

Iron Ore Agreements Legislation Amendment Bill 2021

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Western Australia

LEGISLATIVE ASSEMBLY

**Iron Ore Agreements Legislation Amendment
Bill 2021**

A Bill for

***An Act to amend the Iron Ore (Mount Goldsworthy) Agreement
Act 1964 and the Iron Ore (Goldsworthy-Nimingarra) Agreement
Act 1972.***

The Parliament of Western Australia enacts as follows:

1

Part 1 — Preliminary

2

1. Short title

3

This is the *Iron Ore Agreements Legislation Amendment Act 2021*.

4

5

2. Commencement

6

This Act comes into operation as follows —

7

(a) Part 1 — on the day on which this Act receives the Royal Assent;

8

9

(b) the rest of the Act — on the day after that day.

s. 6

1 **6. Seventh Schedule inserted**

2 After the Sixth Schedule insert:

3

4 **Seventh Schedule — Sixth Variation Agreement**

5

[s. 3]

6

7

2021

8

9

**THE HONOURABLE MARK McGOWAN
PREMIER OF THE STATE OF WESTERN AUSTRALIA**

10

11

AND

12

**BHP MINERALS PTY LTD
ACN 008 694 782**

13

14

**MITSUI IRON ORE CORPORATION PTY. LTD.
ACN 050 157 456**

15

16

**ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY LTD
ACN 009 256 259**

17

18

19

20

IRON ORE (MOUNT GOLDSWORTHY) AGREEMENT 1964

21

RATIFIED VARIATION AGREEMENT

22

23

24

25

26

[Solicitor's details]

1 **THIS AGREEMENT** is made this 4th day of August 2021

2

3 **BETWEEN**

4

5 **THE HONOURABLE MARK McGOWAN**, BA, LLB, M.L.A., Premier of the
6 State of Western Australia, acting for and on behalf of the said State and its
7 instrumentalities from time to time (the "**State**") of the one part

8 **AND**

9 **BHP MINERALS PTY LTD** ACN 008 694 782 of Level 37, Brookfield Place,
10 125 St Georges Terrace, Perth, Western Australia, **MITSUI IRON ORE**
11 **CORPORATION PTY. LTD.** ACN 050 157 456 of Level 25, Exchange Tower,
12 2 The Esplanade, Perth, Western Australia and **ITOCHU MINERALS &**
13 **ENERGY OF AUSTRALIA PTY LTD** ACN 009 256 259 of Level 22, Forrest
14 Centre, 221 St Georges Terrace, Perth, Western Australia (together collectively
15 called the "**Joint Venturers**") of the other part.

16

17 **RECITALS**

18 **A.** The State and the Joint Venturers are now the parties to the agreement
19 dated 15 October 1964 approved by and scheduled to the *Iron Ore*
20 *(Mount Goldsworthy) Agreement Act 1964* and which as subsequently
21 added to, varied or amended is referred to in this Agreement as the
22 "**Principal Agreement**".

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

25

26 **THE PARTIES AGREE AS FOLLOWS:**

27 **1. Ratification and operation**

28 (1) This Agreement, other than this clause, does not come into operation
29 except in accordance with subclause (2).

30 (2) This Agreement, other than this clause, comes into operation on the day
31 on which it is ratified by an Act of the Parliament of Western Australia

s. 6

- 1 ("Operative Date") unless, before that day, it terminates under
2 subclauses (4) or (5).
- 3 (3) The State must introduce in the Parliament of Western Australia before
4 31 August 2021 or a later date agreed between the parties to this
5 Agreement, a Bill to ratify this Agreement and must endeavour to
6 secure its passage as an Act.
- 7 (4) If by 30 April 2022 this Agreement has not been ratified by an Act of
8 the Parliament of Western Australia then, unless the parties to this
9 Agreement otherwise agree, this Agreement terminates on that day and
10 no party hereto will have any claim against any other party hereto with
11 respect to any matter or thing arising out of, done, performed, or omitted
12 to be done or performed under this Agreement.
- 13 (5) The parties agree that if the Principal Agreement is otherwise
14 determined in accordance with its provisions on a day prior to the
15 Operative Date, then this Agreement shall also terminate on and from
16 that day and no party hereto will have any claim against any other party
17 hereto with respect to any matter or thing arising out of, done,
18 performed, or omitted to be done or performed under this Agreement.

