



Western Australia

## **Oil Refinery (Kwinana) Agreement Act 1952**

Compare between:

[11 Sep 2010, 01-c0-06] and [29 Nov 2016, 01-d0-04]



## Oil Refinery (Kwinana) Agreement Act 1952

**An Act to Approve, Ratify and Confirm an Agreement relating to the Establishment and Working of an Oil Refinery in the State; to enable the Carrying Out of the Agreement; and for other and incidental purposes.**

### 1. Short title

This Act may be cited as the *Oil Refinery (Kwinana) Agreement Act 1952*<sup>1</sup>.

[Section 1 amended ~~by~~: No. 80 of 1985 s. 3.]

### 2. Interpretation

In this Act, unless the context requires otherwise, the expression —

[2016 variation agreement means the agreement a copy of which is set out in Schedule 3;](#)

**Agreement** means the Agreement between the State and the Company approved, ratified and confirmed by this Act as the Agreement subsists from time to time;

**Company** means the Anglo-Iranian Oil Company Limited, and includes its successors and assigns;

**refinery** and **refinery site** have the same meanings respectively as in the Agreement;

**the variation agreement** means the agreement of which a copy is set forth in Schedule 2.

[Section 2 amended ~~by~~: No. 80 of 1985 s. [4](#); No. 48 of 2016 [s. 4](#).]

**3. Approval, ratification, and confirmation of Agreement**

- (1) The Agreement entered into by the Treasurer for and on behalf of the State with the Company and executed on 3 March 1952, a copy of which is set forth in Schedule 1, is approved, ratified and confirmed.
- (2) Notwithstanding the provisions of any other Act, the provisions of clauses 1, 3, 4 and 5 of the Agreement shall have effect as if the same were repeated in and enacted by this Act, and for such purpose clause 5 of the Agreement shall be read and construed as if the words it is hereby mutually agreed as follows in line one of the clause were omitted therefrom.
- (3) Without limiting the generality of the provisions of subsection (2), all other Acts, and also all present and future regulations, local laws, by-laws, rules, orders and proclamations made and notices given under other Acts are, by force of this subsection, waived, suspended or otherwise modified to the extent necessary to give effect to the Agreement, or to ensure that all rights, powers, authorities, discretions and exemptions thereunder may be fully exercised and enjoyed.

*[Section 3 amended-by: No. 80 of 1985 s. 5; No. 14 of 1996 s. 4.]*

**[3A. ~~Confirmation Deleted: No. 48 of power to vary etc. Agreement in relation to certain matters~~**

~~In order to resolve any doubt which, but for the enactment of this section, might exist or arise, it is hereby expressly enacted—~~

- ~~(a) that the power to make agreements conferred by clause 5(o) of the Agreement includes, and shall be deemed to have included since the making of the Agreement, power from time to time to make, cancel, add to, and vary, agreements relating to the provision in the Kwinana district of facilities for the purchase and consumption of liquor and other liquid refreshments~~

~~until such time as premises for the carrying on of business under a publican's general license have been erected in the district and such a license has been granted under the *Licensing Act 1911*<sup>2</sup> in respect of them; and~~

~~(b) that the provisions of this section are in addition to, and are not in derogation of, the provisions of section 3(2), or of any other provisions, of this Act; or of clause 5(o), or of any other provisions, of the Agreement.~~

~~[Section 3A inserted by No. 22 of 1956<sup>2016</sup> s. 2.]~~[5.1](#)

### 3B. Validation of acts done by Commission

- (1) In this section the expression, *Commission* means The State Housing Commission established and constituted by the *State Housing Act 1946*<sup>3</sup>.
- (2) Notwithstanding the provisions of the Agreement approved, ratified and confirmed by section 3, the Commission shall take over and assume, and shall be deemed to have taken over and assumed on and from 1 July 1956, the management, control and administration (including the financial administration) of the houses erected in accordance with the provisions of clause 4(n) of the Agreement.
- (3) In order to remove any doubt which, but for the enactment of this section, might exist or arise as to the powers of the Commission in relation to the control, management and administration referred to in subsection (2), and for the purpose of giving effect to that subsection, it is hereby expressly enacted —
  - (a) that the Commission is, and shall be deemed to have been on and from 1 July 1956, authorised and empowered —
    - (i) to collect, recover and receive all rentals payable by the tenants of the houses erected as aforesaid,

**s. 3C**

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and on payment of those rentals to retain the same; and

- (ii) to apply the rentals received, and maintain, deal with and dispose of the houses, in manner provided under the *State Housing Act 1946*<sup>3</sup>,

as though the houses were houses subject to all or any of the provisions of that Act;

- (b) that all acts, matters or things done, suffered or permitted by the Commission in respect to the control, management and administration as aforesaid on or after 1 July 1956, shall be deemed to be, or to have been, as valid and effective, or if the case requires, subject to any relevant provision of this Act, or of the Agreement, in all respects as if when so done, suffered or permitted, this section had in fact been in operation, and are hereby ratified, confirmed and validated.

- (4) The provisions of this section are in addition to, and not in derogation of, the provisions of section 3(2), or of any other provisions of this Act, or of clause 4(n), or of any other provisions, of the Agreement referred to in subsection (2) of this section, but in the case of any inconsistency between the provisions of this section and the provisions of section 3(2), or clause 4(n) of the Agreement, the provisions of this section shall prevail.

*[Section 3B inserted-by: No. 44 of 1959 s. 2.]*

**3C. Variation agreement**

- (1) The variation agreement is approved and ratified.
- (2) The implementation of the variation agreement is authorised.
- (3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the variation agreement shall operate and take effect notwithstanding any other Act or law.

*[Section 3C inserted-by: No. 80 of 1985 s. 6.]*

**3D. 2016 variation agreement**

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

*[Section 3D inserted: No. 48 of 2016 s. 6.]*

**4. Power to acquire and deal with land**

- (1) Such land as is, in the opinion of the Treasurer, required to enable the carrying out of the obligations of the State, but which is not authorised to be set apart, taken or resumed as for a public work, in fact, pursuant to the provisions of the *Public Works Act 1902*<sup>4</sup>, may be set apart, taken or resumed pursuant to those provisions in all respects as if the land were required, in fact, for a public work and may, when so set apart, taken or resumed, be used and disposed of in accordance with the provisions of the Agreement.
- (2) The provisions of the *Public Works Act 1902*<sup>4</sup>, apply in all respects as if the land were required for a public work authorised pursuant to the provisions of that Act.
- (3) This section does not affect the provisions of the *Public Works Act 1902*<sup>4</sup>, insofar as those provisions are applicable in respect of so much of the land as is so required, in fact, for public works.

**5. Appropriation**

Such sums as are necessary for the carrying out by the State of its obligations under the Agreement, and for exercising the powers and authorities conferred upon the Treasurer by this Act, shall be paid from moneys to be provided for the purpose by Parliament.

**6. Authority to purchase and sell electricity undertaking**

- (1) To facilitate the carrying out of the provisions of the Agreement, and to enable the State to carry out its obligations under the Agreement, the State Electricity Commission<sup>5</sup> of Western Australia may purchase from The Fremantle Municipal Tramways and Electric Lighting Board<sup>6</sup>, which may sell to the Commission, upon such terms and conditions as the Commission and the Board agree, the electricity undertaking controlled and managed by the Board under the provisions of the *Fremantle Municipal Tramways and Electric Lighting Act 1903*<sup>7</sup>.
- (2) In this section, the expression *Undertaking* has the same meaning as in paragraph (b) of the interpretation undertaking in section 7 of the *State Electricity Commission Act 1945*<sup>8</sup>.

**7. Restrictions on use of wharves, etc.**

- (1) No person, except a person authorised to do so by or under an Act or under subsection (2), shall enter or remain on or use any wharf, jetty, landing place, berth, waters, or shore, referred to in clause 4(b) of the Agreement.  
Penalty — \$300.
- (2) The Company may authorise, with or without limitations or conditions, any person to enter, or remain on, or use such wharf, jetty, landing place, berth, waters or shore and may at any time revoke or vary the authorisation.

[Section 7 amended ~~by~~ by: No. 78 of 1995 s. 147; No. 19 of 2010 s. 51.]



