

IRON ORE AGREEMENTS LEGISLATION AMENDMENT BILL 2021

EXPLANATORY MEMORANDUM

Part 1

Identifies the short title of the Act and the day on which the Act commences.

Section 1

Identifies the Act as *the Iron Ore Agreements Legislation Amendment Act 2021*.

Section 2

Provides that

- (a) Part 1 of the Act comes into operation on the day on which the Act receives Royal Assent.
- (b) the remainder of the Act comes into operation on the day after the day the Act receives Royal Assent.

Part 2

Iron Ore (Mount Goldsworthy) Agreement Act 1964 amended.

Section 3

Specifies that the Part amends the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*.

Section 4

Amends section 3 of the *Iron Ore (Mount Goldsworthy) Agreement Act 1964* by inserting a new definition “**sixth Variation Agreement**”, being the agreement a copy of which is set out in Seventh Schedule of the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*.

Section 5

Inserts new section 5E (Sixth Variation Agreement) by which:

- 1) the sixth Variation Agreement is ratified;
- 2) the implementation of the sixth Variation Agreement is authorised; and
- 3) without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the sixth Variation Agreement operates and takes effect despite any other Act or law.

Section 6

Inserts as the Seventh Schedule to the *Iron Ore (Mount Goldsworthy) Agreement Act 1964* a copy of the sixth Variation Agreement.

SEVENTH SCHEDULE – SIXTH VARIATION AGREEMENT

PARTIES

The Honourable Mark McGowan, Premier of the State of Western Australia, acting for and on behalf of the State and its instrumentalities (the “**State**”); and

BHP Minerals Pty Ltd, Mitsui Iron Ore Corporation Pty Ltd and Itochu Minerals & Energy of Australia Pty Ltd (together collectively the “**Joint Venturers**”).

RECITALS

- A. Provides that the parties to the Variation Agreement are now parties to the agreement dated 15 October 1964, as approved and scheduled to the *Iron Ore (Mount Goldsworthy) Agreement Act 1964* and which is referred to as the “**Principal Agreement**”.
- B. Advises that the parties wish to vary the Principal Agreement in accordance with the terms and conditions of the Variation Agreement.

THE PARTIES AGREE AS FOLLOWS

Ratification and operation

Clause 1(1)

Provides that the Variation Agreement (except clause 1) does not come into operation except in accordance with clause 1(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 clauses 1(4) or 1(5).

Clause 1(3)

Requires the State to introduce into Parliament a Bill to ratify this Variation Agreement prior to 31 August 2021 (or at a later date as agreed by the parties) 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 a party having claim against the other in relation to the Variation Agreement) if by 30 April 2022 the Variation Agreement has not been ratified.

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 any party having a claim against any other in relation to the Variation Agreement.

Variations of the Principal Agreement

Clause 2(1)

Amends Clause 1 (Definitions) by inserting a new definition: “third variation date” (being the date the Variation Agreement commences operation).

Clause 2(2)

Inserts after clause 9DA a new clause 9DB in respect to the commercialisation of certain iron ore stockpiles.

Clause 9DB – Commercialisation of Ore Stockpiles

Subclause (1) inserts the definition ‘Ore Stockpiles’. Paragraphs (a) - (d) identify the stockpiles by name and the tenements on which the stockpiles are located. The aggregate amount of iron ore in the Ore Stockpiles is approximately 3.718 million tonnes. The locations of the Ore Stockpiles are further identified on a plan titled ‘Mount Goldsworthy Ore Stockpiles’ and initialled by the parties.

Subclause (1) also inserts the definition ‘commercialisation activities’, being works and activities that are reasonably necessary for the Joint Venturers to carry out to achieve the sale of the iron ore comprised in the Ore Stockpiles to a third party at the relevant tenement boundary. Paragraphs (a) - (d) specify that this includes crushing, screening, beneficiation, blending with iron ore from Ore Stockpiles defined in clause 16BB of the *Iron Ore (Goldsworthy-Nimingarra) Agreement 1972*, handling, transport (including by road) and ancillary works, but not any works beyond the point of sale.

Subclause (2) provides that the Joint Venturers may submit one or more additional proposals, pursuant to clause 7A of the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*, for the commercialisation of the Ore Stockpiles.

Subclause (3) provides that the additional proposals may only be submitted for a period of five years from the third variation date and that this period may not be extended further pursuant to clause 24 of the *Iron Ore (Mount Goldsworthy) Agreement 1964*.