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

20 The Principal Agreement is varied as follows:

- 21 (1) in clause 1 by inserting in the appropriate alphabetical position the
22 following new definition:

23 "third variation date" means the date on which clause 2 of the variation
24 agreement made on or about 30 July 2021 between the State and the
25 Joint Venturers comes into operation;

- 26 (2) by inserting after clause 9DA the following new clause:

27 **"9DB. Commercialisation of certain iron ore stockpiles**

- 28 (1) In this clause:

29 "Ore Stockpiles" means the following stockpiles of iron ore
30 known as:

- 31 (a) Yarrie 2 and Yarrie 3 on mineral lease 249SA
32 Section 5;

- 1 (b) Cundaline 1, Cundaline 2, Cundaline 3, Cundaline
2 4, Cundaline 5, Cundaline 6, Cundaline 7,
3 Cundaline 8, Cundaline 9, Cundaline 10, Cundaline
4 11 and Cundaline 12 on mineral lease 249SA
5 Section 4;
- 6 (c) Shay Gap 1 on mineral lease 249SA Section 3; and
- 7 (d) Cattle Gorge 1, Cattle Gorge 2, Cattle Gorge 3,
8 Cattle Gorge 4, Cattle Gorge 5, Cattle Gorge 6,
9 Cattle Gorge 7 and Cattle Gorge 8 on mining lease
10 45/1019-I (produced in each case from mining
11 operations upon mineral lease 249SA Section 6 and
12 mining lease 45/1019-I),
- 13 comprising in aggregate approximately 3.718 million tonnes
14 of iron ore and identified on a plan titled 'Mount Goldsworthy
15 Ore Stockpiles' and initialled by the parties;
- 16 "commercialisation activities" in relation to a Ore Stockpile
17 means such works and activities as may be reasonably
18 necessary for the Joint Venturers to carry out to achieve the
19 sale of the iron ore to an arm's length purchaser at the time the
20 relevant iron ore crosses the boundary of the mining tenement
21 or tenements upon which its source stockpile is situated (or
22 such other boundary of a mining tenement held by the Joint
23 Venturers as the Minister may approve) including:
- 24 (a) crushing, screening, beneficiation or other
25 processing works and activities;
- 26 (b) subject to the Minister being reasonably satisfied
27 that there are in place adequate systems and controls
28 for the correct apportionment of the quantities
29 of iron ore being blended, blending with iron ore
30 from a 'Ore Stockpile' as defined by clause 16BB
31 of the agreement approved by and scheduled to
32 the *Iron Ore (Goldsworthy-Nimingarra) Agreement*
33 *Act 1972*, as from time to time added to, varied or
34 amended;
- 35 (c) handling and transport works and activities,
36 including by road; and

s. 6

- 1 (d) ancillary works and activities,
2 and, for the avoidance of doubt, does not include any works
3 and activities beyond the point of sale.
- 4 (2) Notwithstanding clause 9(2)(e) and subject to this clause, the
5 Joint Venturers may, as one or more additional proposals
6 pursuant to clause 7A and subject to the EP Act, propose to
7 undertake pursuant to this Agreement commercialisation
8 activities in respect of one or more of the Ore Stockpiles and
9 each such proposal shall constitute a proposed development
10 for the purposes of clauses 7D(6) and 7E(5).
- 11 (3) The Joint Venturers may only submit an additional proposal
12 pursuant to clause 7A for the purposes of subclause (2) for a
13 period of 5 years from the third variation date, which period
14 may not be extended further pursuant to clause 24.
- 15 (4) Notwithstanding the proviso to clause 8(2)(b) and
16 clauses 9(2)(j) and 9(2)(k), which for the avoidance of doubt
17 shall not apply with respect to the iron ore comprising the Ore
18 Stockpiles, the parties agree that the Mining Act 1978 shall be
19 deemed to apply to the calculation, payment and
20 administration of royalties and additional rental in relation to
21 that iron ore to the effect that the Joint Venturers shall be
22 liable to pay to the State royalties and additional rental under
23 and in accordance with that Act on all iron ore sold pursuant
24 to this clause."