## Schedule 1 — Oil Refinery (Kwinana) Agreement

[s. 3(1)]

*[Heading amended by No. 19 of 2010 s. 4.]*

AN AGREEMENT under seal made the 3rd day of March, one thousand nine hundred and fifty-two, between The Honourable Duncan Ross McLarty, M.L.A., Premier and Treasurer of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities (hereinafter referred to as “the State”) of the one part, and Anglo-Iranian Oil Company Limited, a company incorporated in England, whose principal office is situate at Britannic House, Finsbury Circus, in the City of London (hereinafter with its successors and assigns referred to as “the Company”) of the other part: Witnesseth: —

1. In this Agreement, except where the context otherwise requires, the following terms have the following meanings —

“commencing date” means the date or the substituted date, as the case may be, referred to in clause three, subclause (d) hereof;

“construction camp” means the living quarters referred to in clause three, subclause (c) hereof;

“cost” for the purposes of clause three, subclauses (e), (f) and (g) of this Agreement means the expenditure incurred in carrying out the obligations of the State with respect to the dredging of a channel pursuant to clause four, subclause (m) hereof, and includes all payments to contractors and all departmental and other administrative costs of and incidental to the dredging operations, and to the provision of navigation lighting equipment, buoys, moorings, beacons, dolphins, and other aids relating to the use of the channel, but excludes all maintenance costs in respect of any of the matters aforesaid;

“full production” shall be deemed to be reached by the Company under this Agreement at the expiration of the first period of three months in which the intake totals 750,000 tons, or at the end of five years after the commencing date, whichever shall first occur;

“intake” means the quantity of petroleum received into the refinery from tankers;

“month” means calendar month;

“person” and “persons” includes the other of such words and also a body corporate and corporations;

“petroleum” means mineral oils and other hydrocarbons of any description or source, crude or refined, including, without limiting the generality of the foregoing, all products obtained from these substances and mixtures of these substances or their products with other substances;

“refinery” means the oil refinery to be constructed and established on the refinery site pursuant to this agreement;

“refinery site” means the whole of the land referred to in clause three subclause (a) hereof.

2. This Agreement is made subject to approval and ratification by the Parliament of Western Australia expressed in an Act to be passed before the 1st day of May, 1952. If the Act is not so passed this Agreement shall not operate and neither of the parties hereto will have any claim against the other with respect to anything arising out of this Agreement.
3. The Company shall —
  - (a) on or with all reasonable despatch after the commencing date and subject to the progressive performance by the State of its obligations under this Agreement, commence work on the construction and establishment and shall complete the construction and establishment of an oil refinery having a designed capacity of at least three million (3,000,000) tons of crude oil per annum on all those pieces of land being portion of Cockburn Sound Location 244, being the whole of the land comprised in Certificate of Title, Volume 641, Folium 78, and all that portion of Cockburn Sound Location 704 as is more particularly delineated and coloured pink on the plan in the Schedule to this Agreement, being part of the land comprised in Certificate of Title Volume 973, Folium 23, and may thereafter maintain, operate and use such refinery and all additions and alterations thereto;
  - (b) subject to the progressive performance by the State of its obligations under this Agreement after the commencing date, continue with all reasonable diligence, and in proper manner, and at its own cost and expense, in all things to erect and establish on the shore of the refinery site and immediately seaward from such shore, such wharves, jetties, landing places, and berths as the Company may reasonably require for the purposes of the establishment and carrying on of the refinery, and may thereafter

- maintain, operate, and use such wharves, jetties, landing places, and berths, together with all additions and alterations thereto;
- (c) establish and erect at its own cost and expense in all things, buildings and erections on the land hereinafter mentioned, to be leased by the State to the Company for the purposes of the establishment of a construction camp by the Company as living quarters for persons employed or engaged on the construction or establishment of the refinery;
- (d) when ready, notify the State in writing of the date upon which it intends to commence work on the refinery site or on the area of the construction camp for the construction and establishment of the refinery pursuant to this Agreement: Provided expressly that in no circumstances will the Company give such notification unless and until matters now under discussion between Commonwealth authorities and the Company are settled to their mutual satisfaction. The parties hereto may agree in writing upon another date in substitution for the date so notified, whereupon for all the purposes of this Agreement the date so substituted shall be deemed to be the commencing date;
- (e) subject to the progressive performance by the State of its obligations under this Agreement, without delay, notify the State in writing of —
- (i) the date on which the Company first receives petroleum into the refinery from a tanker;
  - (ii) the total intake in tons during the month in which such date occurs;
  - (iii) the total intake in tons during each succeeding month until the Company reaches full production; and
  - (iv) the date on which the Company reaches full production —
- and to give the State ample opportunities and facilities for ascertaining or verifying such dates and intake;
- (f) one year after the first day of July next following the date on which the Company reaches full production, and thereafter annually on the first day of July in each succeeding year during the term of this Agreement, pay to the State or to its written nominee an amount equal to a sum of six per centum of one-half of the cost as defined in clause one of this Agreement, calculated to the 30th day of June

next before the due date of payment, or the sum of one hundred and twenty thousand pounds, whichever sum is the lesser;

- (g) until full production is reached and commencing on the first day of the month next following the date on which the Company first receives petroleum into the refinery from tankers, and thereafter until the first day of July next following the date on which the Company reaches full production, pay to the State monthly on the first day of each month such amount as bears the same proportion to the lesser sum referred to in subclause (f) of this clause as the intake for the preceding month in tons bears to 3,000,000 tons;
- (h) not use in the construction of the refinery any cement produced in the State but shall import all cement required for the purpose;
- (i) indemnify and keep indemnified the State against all actions, claims, costs and demands arising out of or in connection with the construction, maintenance, or use by the Company of the wharves, jetties, landing places, and berths referred to in clause three, subclause (b) of this Agreement, or of the use of the shore or the refinery site;
- (j) in the erection, equipment and operation of the refinery, comply with accepted modern refinery practice and the standards and specifications required in the construction and operation of refineries in Great Britain and the United States of America

4. The State shall —

- (a) acquire, either privately or compulsorily, as for a public work under the *Public Works Act 1902-1950*, and sell to the Company, which shall purchase for a total price not exceeding £750, an estate in fee simple in an area of land comprising seventy-five acres and fronting a bitumen road, being the land coloured green on the plan (subject to survey) in the Schedule hereto, subject to the condition that the Company will use the area of land solely for the purposes of a residential area, social centre and recreation ground;
- (b) prohibit under penalty the use by unauthorised persons of the shore of the refinery site and the wharves, jetties, landing places and berths, and of the waters adjacent to such wharves, jetties, landing places and berths, and within fifty yards thereof in any direction, but so that such prohibition shall not apply to any waters north of the projection into the waters of Cockburn Sound of the northern

- boundary (if the refinery site and south of a line running on a bearing 270° from the southern extremity of the refinery site;
- (c) within one month from the commencing date, lease to the Company upon such terms and conditions as may be agreed with the Company, during the period of the construction of the refinery, and for the purposes of the establishment of a construction camp as living quarters for persons employed or engaged on the construction or establishment of the refinery such land, whether Crown or alienated, within half a mile of the easterly boundary of the refinery site as may be agreed by the Company;
  - (d) cancel by notice published in the *Gazette* any existing reserve howsoever classified, and acquire, either privately or compulsorily as for a public work under the *Public Works Act 1902-1950*, any alienated land which the parties hereto may agree should be used for the purpose mentioned in the preceding subclause;
  - (e) provide and supply at the cost of the Company, at rates according to the standard schedule rates of the State Electricity Commission of Western Australia from time to time prevailing, electricity to the outside of the buildings erected on any of the land referred to in subclause (c) of this clause;
  - (f) provide and supply to the satisfaction of the Commissioner of Public Health of the State at reasonable cost to the Company, water and sanitary services in close proximity to the buildings erected on any of the land referred to in subclause (c) of this clause;
  - (g) construct and maintain all necessary roads and footpaths within the area of the construction camp;
  - (h) notwithstanding the provisions of the *Fremantle Tramways and Electric Lighting Act 1903-1946*, or any other law within two and a half years from the commencing date, construct, or through the State Electricity Commission of Western Australia, cause to be constructed to an agreed point within the refinery site a high tension power supply system, but not including the transformers, and thereafter to supply the Company's reasonable requirements of electric power at rates not exceeding the Commission's standard scheduled rates from time to time prevailing. The Company shall advise in writing the Commission of its requirements at least twenty-four months in advance of the required date of supply of electric power, and the maximum quantity required by the Company shall not exceed 12,000 kilowatts. The Company shall

be at liberty to generate at the refinery site the whole or any part of the electric power required by it;

