 provided.
- 14 (v) At least 3 months before the anticipated submission  
15 of proposals pursuant to clause 5(x) (or such lesser  
16 period as the Minister may, at the request of the  
17 Company, approve in respect of any such anticipated  
18 proposals), the Company must, unless the Minister  
19 otherwise requires, give to the Minister information  
20 about the implementation of the plan provided under  
21 this clause in relation to the activities to be the  
22 subject of such proposals. This obligation operates  
23 in relation to all proposals submitted on or after the  
24 date that is 4 months after the date when a plan is  
25 first provided under this clause.
- 26 (vi) During the currency of this Agreement the Company  
27 shall implement the plan provided under this clause.
- 28 (vii) The Company shall:
- 29 (a) in every contract entered into with a third  
30 party where the third party has an obligation  
31 or right to procure the supply of services,  
32 labour, works, materials, plant, equipment or  
33 supplies for or in connection with a proposed  
34 development, ensure that the contract contains  
35 appropriate provisions requiring the third  
36 party to undertake procurement activities in

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- 1                                   accordance with the plan provided under this  
 2                                   clause; and
- 3                                   (b) use reasonable endeavours to ensure that the  
 4                                   third party complies with those provisions.
- 5                                   **(yb) Use of local labour professional services and materials**
- 6                                   (i) Except as otherwise agreed by the Minister the  
 7                                   Company shall, for the purposes of this Agreement:
- 8                                   (a) except in those cases where the Company can  
 9                                   demonstrate it is not reasonable and  
 10                                  economically practicable so to do, use labour  
 11                                  available within the said State or if such  
 12                                  labour is not available then, except as  
 13                                  aforesaid, use labour otherwise available  
 14                                  within Australia;
- 15                                  (b) as far as it is reasonable and economically  
 16                                  practicable so to do, use the services of  
 17                                  engineers, surveyors, architects and other  
 18                                  professional consultants experts and  
 19                                  specialists, project managers, manufacturers,  
 20                                  suppliers and contractors resident and  
 21                                  available within the said State, or if such  
 22                                  services are not available within the said  
 23                                  State, then, as far as practicable as aforesaid,  
 24                                  use the services of such persons otherwise  
 25                                  available within Australia;
- 26                                  (c) during design and when preparing  
 27                                  specifications, calling for tenders and letting  
 28                                  contracts for works, materials, plant,  
 29                                  equipment and supplies (which shall at all  
 30                                  times, except where it is impracticable so to  
 31                                  do, use or be based upon Australian Standards  
 32                                  and Codes) ensure that suitably qualified  
 33                                  Western Australian and Australian suppliers,  
 34                                  manufacturers and contractors are given fair  
 35                                  and reasonable opportunity to tender or quote;

- 1 (d) give proper consideration and, where possible,  
2 preference to Western Australian suppliers,  
3 manufacturers and contractors when letting  
4 contracts or placing orders for works,  
5 materials, plant, equipment and supplies  
6 where price, quality, delivery and service are  
7 equal to or better than that obtainable  
8 elsewhere or, subject to the foregoing, give  
9 that consideration and, where possible,  
10 preference to other Australian suppliers,  
11 manufacturers and contracts; and
- 12 (e) if, notwithstanding the foregoing provisions of  
13 this clause, a contract is to be let or an order is  
14 to be placed with other than a Western  
15 Australian or Australian supplier,  
16 manufacturer or contractor, give proper  
17 consideration and, where possible, preference  
18 to tenders, arrangements or proposals that  
19 include Australian participation where price,  
20 delivery and service are otherwise equal or  
21 better.
- 22 (ii) Except as otherwise agreed by the Minister, the  
23 Company shall, in every contract entered into with a  
24 third party for the supply of services, labour, works,  
25 materials, plant, equipment or supplies for the  
26 purposes of this Agreement require as a condition  
27 thereof that such third party shall undertake the same  
28 obligations as are referred to in paragraph (i) and  
29 shall report to the Company concerning such third  
30 party's implementation of that condition.
- 31 (iii) The Company shall in respect of developments the  
32 subject or to be the subject (as the case may be) of  
33 proposals submitted under clause 5(x) submit a  
34 report to the Minister at quarterly intervals from the  
35 date on which it gives notice under clause 5(x) until  
36 commissioning of the developments the subject of  
37 the proposals approved pursuant to clause 5(x) and  
38 thereafter as requested by the Minister from time to  
39 time, concerning its implementation of the

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- 1 provisions of this clause and of the relevant plan in  
2 connection with the development provided pursuant  
3 to clause 5(ya), together with a copy of any report  
4 received by the Company pursuant to paragraph (ii)  
5 during that quarter or longer period as the case may  
6 be PROVIDED THAT the Minister may agree that  
7 any such reports need not be provided in respect of  
8 contracts of such kind or value as the Minister may  
9 from time to time determine.
- 10 (iv) The Company shall keep the Minister informed on a  
11 regular basis as determined by the Minister from  
12 time to time or otherwise as reasonably required by  
13 the Minister during the currency of this Agreement  
14 of any services (including any elements of the  
15 project investigations, design and management) and  
16 any works, materials, plant, equipment and supplies  
17 that it may be proposing to obtain from or have  
18 carried out or permit to be obtained from or carried  
19 out outside Australia, together with its reasons  
20 therefor and shall, as and when required by the  
21 Minister, consult with the Minister with respect  
22 thereto."; and
- 23 (h) inserting "(including under the *Environmental Protection*  
24 *Act 1986*)" after "Act" in subclause (y).

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**EXECUTED AS A DEED.**

**SIGNED** by **THE HONOURABLE** )  
**COLIN JAMES BARNETT** ) [Signature]  
in the presence of: )

[Signature]  
Signature of witness

AMY O’SULLIVAN  
Name of witness

**EXECUTED** by **BP REFINERY (KWINANA)** )  
**PROPRIETARY LIMITED** ACN 008 689 763 )  
in accordance with section 127(1)) of the )  
*Corporations Act 2001* (Cth) )

[Signature] [Signature]  
Signature of Director Signature of Director/Secretary

DESMOND THOMAS GILLEN SUZANNE BROE  
Full Name Full Name

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