s. 6

EXECUTED by **MITSUI IRON**)
ORE CORPORATION)
PTY. LTD. ACN 050 157 456)
in accordance with section 127(1))
of the *Corporations Act 2001* (Cth)
by authority of its directors:

[Signature]
.....
Signature of director

[Signature]
.....
Signature of ~~director~~/company
secretary*

MOTOI YAMAMOTO
.....
Full name of director (block letters)

GAVIN PATTERSON
.....
Full name of director/company
secretary* (block letters)
*delete whichever is not applicable

1

EXECUTED by **ITOCHU**)
MINERALS & ENERGY OF)
AUSTRALIA PTY. LTD.)
ACN 009 256 259)
in accordance with section 127(1)
of the *Corporations Act 2001* (Cth)
by authority of its directors:

[Signature]
.....
Signature of director

[Signature]
.....
Signature of director/
~~company secretary~~*

DAISUKE INOUE
.....
Full name of director (block letters)

NORIMASA MATSUZAWA
.....
Full name of director/
~~company secretary~~* (block letters)
*delete whichever is not applicable

2

1 **Part 3 — *Iron Ore (Goldsworthy-Nimingarra)***
2 ***Agreement Act 1972* amended**

3 **7. Act amended**

4 This Part amends the *Iron Ore (Goldsworthy-Nimingarra)*
5 *Agreement Act 1972*.

6 **8. Section 2 amended**

7 In section 2 insert in alphabetical order:

8

9 *the Fourth Variation Agreement* means the agreement
10 a copy of which is set out in Schedule 5;

11

12 **9. Section 9 inserted**

13 After section 8 insert:

14

15 **9. Fourth Variation Agreement**

16 (1) The Fourth Variation Agreement is ratified.

17 (2) The implementation of the Fourth Variation Agreement
18 is authorised.

19 (3) Without limiting or otherwise affecting the application
20 of the *Government Agreements Act 1979*, the Fourth
21 Variation Agreement is to operate and take effect
22 despite any other Act or law.

23

s. 10

1 **10. Schedule 5 inserted**

2 After Schedule 4 insert:

3

4 **Schedule 5 — Fourth Variation Agreement**

5

[s. 2]

6

2021

7

**THE HONOURABLE MARK McGOWAN
PREMIER OF THE STATE OF WESTERN AUSTRALIA**

8

9

AND

10

BHP MINERALS PTY LTD

11

ACN 008 694 782

12

MITSUI IRON ORE CORPORATION PTY. LTD

13

ACN 050 157 456

14

ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY LTD

15

ACN 009 256 259

16

17

18

IRON ORE (GOLDSWORTHY-NIMINGARRA) AGREEMENT 1972

19

RATIFIED VARIATION AGREEMENT

20

21

22

23

24

[Solicitor's details]

1 **THIS AGREEMENT** is made this 4th day of August 2021

2

3 **BETWEEN**

4

5 **THE HONOURABLE MARK McGOWAN**, BA, LLB, M.L.A., Premier of the
6 State of Western Australia, acting for and on behalf of the said State and its
7 instrumentalities from time to time (the "**State**") of the one part

8 **AND**

9 **BHP MINERALS PTY LTD** ACN 008 694 782 of Level 37, Brookfield Place,
10 125 St Georges Terrace, Perth, Western Australia, **MITSUI IRON ORE**
11 **CORPORATION PTY. LTD.** ACN 050 157 456 of Level 25, Exchange Tower,
12 2 The Esplanade, Perth, Western Australia and **ITOCHU MINERALS &**
13 **ENERGY OF AUSTRALIA PTY LTD** ACN 009 256 259 of Level 22, Forrest
14 Centre, 221 St Georges Terrace, Perth, Western Australia (together collectively
15 called the "**Joint Venturers**") of the other part.