- (i) within six months of the commencing date supply to the Company up to 1,000 kilowatts of electric power for its construction purposes at a location on the refinery site to be agreed between the parties hereto. Such power shall be supplied at 440 volt, 50 cycle, 3 phase, and at a cost in accordance with the schedule rates of the State Electricity Commission of Western Australia from time to time prevailing;
- (j) within three months of the commencing date subject to any necessary arrangements being made with the Commonwealth of Australia (the present owner of the refinery site) sell to the Company which shall purchase an estate in fee simple in the land comprised within the refinery site for a price equal to the total of the sums payable by the State for and in respect of the acquisition of the land by the State from the Commonwealth but not exceeding £80 per acre and at the request and cost of the Company execute all documents to enable the Company to become the registered proprietor of such land free from encumbrances;
- (k) within two months of the commencing date supply to the refinery site for construction purposes not less than 200,000 gallons per day of potable water at the ruling rates from time to time prevailing for excess water for industrial purposes supplied by the Metropolitan Water Supply, Sewerage and Drainage Department pursuant to the provisions of the *Metropolitan Water Supply, Sewerage and Drainage Act 1909-1951*;
- (l) within six months of the commencing date make or support representations to the Commonwealth Government with a view to obtaining special quotas of migrant labour for the rapid construction and establishment of the refinery;
- (m)
  - (i) subject to the progressive performance by the Company of its obligations under this Agreement within three years from the commencing date complete the dredging through the Parmelia and Success Banks in Cockburn Sound of a channel having a depth of 36 feet and a bottom width of 300 feet; within four years from the commencing date deepen the channel to a depth of 38 feet with a bottom width of 300 feet and within six years from the commencing date maintain the channel to a depth of

38 feet and increase its bottom width to 450 feet or alternatively if so required by the company at the time of giving notice of the commencing date within two and a half years from such date subject to the ability of the State to obtain a satisfactory contract for the performance thereof, complete the dredging as aforesaid to a depth of 34 feet with a bottom width of 400 feet within three and a half years to a depth of 36 feet with a bottom width of 450 feet and within four and a half years to a depth of 38 feet with a bottom width of 500 feet but if such alternative is required, and is provided the maximum annual payment referred to in clause three subclause (f) of this Agreement shall be £150,000 in lieu of £120,000 as therein mentioned;

- (ii) collaborate with the Company as to the terms and conditions of the dredging tenders and contracts and provide therein for damages to be paid by the Contractor in respect of failure, to achieve any of the dredging requirements of the contract;
  - (iii) not accept any tender or let any contract to any person save with the prior agreement of the Company;
  - (iv) consult from time to time with the Company to consider the dredging progress and to decide whether and if so in what measure the various safeguards set out in the dredging contract should be applied or enforced;
  - (v) in the event of damages being recovered from the dredging contractor in consequence of any breach of such contract, pay to the Company the damages recovered;
  - (vi) after completion of the dredging, and subject to the compliance by the Company with the provisions of subclauses (f) and (g) of clause three of this Agreement, maintain the channel to at least the final depth and width required under this clause;
- (n) (i) arrange for the building within two and one-half miles from the refinery site, and at such place or places, and of such standard designs of the State Housing Commission as may from time to time be agreed upon in writing with the Company, of at least 333 houses in each of the three years next following the commencing date;

- (ii) ensure that at least 100 of such houses shall be constructed in brick, of which at least 50 shall be completed within two years from the commencing date;
- (iii) let all such houses to the Company at reasonable rentals, and otherwise upon such terms and conditions as may be agreed from time to time by the parties hereto, but so that the period of letting in respect of any house shall be such period not exceeding five years from the date of its completion as the Company may require. The Company shall have an option of renewal upon the like terms (except the covenant as to an option of renewal) in respect of each house for a period not exceeding three years as the Company may by notice in writing give to the State at least three months prior to the expiration of the first mentioned term;
- (iv) ensure that any house so let to the Company shall be occupied by such persons as the Company thinks fit to facilitate the construction or operation of the refinery;
- (v) let the houses on the express condition that at the expiration of the tenancy of any house the Company shall, as soon as possible, place the same in proper order and condition in accordance with the provisions of the relative tenancy agreement, and thereafter the Company may nominate an employee of the Company to acquire such house, and the State shall then make available such house to such employee under the provisions of the *State Housing Act 1946-1950*, and for the purposes of this paragraph any such employee of the Company shall be deemed to be a worker within the meaning of that Act;
- (vi) for the purposes mentioned in this clause, acquire the necessary land either privately or compulsorily as for a public work under the *Public Works Act 1902-1950*, and in relation to such houses provide or cause to be provided roads, septic tanks, sewerage, fencing, and water and electricity services necessary for the reasonable occupancy of the houses;
- (o) within two and one-half years from the commencing date provide a supply of such quantity not exceeding three million gallons a day of potable water as the Company may from time to time reasonably



require for the establishment and carrying on of the refinery. The Company shall pay to the State or its nominee for such water at the ruling rates from time to time for excess water for industrial purposes supplied by the Metropolitan Water Supply Sewerage and Drainage Department pursuant to the provisions of the *Metropolitan Water Supply Sewerage and Drainage Act 1909-1951*. If the State shall sink a bore at or near the refinery site any water supplied direct from such bore to the Company shall be paid for by the Company at one-half of the rates abovementioned;

- (p) within twelve months from the commencing date but subject to the provisions of section ninety-six of the *Public Works Act 1902-1950*, construct and thereafter maintain a railway to the refinery site from the existing railway at Woodman's Point, or from any other existing railway as the parties may agree, and further, at the request and cost of the Company, provide and lay internal railway lines on the refinery site as the Company may from time to time reasonably require;
- (q) construct, or through the Commissioner of Main Roads, cause to be constructed and maintained all necessary road diversions leading to the refinery site, and at the request and cost of the Company, construct and maintain all internal roads on the refinery site which may reasonably be required from time to time by the Company; further, within three years from the commencing date, at the election of the State, and at no expense to the Company, either improve the existing road or construct a new road between the refinery site and the oil tanks at Fremantle of The Commonwealth Oil Refineries Limited and of the Company so that such road will be capable of meeting the reasonable or agreed requirements of the Company in regard to the use of the Company's road oil tankers; and maintain such road accordingly;
- (r) undertake that notwithstanding the provisions of the *Fremantle Harbour Trust Act 1902-1951*, but subject to the payment by the Company within two months after the respective due dates of payment of the amounts referred to in subclauses (f) and (g) of clause three of this Agreement, where the Company's wharves, jetties, landing places, or berths are used —
  - (i) by any vessel owned or chartered by the Company; or

- (ii) by tankers or other vessels bringing petroleum or equipment or materials for the construction, operation, or maintenance of the refinery; or
- (iii) by tankers or vessels removing petroleum surplus material or equipment from the refinery —

neither the State nor the Fremantle Harbour Trust Commissioners nor any other State authority shall make any charge to the Company or to any other person for such use, nor in respect of the following services, namely, entering into or departure from Cockburn Sound (including pilotage), and movements of the vessels or tankers within Cockburn Sound (excluding the Inner harbour of Fremantle and excluding tug hire). The provisions of section thirty-two of the last mentioned Act shall apply to any such vessel or tanker as though such vessel or tanker was able to pay ordinary pilotage. It is further agreed that vessels or tankers other than the abovementioned which utilise the Company's wharves, jetties, landing places, or berths, for the purpose of bunkering or any other purpose than in this clause mentioned shall be charged for such use and any incidental services in connection therewith at a rate to be fixed by the Fremantle Harbour Trust Commissioners;

