

OIL REFINERY (KWINANA) AGREEMENT AMENDMENT BILL 2016

EXPLANATORY MEMORANDUM

Bill

Section 1

Contains the short title of the Act.

Section 2(a)

Provides for sections 1 and 2 of the Act to come into operation on the day it receives the Royal Assent.

Section 2(b)

Provides for the remainder of the Act to come into operation on the day after sections 1 and 2 receive the Royal Assent.

Section 3

Specifies that the Act amends the *Oil Refinery (Kwinana) Agreement Act 1952*.

Section 4

Provides that section 2 (Interpretation) of the State Agreement Act is amended by inserting the new definition of the "2016 Variation Agreement" which means the agreement a copy of which is set out in Schedule 3 of the Principle Agreement.

Section 5

Provides for the deletion of section 3A (Confirmation of power to vary etc. Agreement in relation to certain matters) of the Act which deals with the provision of facilities for the purchase and consumption of liquor. This arises because the Variation Agreement deletes clause 5(u) from the Principle Agreement, which also deals with the provision of facilities for the purchase and consumption of liquor.

Section 6

Inserts a new Section 3D (2016 variation agreement) into the Act which:

1. ratifies the 2016 Variation Agreement.
2. authorises the implementation of the 2016 Variation Agreement; and
3. provides for the 2016 variation agreement to operate despite any other act or law, without limiting or affecting the application of the *Government Agreement Act 1979*.

Section 7

Inserts as the Third Schedule to the State Agreement Agreement the 2016 Variation Agreement.

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EXPLANATORY MEMORANDUM

2016 Variation Agreement

PARTIES

The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the Government of the State and its instrumentalities (**State**) and BP Refinery (Kwinana) Proprietary Limited (**Company**).

RECITALS

- A** Provides details of the State Agreement dated 3 March 1952 as originally ratified by the *Oil Refinery Industry (Anglo-Iranian Oil Company Limited) Act 1952* (now known as the *Oil Refinery (Kwinana) Agreement Act 1952*) and of variations made to it. The State Agreement as so varied is called the “**Principal Agreement**”.
- B** Advises that the parties wish to vary the Principal Agreement on the terms and conditions set out in the Variation Agreement.

OPERATIVE CLAUSES

Ratification and Operation

Clause 1 (1)

Provides that the Variation Agreement (except clause 1) does not come into operation except in accordance with subclause (2).

Clause 1 (2)

States that the Variation Agreement (except clause 1) comes into operation on the day that it is ratified by an Act of Parliament (**Operative Date**) unless it terminates prior to that day under subclauses (4) or (5).

Clause 1 (3)

Requires the State to introduce into Parliament a Bill to ratify this Variation Agreement prior to 31 December 2016 and to endeavour to secure its passage as an Act.

Clause 1 (4)

Provides, unless the parties otherwise agree, for the termination of the Variation Agreement (and without either party having a claim against the other) if by 31 December 2017 the Variation Agreement has not been ratified by an Act.

Clause 1 (5)

Specifies that if the Principal Agreement is determined on a day prior to the Operative Date, then the Variation Agreement will also terminate on and from that day, and without either party having a claim against any other.

Variations of the Principal Agreement

Clause 2 (1)

Amends clause 1 to insert definitions of "**Minister**", "**Variation Agreement**" and "**Variation Date**".

Clause 2 (2)

Amends clause 4(r) relating to harbour charges by inserting a reference to "(including usual conservancy dues)" in paragraph (iii) and deleting paragraph (iv) which refers to the Department of Marine and Harbours as that Department no longer exists.

Clause 2 (3)(a) and (b)

Amends clause 5(e) relating to provisions of the *Anglo-Persian Oil Company Limited (Private) Act 1919* and clause 5(f) relating to new petroleum pipes by removing the existing references to the "Treasurer" and replacing them with references to the "Minister".

The Minister for State Development administers Government agreement Acts. This amendment updates the Principal Agreement to refer to the Minister currently responsible for its administration.

Clause 2 (3)(c)

Amends clause 5(n) relating to payment of rates on the refinery site by excluding from the unimproved value rating exemption provided by this clause improvements on the refinery site being accommodation, recreation and administration facilities and associated buildings or maintenance workshops existing within 100 metres of those facilities.

This clause implements the State Government's 2011 policy "Application of Gross Rental Valuation to Mining, Petroleum and Resource Interests" requiring the payment of rates based on gross rental values on accommodation, recreation, administration facilities and maintenance workshops.

Clause 2 (3)(d)

Amends clause 5(r) relating to the interpretation of the Principal Agreement in accordance with the laws of the State by clarifying, for the avoidance of doubt, that reference to an Act includes regulations made under it and any substituted Act and regulations.

Clause 2 (3)(e)

Amends clause 5(t) relating to the expiration of the Principal Agreement to provide for the extension of its term from 1 January 2020 to 1 January 2050.

The 30 year extension will support the Company in continuing its operations the subject of the Principal Agreement including making future investment decisions.

Clause 2 (3)(f)

Deletes clause 5(u) relating to temporary liquor licensed premises. The clause is considered spent and no longer appropriate.

Clause 2 (3)(g)

Inserts the following new subclauses into clause 5 of the Principal Agreement after clause 5(x):

subclause (ya) (Local industry participation plan) requires the Company within 3 months after the Variation Date to submit a Local Industry Participation Plan.

The Plan describes proposed strategies the Company will use, and require a third party supplier to use, to maximise the uses and procurement of materials within Western Australia.

This Plan is to include detailed information on the procurement practices the Company will adopt in calling for tenders and letting contracts and how such practices will provide fair and reasonable opportunity for suitable qualified Western Australian suppliers, manufacturers and contractors to tender for works, materials, plant, equipment and supplies.

This Plan is also to include details of the communication strategies the Company will use to alert Western Australian suppliers, manufacturers and contractors to service opportunities and procurement opportunities.

At least 3 months before the anticipated submission of proposals relating to a proposed development, the Company must give to the Minister information about the implementation of this Plan in relation to the proposed development.

Provision is also made for amendment of the Local Participation Plan or adoption of a new plan as requested by either the Minister or the Company

subclause (yb) (Use of local labour professional services and materials) requires the Company, among other things, to use labour, services and materials available within Western Australia or if not available, then otherwise available within Australia, except where the Company can demonstrate it is not reasonably and economically practicable to do so. The subclause also provides for the Company to submit local content reports to the Minister concerning its implementation of the provisions of this subclause.

Clause 2 (3)(h)

Amends Clause 5(y) relating to compliance with environmental requirements by inserting specific reference to the *Environmental Protection Act 1986*.