16

17 **RECITALS**

18 **A.** The State and the Joint Venturers are now the parties to the agreement
19 dated 12 April 1972 approved by and scheduled to the *Iron Ore*
20 *(Goldsworthy-Nimingarra) Agreement Act 1972* and which as
21 subsequently added to, varied or amended is referred to in this
22 Agreement as the "**Principal Agreement**".

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

25

26 **THE PARTIES AGREE AS FOLLOWS:**

27 **1. Ratification and operation**

28 (1) This Agreement, other than this clause, does not come into operation
29 except in accordance with subclause (2).

30 (2) This Agreement, other than this clause, comes into operation on the day
31 on which it is ratified by an Act of the Parliament of Western Australia

s. 10

- 1 ("Operative Date") unless, before that day, it terminates under
2 subclauses (4) or (5).
- 3 (3) The State must introduce in the Parliament of Western Australia before
4 31 August 2021 or a later date agreed between the parties to this
5 Agreement, a Bill to ratify this Agreement and must endeavour to
6 secure its passage as an Act.
- 7 (4) If by 30 April 2022 this Agreement has not been ratified by an Act of
8 the Parliament of Western Australia then, unless the parties to this
9 Agreement otherwise agree, this Agreement terminates on that day and
10 no party hereto will have any claim against any other party hereto with
11 respect to any matter or thing arising out of, done, performed, or omitted
12 to be done or performed under this Agreement.
- 13 (5) The parties agree that if the Principal Agreement is otherwise
14 determined in accordance with its provisions on a day prior to the
15 Operative Date, then this Agreement shall also terminate on and from
16 that day and no party hereto will have any claim against any other party
17 hereto with respect to any matter or thing arising out of, done,
18 performed, or omitted to be done or performed under this Agreement.

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

20 The Principal Agreement is varied as follows:

- 21 (1) in clause 1 by inserting in the appropriate alphabetical position the
22 following new definition:
- 23 "third variation date" means the date on which clause 2 of the variation
24 agreement made on or about 30 July 2021 between the State and the
25 Joint Venturers comes into operation;
- 26 (2) by inserting after clause 16B the following new clause:
- 27 **"16BB. Commercialisation of certain iron ore stockpiles**
- 28 (1) In this clause:
- 29 "Ore Stockpiles" means the following stockpiles of iron ore
30 known as:
- 31 (a) Sunrise Hill 1 on mining lease 263SA Section 1 and
32 Section 5;

- 1 (b) Sunrise Hill 2 on mineral lease 251SA Section 1 and
2 mining lease 263SA Section 5;
- 3 (c) Sunrise Hill 3, Sunrise Hill 4, Sunrise Hill 5 and
4 Sunrise Hill 6 on mineral lease 251SA Section 1;
- 5 (d) Sunrise Hill 7, Sunrise Hill 8 and Sunrise Hill 9 on
6 mining lease 263SA Section 1;
- 7 (e) Nimingarra 1, Nimingarra 3 and Nimingarra 4
8 (being two stockpiles) on mining lease 263SA
9 Section 1;
- 10 (f) Nimingarra 2 on mining lease 263SA Section 2;
- 11 (g) Yarrie 1 on mining lease 263SA Section 8; and
- 12 (h) Yarrie 4 and Yarrie 5 on mining lease 263SA
13 Section 4,
- 14 comprising in aggregate approximately 3.704 million tonnes
15 of iron ore and identified on a plan titled
16 'Goldsworthy-Nimingarra Ore Stockpiles' and initialled by
17 the parties;
- 18 "commercialisation activities" in relation to a Ore Stockpile
19 means such works and activities as may be reasonably
20 necessary for the Joint Venturers to carry out to achieve the
21 sale of the iron ore to an arm's length purchaser at the time the
22 relevant iron ore crosses the boundary of the mining tenement
23 or tenements upon which its source stockpile is situated (or
24 such other boundary of a mining tenement held by the Joint
25 Venturers as the Minister may approve) including:
- 26 (a) crushing, screening, beneficiation or other
27 processing works and activities;
- 28 (b) subject to the Minister being reasonably satisfied
29 that there are in place adequate systems and controls
30 for the correct apportionment of the quantities of
31 iron ore being blended, blending with iron ore from
32 a 'Ore Stockpile' as defined by clause 9DB of the
33 agreement approved by and scheduled to the *Iron*