- (s) allow the Company to use the said wharves, jetties, landing places, and berths for receiving petroleum and any goods or commodities whatsoever for the refinery or required by the Company for use in connection therewith, or for the embarkation or disembarkation of personnel, or for the handling or distribution of any of its products; for the despatch therefrom of petroleum from the refinery or any cargoes, goods or commodities of the Company, and for the bunkering of vessels, but the Company shall not, save with the consent of the Fremantle Harbour Trust Commissioners, and on such terms and conditions as may then in writing be agreed, use, permit, or suffer to be used the wharves, jetties, landing places, and berths for any other purpose or by any other person;
- (t) for the purposes of subclauses (f) and (g) of clause three of this Agreement give to the Company ample opportunities and facilities for ascertaining or verifying the cost from time to time of the dredging work referred to in clause four, subclause (m)(i) of this agreement;
- (u) facilitate supplies of all materials required by the Company;

- (v) maintain as a reserve the present reserve, west of the existing bitumen road and being the land coloured yellow (subject to survey) in the plan in the Schedule to this Agreement.
5. It is hereby mutually agreed as follows —
- (a) that within a reasonable period after the completion of the construction of the refinery the Company may remove (making good any loss or damage occasioned thereby) and take away any fixtures or improvements effected or made by the Company to the land referred to in subclause (c) of clause four, or the Company may sell the same or any part thereof to the State or any other party for such price as the parties to the sale may agree upon;
- (b) that the Company may at any time and from time to time during the term of this Agreement, at its own cost, in all things erect, construct, lay down, establish, fix, maintain, and use pipes and all necessary incidental works for supplying and distributing petroleum from —
- (i) the refinery to oil installations established or to be established at or in the vicinity of Fremantle;
- (ii) installations established or to be established at Fremantle or in the vicinity thereof to installations established or to be established at or in the vicinity of Perth;
- (iii) the refinery to installations established or to be established at or in the vicinity of Perth;
- (c) that the route to be followed by such pipes and the site of such works shall be as may be agreed from time to time between the parties hereto such route may be wholly or partly within the boundaries of any road;
- (d) that when any route or site referred to in subclause (c) of this clause has been agreed upon or determined by arbitration as in this Agreement provided, the State shall, at the request and cost of the Company (such cost to be the actual cost to the State), acquire either privately or compulsorily as for a public work under the *Public Works Act 1902-1950*, any land reasonably required by the Company for the purposes of this clause, and the State shall convey and transfer the land to the Company, or grant appropriate rights or easements over the land, in order that the Company may exercise the rights granted to it under subclause (b) hereof;

- (e) that the exercise by the Company of any of the powers granted to it under subclause (b) hereof and the opening, breaking-up, and interference with any street or railway and any sewer, drain, or tunnel within or under any street or railway shall be subject to the provisions so far as they are applicable of the *Anglo-Persian Oil Company Limited (Private) Act 1919*, except (without prejudicing or in any other way affecting the liability of the Company to make payment in lieu of rates in respect of mains, service pipes, and other works now existing and laid pursuant to the authority conferred by that Act) the Company shall not be liable or required to pay to the State or to any municipality or local authority any money for or in lieu of rates with respect to any pipes or land used for piping by the Company under this clause. The Company in exercising any of the powers set out in subclauses (b) or (f) hereof shall not have the right or power to lay down any pipes under any wharf other than the Company's wharves, except with the approval in writing of the Treasurer;
- (f) that subject to the approval of the Treasurer and on the conditions set out in subclauses (c), (d) and (e) (subject to the necessary adaptations being made) the Company may at any time and from time to time during the term of this Agreement, at its own cost, in all things erect, construct, lay down, establish, fix, maintain, and use pipes and all necessary incidental works for supplying and distributing petroleum from the refinery to installations established or to be established by the Company within an area having a radius of forty miles from the centre of the refinery site;
- (g) that the provisions of this Agreement do not affect or in any way prejudice the rights conferred on the Company under the provisions of the *Anglo-Persian Oil Company Limited's (Private) Act 1919*;
- (h) that no State instrumentality or statutory authority shall take over the operation of or the possession of or acquire compulsorily for public purposes the refinery during the term of this Agreement. If the operation of the refinery or the refinery is taken over or taken possession of or acquired compulsorily for public purposes by the State or any State instrumentality or statutory authority after the expiration of this Agreement, just and reasonable compensation shall be paid by the State to the Company;
- (i) that the Company may use sea water for refinery cooling purposes;

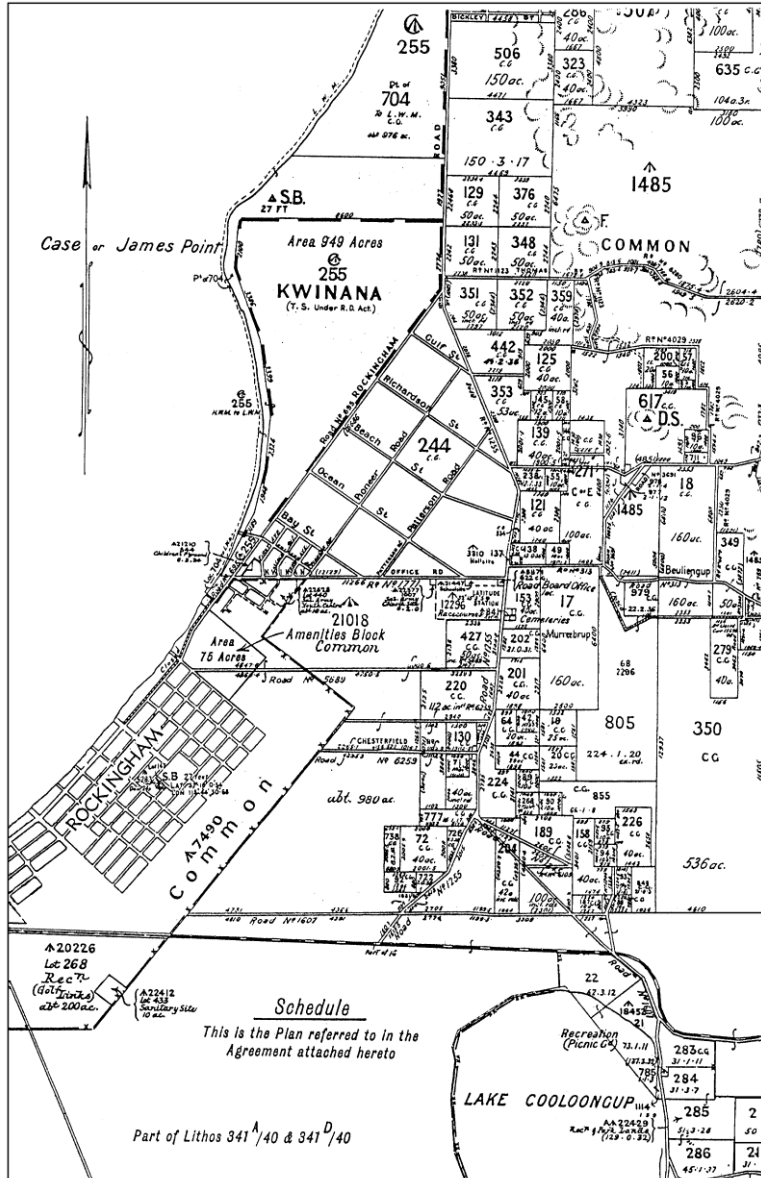
- (j) that in the erection of the construction camp and of all buildings and amenities to be used in connection therewith, the Company need not conform to any building regulations or by-laws, but such camp buildings and amenities shall comply with such directions in regard thereto as may from time to time be issued by the Commissioner of Public Health for the State;
- (k) that the Company shall have the right with the consent in writing of the State, to assign or otherwise dispose of this Agreement, or any interest herein, and such consent shall not be arbitrarily or unreasonably withheld; but such consent shall not be required in the case of an assignment to a company in which the Company holds more than thirty per centum of the shares;
- (l) that without affecting the liability of the Company to the State under the provisions of this Agreement, the Company shall have the right from time to time to entrust to third parties the carrying out of such portion of the operations authorised under this Agreement as it may consider expedient;
- (m) that the Company may use tugs for moving vessels within the harbour as defined in the *Fremantle Harbour Trust Act 1902-1951*;
- (n) notwithstanding the provisions of any Act the valuation of the refinery site shall, for rating purposes, be on the unimproved value; but this subclause shall not apply to any part of the refinery site upon which a permanent residence is erected;
- (o) that any obligation under or provisions of this Agreement may from time to time be cancelled, added to, or varied by an agreement in writing to that effect signed by or on behalf of the parties hereto;
- (p) that any dispute or difference between the parties arising out of or in connection with this Agreement, or any variation thereof as provided in the next preceding subclause, or as to the construction of this Agreement, or such variation, or as to the rights, duties, or liabilities of either party thereunder, shall, in default of agreement between the parties, be referred to and settled by arbitration under the provisions of the *Arbitration Act 1895*, and its amendments for the time being in force;
- (q) that this Agreement is made subject to any delays in the performance of obligations under this Agreement which may be occasioned by or arise from circumstances beyond the power and