Subclause (4) provides that the *Mining Act 1978* is deemed to apply to the calculation, payment and administration of royalties and additional rental in relation to iron ore from the Ore Stockpiles sold by the Joint Venturers pursuant to the clause.

Part 3

Iron Ore (Goldsworthy-Nimigarra) Agreement Act 1972 amended.

Section 7

Specifies that the Part amends the *Iron Ore (Goldsworthy-Nimigarra) Agreement Act 1972*.

Section 8

Amends section 2 of the *Iron Ore (Goldsworthy-Nimigarra) Agreement Act 1972* by inserting a new definition “**the Fourth Variation Agreement**”, being the agreement a copy of which is set out in Schedule 5 of the *Iron Ore (Goldsworthy-Nimigarra) Agreement Act 1972*.

Section 9

Inserts new section 9 (Fourth Variation Agreement) by which:

- 1) the Fourth Variation Agreement is ratified;
- 2) the implementation of the Fourth Variation Agreement is authorised; and
- 3) without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Fourth Variation Agreement operates and takes effect despite any other Act or law.

Section 10

Inserts as Schedule 5 to the *Iron Ore (Goldsworthy-Nimigarra) Agreement Act 1972* a copy of the Fourth Variation Agreement.

SCHEDULE 5 – FOURTH VARIATION AGREEMENT

PARTIES

The Honourable Mark McGowan, Premier of the State of Western Australia, acting for and on behalf of the State and its instrumentalities (the “**State**”); and

BHP Minerals Pty Ltd, Mitsui Iron Ore Corporation Pty Ltd and Itochu Minerals & Energy of Australia Pty Ltd (together collectively the “**Joint Venturers**”).

RECITALS

- C. Provides that the parties to the Variation Agreement are now parties to the agreement dated 12 April 1972 as approved and scheduled to the *Iron Ore (Goldsworthy-Nimngarra) Agreement Act 1972* and which is referred to as the “**Principal Agreement**”.
- D. Advises that the parties wish to vary the Principal Agreement in accordance with the terms and conditions of the Variation Agreement.

THE PARTIES AGREE AS FOLLOWS

Ratification and operation

Clause 1(1)

Provides that the Variation Agreement (except clause 1) does not come into operation except in accordance with clause 1(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 clauses 1(4) or 1(5).

Clause 1(3)

Requires the State to introduce into Parliament a Bill to ratify this Variation Agreement prior to 31 August 2021 (or at a later date as agreed by the parties) 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 a party having claim against the other in relation to the Variation Agreement) if by 30 April 2022 the Variation Agreement has not been ratified.

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 any party having a claim against any other in relation to the Variation Agreement.

Variations of the Principal Agreement

Clause 2(1)

Amends Clause 1 (Definitions) by inserting a new definition: “third variation date” (being the date the Variation Agreement commences operation).

Clause 2(2)

Inserts after clause 16B a new clause 16BB in respect to the commercialisation of certain iron ore stockpiles.

Clause 16BB – Commercialisation of Ore Stockpiles

Subclause (1) inserts the definition ‘Ore Stockpiles’. Paragraphs (a) - (d) identify the stockpiles by name and the tenements on which the stockpiles are located. The aggregate amount of iron ore in the Ore Stockpiles is approximately 3.704 million tonnes. The locations of the Ore Stockpiles are further identified on a plan titled ‘Goldsworthy-Nimingarra Ore Stockpiles’ and initialled by the parties.

Subclause (1) also inserts the definition ‘commercialisation activities’, being the works and activities that are reasonably necessary for the Joint Venturers to carry out to achieve the sale of the iron ore comprised in the Ore Stockpiles to a third party at the relevant tenement boundary. Paragraphs (a) - (d) specify that this includes crushing, screening, beneficiation, blending with iron ore from Ore Stockpiles defined in clause 9DB of the *Iron Ore (Mount Goldsworthy) Agreement 1964*, handling, transport (including by road) and ancillary works, but not any works beyond the point of sale.

Subclause (2) provides that the Joint Venturers may submit one or more additional proposals, pursuant to clause 8 of the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*, for the commercialisation of the Ore Stockpiles.

Subclause (3) provides that the additional proposals may only be submitted for a period of five years from the third variation date and that this period may not be extended further pursuant to clause 44 of the *Iron Ore (Goldsworthy-Nimingarra) Agreement 1972*.

Subclause (4) provides that the *Mining Act 1978* is deemed to apply to the calculation, payment and administration of royalties and additional rental in relation to iron ore from the Ore Stockpiles sold by the Joint Venturers pursuant to the clause.