Iron Ore Agreements Legislation Amendment Bill 2021

Part 3 Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972
amended

s. 10

- 1 *Ore (Mount Goldsworthy) Agreement Act 1964, as*
2 *from time to time added to, varied or amended;*
- 3 (c) handling and transport works and activities,
4 including by road; and
- 5 (d) ancillary works and activities,
- 6 and, for the avoidance of doubt, does not include any works
7 and activities beyond the point of sale.
- 8 (2) Notwithstanding clause 13 and subject to this clause, the Joint
9 Venturers may, as one or more additional proposals pursuant
10 to clause 8 and subject to the EP Act, propose to undertake
11 pursuant to this Agreement commercialisation activities in
12 respect of one or more of the Ore Stockpiles and each such
13 proposal shall constitute a proposed development for the
14 purposes of clauses 8C(6) and 8D(5).
- 15 (3) The Joint Venturers may only submit an additional proposal
16 pursuant to clause 8 for the purposes of subclause (2) for a
17 period of 5 years from the third variation date, which period
18 may not be extended further pursuant to clause 44.
- 19 (4) Notwithstanding clauses 11(3) and 33, which for the
20 avoidance of doubt shall not apply with respect to the iron ore
21 comprising the Ore Stockpiles, the parties agree that the
22 Mining Act 1978 shall be deemed to apply to the calculation,
23 payment and administration of royalties and additional rental
24 in relation to that iron ore to the effect that the Joint Venturers
25 shall be liable to pay to the State royalties and additional
26 rental under and in accordance with that Act on all iron ore
27 sold pursuant to this clause."

1 **EXECUTED** as a deed.

2

3 **SIGNED** by **THE HONOURABLE**)
4 **MARK McGOWAN**) [Signature]
5 in the presence of:)

6

7 [Signature]

8

9 _____
Signature of witness

10

11 **NADEEN LYN ROBERTS**

12

13 _____
Name of witness

14

15

EXECUTED by **BHP MINERALS**)
PTY LTD ACN 008 694 782)
in accordance with section 127(1))
of the *Corporations Act 2001* (Cth))
by authority of its directors:

[Signature]

[Signature]

.....
Signature of director

.....
Signature of ~~director~~/
company secretary*

BRANDON KYLE CRAIG

NICOLE DE VILLIERS

.....
Full name of director (block letters)

.....
Full name of ~~director~~/
company secretary* (block letters)

*delete whichever is not applicable

Iron Ore Agreements Legislation Amendment Bill 2021

Part 3 Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972
amended

s. 10

EXECUTED by **MITSUI IRON**)
ORE CORPORATION)
PTY. LTD. ACN 050 157 456)
in accordance with section 127(1))
of the *Corporations Act 2001* (Cth)
by authority of its directors:

[Signature]
.....
Signature of director

[Signature]
.....
Signature of ~~director~~/
company secretary*

MOTOI YAMAMOTO
.....
Full name of director (block letters)

GAVIN PATTERSON
.....
Full name of director/
company secretary* (block letters)
*delete whichever is not applicable

1

EXECUTED by **ITOCHU**)
MINERALS & ENERGY OF)
AUSTRALIA PTY. LTD.)
ACN 009 256 259)
in accordance with section 127(1)
of the *Corporations Act 2001* (Cth)
by authority of its directors:

[Signature]
.....
Signature of director

[Signature]
.....
Signature of director/
~~company secretary~~*

DAISUKE INOUE
.....
Full name of director (block letters)

NORIMASA MATSUZAWA
.....
Full name of director/
~~company secretary~~* (block letters)
*delete whichever is not applicable

2

=====