control of the party responsible for the performance of such obligations, including delays caused by or arising from act of God, act of war, force majeure, act of public enemies, strikes, lock-outs, stoppages, restraint of labour, or other similar acts, whether partial or general, shortage of essential materials, reasonable failure to secure or delays of contractors (particularly in relation to dredging operations under this Agreement), riots and civil commotion;

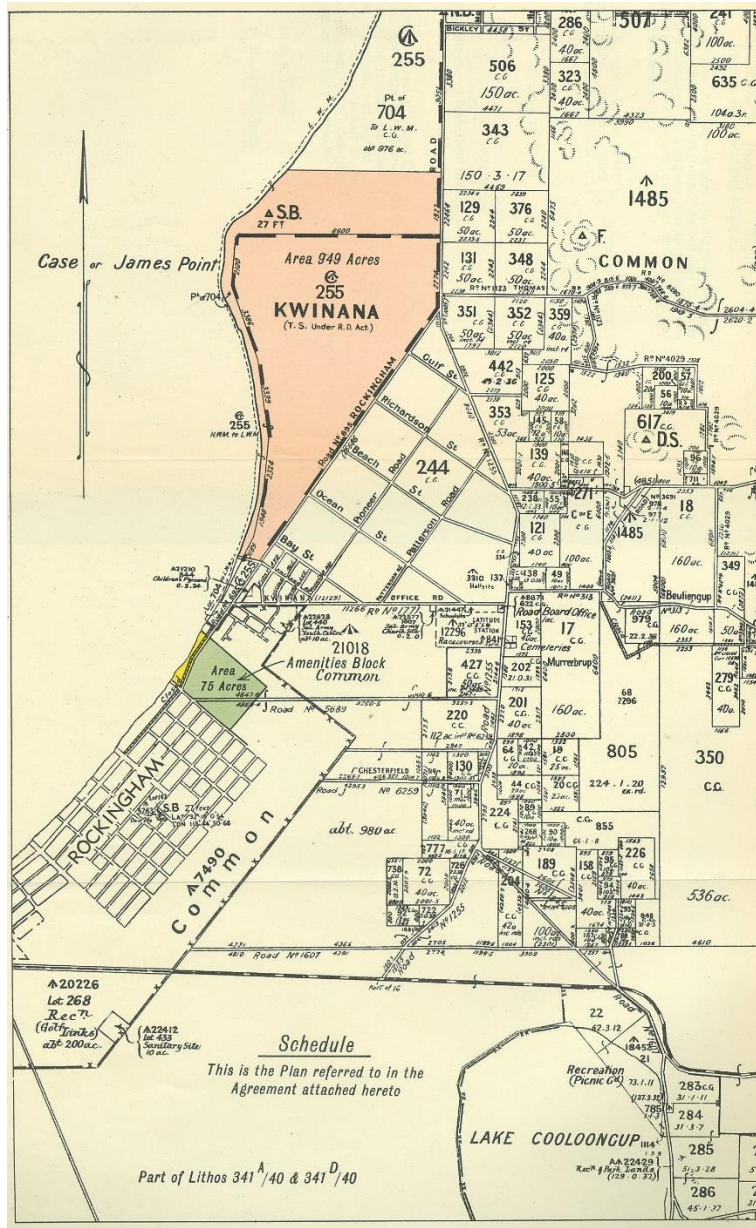
- (r) that this Agreement will be interpreted according to the laws for the time being in force in the State;
- (s) that any notice, consent, or other writing authorised or required by this Agreement to be given or sent, shall be deemed to have been duly given or sent by the State if signed by the Premier, the Minister for Works, or the Director of Works for the time being of the State, and forwarded by prepaid post to the Company at its registered office in the State, or at the refinery site; and by the Company if signed by the attorney, general manager, manager, or secretary of the Company in the State, and forwarded by prepaid post to the Premier, Minister for Works, or Director of Works of the State, and any such notice, consent, or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post;
- (t) that this Agreement will expire on the first day of January, 2,000, unless the Company by notice in writing given to the State not later than the first day of January, 1996, requires the Agreement extended for such further period not exceeding twenty years as the Company may nominate in such notice, and the Agreement, save for the right of renewal, shall thereupon be extended accordingly.

THE SCHEDULE

(Plan attached hereto.)



**Oil Refinery (Kwinana) Agreement Act 1952**  
**Schedule 1 Oil Refinery (Kwinana) Agreement**



In witness whereof the Honourable Duncan Ross McLarty has hereunto set his hand and seal, and Arthur Eric Courtney Drake, the attorney of the Company,



has hereunto for and on behalf of the Company set his hand and seal the day and year first above written.

Signed, sealed and delivered by the Honourable Duncan Ross McLarty, in the presence of —	}	ROSS McLARTY. [L.S.]
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D. Brand,  
Minister for Works.

R. J. Dumas,  
Co-ordinator of Works and Industries.

Sealed with the seal of Arthur Eric Courtney Drake, as Attorney for Anglo-Iranian Oil Company Limited, and signed by him for and on behalf of the Anglo-Iranian Oil Company Limited, in the presence of —	}	A. E. C. DRAKE. [L.S.]
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D. W. K. Barker.

P. Hackforth-Jones.

*[Schedule 1 amended ~~by~~ No. 80 of 1985 s. 7.]*

## **Schedule 2 — Variation agreement**

[s. 3C]

*[Heading amended by No. 19 of 2010 s. 4.]*

THIS AGREEMENT is made the 21st day of October, 1985 BETWEEN THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called “the State”) of the one part AND BP REFINERY (KWINANA) PROPRIETY LIMITED a company incorporated in the State of Western Australia and having its registered office at Mason Road, Kwinana (hereinafter called “the Company” in which term shall be included its successors and permitted assigns) of the other part.

WHEREAS:

- (a) the State and the Company (pursuant to assignment) are now the parties to the agreement dated the 3rd day of March 1952 which is scheduled to the *Oil Refinery Industry (Anglo-Iranian Oil Company Limited) Act 1952*;
- (b) the said agreement has been varied from time to time in accordance with its provisions by agreements respectively dated the 10th day of November 1953, the 23rd day of November 1953, the 10th day of September 1954, the 22nd day of December 1955, the 1st day of June 1956, the 3rd day of October 1956, the 26th day of March 1959, the 1st day of June 1962, the 8th day of April 1965, the 4th day of October 1965 and the 19th day of November 1975 and as so varied is hereinafter referred to as the “Principal Agreement”;
- (c) the parties desire to vary the Principal Agreement.

NOW THIS AGREEMENT WITNESSETH:

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
2. The provisions of this Agreement shall not come into operation until a Bill to approve and ratify this Agreement is passed by the Legislature of the said State and comes into operation as an Act.

3. The Principal Agreement is hereby varied as follows:

(1) Clause 1 —

- (a) by inserting before the definition of “commencing date” the following definition —

“ “bulk cargo” means any quantity of petroleum or other bulk materials being materials for the construction operation and maintenance of the refinery or being surplus materials from the refinery or being such other materials as the Minister after consultation with the Fremantle Port Authority may from time to time approve for the purposes of this definition; ”;

- (b) by deleting the full stop in the definition of “refinery site” and inserting therein after “hereof” the following —

“ less any part or parts thereof sold by the Company; ”;

- (c) by inserting after the definition of “refinery site” the following definition —

“ “tonne” has the same meaning as it has in and for the purposes of regulations under the *Fremantle Port Authority Act 1902*. ”.

(2) Clause 3 —

- (a) subclause (f) —

by inserting after “this Agreement”, where it first occurs, the following —

“ up to and including the year ending the 30th day of June, 1984 ”;

- (b) by inserting after subclause (j) the following subclauses —

“ (k) on and after the 1st day of July, 1984 pay to the Fremantle Port Authority in relation to any cargo described in clause 4, subclause (s) hereof which is discharged upon or over or shipped from or over the wharves, jetties, landing places or berths referred to in clause 3, subclause (b) hereof wharfage charges as follows —

- (i) on all inward and outward bulk cargoes at the rate of 10.94 cents per tonne PROVIDED THAT upon any alteration after the 1st day of

July, 1984 in the Fremantle Port Authority's general cargo Inner Harbour rate for wharfage on non-containerised inward goods for which other specific rates are not provided (hereinafter called "the basic rate") the rate shall increase or decrease proportionately to the alteration in the basic rate;

- (ii) on all other inward and outward cargoes a sum equal to 25 per centum of the appropriate prescribed general cargo non-containerised rates from time to time applicable to Fremantle Port Authority Inner Harbour cargoes (which rates as at the 1st July, 1984 were \$3 per tonne for inward cargoes and \$2 per tonne for outward cargoes);

PROVIDED THAT at the end of June in the year 1989 and each fifth year thereafter the said base figure of 10.94 cents (or such other base figure as may have been substituted therefor by virtue of this proviso) shall be reviewed and if during the period from the 1st day of July five years prior thereto the amounts payable by the Company under paragraph (i) of this subclause have on average increased at a rate greater than CCI (as hereinafter defined) has on average increased (measured by the CCI figure for the end of the preceding March in each case), the said base figure to apply from the next succeeding 1st day of July shall be reduced so far as necessary to ensure that the amount payable by the Company as at that 1st day of July equals the amount which would have been payable at that date if during the preceding five year period the amounts payable under paragraph (i) of this subclause had on average increased at the same rate as CCI has on average increased in that period AND for the purposes of this proviso "CCI" means the weighted average of:

The index for Western Australia contained in the Average Weekly Earnings States and Australia Index published by the Australian Bureau of Statistics in Catalogue Number 6302.0 as to sixty

per centum; and The index for Perth contained in the Price Index of Materials used in Building other than House Building Six State Capitals and Darwin published by the Australian Bureau of Statistics in Catalogue Number 6407.0 as to forty per centum;

PROVIDED FURTHER THAT if on any occasion one of those indices ceases to be published, becomes immutable or has its reference base changed so that it becomes inappropriate for the purposes of the foregoing proviso, it shall be substituted by such other appropriate index as the parties hereto agree or failing agreement as determined by arbitration hereunder;

- (l) keep the Minister fully informed in respect of, and when and in such form as required by the Minister from time to time report to the Minister on, the measures it has taken and is taking for the monitoring, protection and management of the environment including without limiting the generality of the foregoing provisions with respect to the following matters arising from the operations of the Company at the refinery site —
  - (i) emissions and discharges into Cockburn Sound from the refinery site, the wharves, jetties, landing places and berths referred to in clause 3, subclause (b) hereof and vessels in the vicinity of any thereof;
  - (ii) emissions, discharges and disposals of matter onto or into land at or in the vicinity of the refinery site;
  - (iii) emissions and discharges into the air in the vicinity thereof;and
  - (iv) disciplinary action taken against the Company in respect of environmental matters during the period in respect of which the report is made

and as and when required by the Minister the Company shall liaise and co-operate with the Minister on measures it is taking and take additional reasonable measures with respect to the monitoring, protection and management of the environment arising from the operation of the refinery;

- (m) without prejudice to any obligation of the Company to comply with the regulations under the *Fremantle Port Authority Act 1902*, during such time as a jetty superintendent of the Fremantle Port Authority is not present at the wharves, jetties, landing places or berths referred to in clause 3, subclause (b) hereof, use all reasonable endeavours to ensure compliance by third parties with part IV section V (as amended or replaced from time to time) of the said regulations. ”.

(3) Clause 4 —

- (a) subclause (a) —

by deleting “-1950,”;

- (b) subclause (d) —

by deleting “-1950,”;

- (c) subclause (h) —

(i) by deleting “the *Fremantle Tramways and Electric Lighting Act 1903-1946*, or any other” and substituting “any”;

(ii) by deleting “State Electricity Commission” and substituting “State Energy Commission”;

(iii) by deleting “12,000 kilowatts” and substituting “such amount as may be agreed from time to time between the Company and the Commission”;

- (d) subclause (k) —

by deleting “-1951”;

- (e) subclause (n) —

(i) paragraph (v) —

- (A) by deleting “*State Housing Act 1946-1954*” and substituting “*Housing Act 1980*”;
- (B) subparagraph (a) —  
by deleting “a “worker” ” and substituting “an “eligible person” ”;
- (C) subparagraph (b) —  
by deleting “of the amount of Two Thousand Five Hundred Pounds (L2,500) for advances to a worker” and substituting “provided in section 40 of that Act as to the amount which may be lent to an eligible person”;
- (ii) paragraph (vi) —  
by deleting “-1950,”;
- (f) subclause (o) —  
by deleting “-1951”;
- (g) subclause (p) —  
by deleting “-1950,”;
- (h) by deleting subclause (r) and substituting the following —
  - “ (r) without prejudice to any terms and conditions agreed with the Fremantle Port Authority under clause 4, subclause(s) hereof, ensure that no charges are levied by the State, the Fremantle Port Authority, the Department of Marine and Harbours or by any other State instrumentality in respect of any vessel using the wharves, jetties, landing places and berths referred to in clause 3, subclause (b) hereof (except for services actually rendered at the request of that vessel) other than —
    - (i) tonnage rates from time to time levied by the Fremantle Port Authority for the Port of Fremantle on the tonnage of vessels ascertained pursuant to the *Fremantle Port Authority Act 1902*;

- (ii) the charges from time to time prevailing made by the Fremantle Port Authority in respect of pilotage services ordered by or rendered to or in respect of any vessel in accordance with the *Fremantle Port Authority Act 1902*;
  - (iii) the usual charges from time to time prevailing made by the Fremantle Port Authority in respect of any other port service rendered to or in respect of any vessel by the Fremantle Port Authority; and
  - (iv) the usual conservancy dues from time to time prevailing made by the Department of Marine and Harbours; ”;
- (i) subclause (s) —
  - (i) by deleting “allow the Company” and substituting the following —

“subject to the payment by the Company of charges and dues pursuant to clause 3, subclause (k), allow the Company”;
  - (ii) by deleting “Fremantle Harbour Trust Commissioners” and substituting “Fremantle Port Authority”;
- (j) by inserting after subclause (u) the following subclause —

“ (ua) except as provided by this Agreement not impose, permit or authorise any of its agencies or instrumentalities or any local or other authority to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the operations of the Company in the conduct of its business hereunder nor take or permit to be taken by any such State authority any other discriminatory action which would deprive the Company of full enjoyment of the rights granted or intended to be granted under this Agreement. ”.



- (4) Clause 5 —
- (a) subclause (d) —  
by deleting “-1950,”;
  - (b) subclause (k) —  
by inserting “after shares”, where it first occurs, the following —  
“ or to a company which is related (within the meaning of that term as used in section 7 of the *Companies (Western Australia) Code*) to the Company ”;
  - (c) subclause (m) —  
by deleting “*Fremantle Harbour Trust Act 1902-1951*” and substituting “*Fremantle Port Authority Act 1902*”;
  - (d) subclause (s) —
    - (i) by deleting “the Premier, the Minister for Works, or the Director of Works for the time being of the State,” and substituting the following —  
“ the Minister in the Government of the State for the time being responsible for the administration of this Agreement and its ratifying Act, ”
    - (ii) by deleting “the Premier, Minister for Works, or Director of Works of the State” and substituting “the said Minister”;
  - (e) subclause (t) —
    - (i) by deleting “that this Agreement” and substituting the following —  
“ (i) that, subject to paragraph (ii) of this subclause, this Agreement ”;
    - (ii) by inserting the following paragraph —  
“ (ii) that if the Company desires at any time to close down for a period greater than 12 months the operations of the refinery it shall give to the State at least 6 months’ prior notice in writing of the date on which it is to close down those operations. At the expiration of the period of any such notice this Agreement shall (unless the parties

otherwise agree) cease and determine. During the period of any such notice, and if so required by the State and notwithstanding any determination of this Agreement for a further six months following the expiration of that period, the Company shall co-operate with the State for the purpose of ensuring that the continued supply and distribution of petroleum within Western Australia is not adversely affected; ”;

- (f) subclause (u) —
  - (i) paragraph (iii) —  
by deleting “*Licensing Act, 1911-1952*,” and substituting “*Liquor Act 1970*”;
  - (ii) paragraph (iv) —
    - (A) by deleting “*Licensing Act, 1911-1952*,” where it first occurs and substituting “*Liquor Act 1970*”;
    - (B) subparagraph (b) —  
by deleting “*Licensing Act, 1911-1952*, for the purposes of the provisions of sections 141, 142, 146, 147 and Part X” and substituting “*Liquor Act 1970* for the purposes of the provisions of sections 126 and 127”;
- (g) subclause (v) —
  - (i) paragraph (i) —
    - (A) by deleting “*Fremantle Harbour Trust Act, 1902-1952*,” and substituting “*Fremantle Port Authority Act 1902*”;
    - (B) by deleting “Fremantle Harbour Trust Commissioners” and substituting “Fremantle Port Authority”;
    - (C) by deleting “said Commissioners” and substituting “said Authority”;
    - (D) by deleting “-1950,”;
  - (ii) paragraph (ii) —

- (A) by deleting “Fremantle Harbour Trust Commissioners” and substituting “Fremantle Port Authority”;
- (B) by deleting “the Commissioners” and substituting “the Authority”;
- (iii) paragraph (iii) —  
by deleting “Fremantle Harbour Trust Commissioners” and substituting “Fremantle Port Authority”;
- (h) by inserting after subclause (v) the following subclause —
  - “ (w) that save as provided in clause 3, subclause (k) hereof no other charges or dues (except for services actually rendered at the request of the Company) shall be levied by the State, the Fremantle Port Authority or any other authority of the State on and after the 1st day of July 1984 upon the Company in respect of the inward or outward cargoes described in clause 4, subclause (s) hereof discharged upon or over or shipped from the wharves, jetties, landing places or berths referred to in clause 3, subclause (b) hereof;
  - (x) (i) that if the Company at any time during the continuance of this Agreement desires to significantly modify, expand or otherwise vary its activities carried on pursuant to this Agreement or desires to carry on operations other than the refining of petroleum it shall give notice of such desire to the Minister and if required by the Minister within 2 months of the giving of such notice, shall submit to the Minister (within such period as the Minister shall reasonably allow) to the fullest extent reasonably practicable detailed proposals in respect of all matters covered by such notice and other relevant information as the Minister may reasonably require;
  - (ii) if the Minister does not require the Company to submit proposals under

paragraph (i) of this subclause, the Company may, subject to compliance with all applicable laws, proceed with the modification, expansion or variation of its activities carried on pursuant to this Agreement;

- (iii) on receipt of proposals pursuant to paragraph (i) of this subclause the Minister shall —
  - (A) approve of the said proposals either wholly or in part without qualification or reservation; or
  - (B) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of any matters (in addition to those required to be addressed pursuant to paragraph (i) of this subclause) which the Minister reasonably requires to be covered by the said proposals; or
  - (C) require as a condition precedent to the giving of his approval to the said proposals that the Company make such alteration thereto or comply with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use by others as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such alteration or conditions;
- (iv) the Minister shall within two months after receipt of proposals pursuant to paragraph (iii) of this subclause give notice

- to the Company of his decision in respect to the same;
- (v) if the decision of the Minister is as mentioned in either of subparagraphs (B) or (C) of paragraph (iii) of this subclause the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter;
  - (vi) if the decision of the Minister is as mentioned in either of subparagraphs (B) or (C) of paragraph (iii) of this subclause, the Company may within 2 months after receipt of the notice mentioned in paragraph (iv) of this subclause —
    - (A) if the Company considers that the decision is unreasonable, elect to refer to arbitration in the manner hereinbefore provided the question of the reasonableness of the decision;
    - or
    - (B) advise the Minister that the Company does not wish to proceed with the matters the subject of the said proposals whereupon the said proposals shall lapse;
  - (vii) the Company shall implement the decision of the Minister or an award made on an arbitration as the case may be in accordance with the terms thereof;
  - (y) that nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities hereunder that may be made by the State or by any State agency or instrumentality or any

local or other authority or statutory body of the State pursuant to any Act from time to time in force. ”.

4. The parties hereto acknowledge that having regard to the amendments pursuant to this Agreement to clause 4, subclause (r) of the Principal Agreement, the agreement dated the 3rd day of October 1956 referred to in recital (b) to this Agreement is no longer in force.

IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED by the said THE HONOURABLE  
BRIAN THOMAS BURKE, M.L.A. in the  
presence of:

BRIAN BURKE

DAVID PARKER  
MINISTER FOR MINERALS  
AND ENERGY

THE COMMON SEAL OF BP REFINERY  
(KWINANA) PROPRIETARY LIMITED  
was hereunto affixed by authority  
of the Directors in the presence of:

[C.S.]

Director:      BRUCE SELIGMANN.

Secretary:    MICHAEL R. BEER.

*[Schedule 2 inserted ~~by~~ No. 80 of 1985 s. 8.]*

**Schedule 3 — 2016 variation agreement**

[s. 2]

*[Heading inserted: No. 48 of 2016 s. 7.]*

**2016**

**THE HONOURABLE COLIN JAMES BARNETT**

**THE STATE OF WESTERN AUSTRALIA**

**and**

**BP REFINERY (KWINANA) PROPRIETARY LIMITED**

**ACN 008 689 763**

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**OIL REFINERY (KWINANA) AGREEMENT 1952**

**RATIFIED VARIATION AGREEMENT**

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[Solicitor's details]

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

**BETWEEN**



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

AND

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

**RECITALS:**

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

- (a) the agreement dated 10 November 1953;
- (b) the agreement dated 23 November 1953;
- (c) the agreement dated 10 September 1954;
- (d) the agreement dated 22 December 1955;
- (e) the agreement dated 1 June 1956;
- (f) the agreement dated 3 October 1956;
- (g) the agreement dated 26 March 1959;
- (h) the agreement dated 1 June 1962;
- (i) the agreement dated 8 April 1965;
- (j) the agreement dated 4 October 1965;
- (k) the agreement dated 19 November 1975;

(1) the agreement dated 21 October 1985 which was ratified by the *Oil Refinery Industry (Anglo-Iranian Oil Company Limited) Amendment Act 1985*.

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

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

**THE PARTIES AGREE AS FOLLOWS:**

**1. Ratification and operation**

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

(2) This Agreement, other than this clause, comes into operation on the day on which it is ratified by an Act of the Parliament of Western Australia ("**Operative Date**") unless, before that day, it terminates under subclauses (4) or (5).

(3) The State must introduce in the Parliament of Western Australia before 31 December 2016 a Bill to ratify this Agreement and must endeavour to secure its passage as an Act.

(4) If by 31 December 2017 this Agreement has not been ratified by an Act of the Parliament of Western Australia then, unless the parties to this Agreement otherwise agree, this Agreement terminates on that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

(5) The parties agree that if the Principal Agreement is otherwise determined in accordance with its provisions on a day prior to the Operative Date, then this Agreement shall also terminate on and from that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

**2. Variations of the Principal Agreement**

The Principal Agreement is hereby varied as follows:

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

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

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

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

- (2) in clause 4 by:

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

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

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

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

- (3) in clause 5 by:

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

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

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

"is situated the following improvements:

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

(ii) maintenance workshops existing within 100 metres of facilities of the type listed in paragraph (i) above";

(d) inserting after "State" in subclause (r):

"and for the avoidance of doubt reference to:

(i) an Act includes the regulations for the time being in force thereunder; and

(ii) an Act or regulations includes the amendments to that Act or regulations and also any Act or regulations passed in substitution therefor or in lieu thereof";

(e) deleting paragraph (i) of subclause (t) and substituting the following new paragraph:

"that, subject to paragraph (ii) of this subclause, this Agreement will expire on 1 January 2050; and";

(f) deleting subclause (u);

(g) inserting after clause (x) the following new subclauses:

"(ya) **Local industry participation plan**

(i) In this clause, the term "local industry participation benefits" means:

(a) the use and training of labour available within the said State;

(b) the use of the services of engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and contractors available within the said State; and

(c) the procurement of works, materials, plant, equipment and supplies from Western Australian suppliers, manufacturers and contractors.

(ii) The Company acknowledges the need for local industry participation benefits flowing from this Agreement.

(iii) The Company agrees that within 3 months after the Variation Date it shall prepare and provide to the Minister a plan which contains:

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(a) a clear statement on the strategies which the Company will use, and require a third party as referred to in paragraph (vii) to use, to maximise the uses and procurement referred to in paragraph (i);

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(b) detailed information on the procurement practices the Company will adopt, and require a third party as referred to in paragraph (vii) to adopt, in calling for tenders and letting contracts for works, materials, plant, equipment and supplies and how such practices will provide fair and reasonable opportunity for suitably qualified Western Australian suppliers, manufacturers and contractors to tender or quote for works, materials, plant, equipment and supplies;

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(c) detailed information on the methods the Company will use, and require a third party as referred to in paragraph (vii) to use, to have their respective procurement officers promptly introduced to Western Australian suppliers, manufacturers and contractors seeking such introduction; and

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(d) details of the communication strategies the Company will use, and require a third party as referred to in paragraph (vii) to use, to alert Western Australian engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and consultants and Western Australian suppliers, manufacturers and contractors to services opportunities and procurement opportunities respectively as referred to in paragraph (i).

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It is acknowledged by the Company that the strategies of the Company referred to in paragraph (iii)(a) will include strategies of the Company in relation to supply of services, labour, works, materials, plant,

equipment or supplies for the purposes of this Agreement.

(iv) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan provided under this Clause and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.

(v) At least 3 months before the anticipated submission of proposals pursuant to clause 5(x) (or such lesser period as the Minister may, at the request of the Company, approve in respect of any such anticipated proposals), the Company must, unless the Minister otherwise requires, give to the Minister information about the implementation of the plan provided under this clause in relation to the activities to be the subject of such proposals. This obligation operates in relation to all proposals submitted on or after the date that is 4 months after the date when a plan is first provided under this clause.

(vi) During the currency of this Agreement the Company shall implement the plan provided under this clause.

(vii) The Company shall:

(a) in every contract entered into with a third party where the third party has an obligation or right to procure the supply of services, labour, works, materials, plant, equipment or supplies for or in connection with a proposed development, ensure that the contract contains appropriate provisions requiring the third party to undertake procurement activities in accordance with the plan provided under this clause; and

(b) use reasonable endeavours to ensure that the third party complies with those provisions.

(yb) **Use of local labour professional services and materials**

(i) Except as otherwise agreed by the Minister the Company shall, for the purposes of this Agreement:

(a) except in those cases where the Company can demonstrate it is not reasonable and economically practicable so to do, use labour available within the said State or if such labour is not available then, except as aforesaid, use labour otherwise available within Australia;

(b) as far as it is reasonable and economically practicable so to do, use the services of engineers, surveyors, architects and other professional consultants experts and specialists, project managers, manufacturers, suppliers and contractors resident and available within the said State, or if such services are not available within the said State, then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;

(c) during design and when preparing specifications, calling for tenders and letting contracts for works, materials, plant, equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that suitably qualified Western Australian and Australian suppliers, manufacturers and contractors are given fair and reasonable opportunity to tender or quote;

(d) give proper consideration and, where possible, preference to Western Australian suppliers, manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies where price, quality, delivery and service are equal to or better than that obtainable elsewhere or, subject to the foregoing, give that consideration and, where possible, preference

to other Australian suppliers, manufacturers and contracts; and

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(e) if, notwithstanding the foregoing provisions of this clause, a contract is to be let or an order is to be placed with other than a Western Australian or Australian supplier, manufacturer or contractor, give proper consideration and, where possible, preference to tenders, arrangements or proposals that include Australian participation where price, delivery and service are otherwise equal or better.

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(ii) Except as otherwise agreed by the Minister, the Company shall, in every contract entered into with a third party for the supply of services, labour, works, materials, plant, equipment or supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake the same obligations as are referred to in paragraph (i) and shall report to the Company concerning such third party's implementation of that condition.

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(iii) The Company shall in respect of developments the subject or to be the subject (as the case may be) of proposals submitted under clause 5(x) submit a report to the Minister at quarterly intervals from the date on which it gives notice under clause 5(x) until commissioning of the developments the subject of the proposals approved pursuant to clause 5(x) and thereafter as requested by the Minister from time to time, concerning its implementation of the provisions of this clause and of the relevant plan in connection with the development provided pursuant to clause 5(ya), together with a copy of any report received by the Company pursuant to paragraph (ii) during that quarter or longer period as the case may be PROVIDED THAT the Minister may agree that any such reports need not be provided in respect of contracts of such kind or value as the Minister may from time to time determine.



(iv) The Company shall keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as reasonably required by the Minister during the currency of this Agreement of any services (including any elements of the project investigations, design and management) and any works, materials, plant, equipment and supplies that it may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia, together with its reasons therefor and shall, as and when required by the Minister, consult with the Minister with respect thereto."; and

(h) inserting "(including under the Environmental Protection Act 1986)" after "Act" in subclause (y).

**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) \_\_\_\_\_ )



## Notes

- <sup>1</sup> This is a compilation of the *Oil Refinery (Kwinana) Agreement Act 1952* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Oil Refinery Industry (Anglo-Iranian Oil Company Limited) Act 1952</i> <sup>9</sup>	1 of 1952	27 Mar 1952	27 Mar 1952
<i>Oil Refinery Industry (Anglo-Iranian Oil Company Limited) Act Amendment Act 1956</i>	22 of 1956	21 Nov 1956	21 Nov 1956
<i>Oil Refinery Industry (Anglo-Iranian Oil Company Limited) Act Amendment Act 1959</i>	44 of 1959	10 Nov 1959	10 Nov 1959
<i>Oil Refinery Industry (Anglo-Iranian Oil Company Limited) Amendment Act 1985</i>	80 of 1985	4 Dec 1985	4 Dec 1985 (see s. 2)
<i>Sentencing (Consequential Provisions) Act 1995</i> s. 147	78 of 1995	16 Jan 1996	Proc. 4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<b>Reprint of the <i>Oil Refinery (Kwinana) Agreement Act 1952</i> as at 6 Jul 2001</b> (includes amendments listed above)			
<i>Standardisation of Formatting Act 2010</i> s. 4 and 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<a href="#">Oil Refinery (Kwinana) Agreement Amendment Act 2016</a>	<a href="#">48 of 2016</a>	<a href="#">28 Nov 2016</a>	<a href="#">s. 1 and 2: 28 Nov 2016 (see s. 2(a)); Act other than s. 1 and 2: 29 Nov 2016 (see s. 2(b))</a>

- <sup>2</sup> Repealed by the *Liquor Act 1970* which was repealed by the *Liquor Licensing Act 1988*.
- <sup>3</sup> Repealed by the *Housing Act 1980*.
- <sup>4</sup> See *Land Administration Act 1997* Pt. 9 in relation to taking land for public work.
- <sup>5</sup> Renamed the State Energy Commission which was replaced by the Western Power Corporation.
- <sup>6</sup> Board no longer in existence.
- <sup>7</sup> Repealed by the *City of Fremantle and Town of East Fremantle Trust Funds Act 1961*.
- <sup>8</sup> Repealed by the *State Energy Commission Act 1979* which is now called the *Energy Operators (Powers) Act 1979*.
- <sup>9</sup> Now known as the *Oil Refinery (Kwinana) Agreement Act 1952*, short title changed (see note under s. 1).