



Western Australia

Oil Refinery (Kwinana) Agreement Amendment Act 2016

As at 28 Nov 2016

No. 48 of 2016

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Western Australia

Oil Refinery (Kwinana) Agreement Amendment Act 2016

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Western Australia

Oil Refinery (Kwinana) Agreement Amendment Act 2016

No. 48 of 2016

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

[Assented to 28 November 2016]

The Parliament of Western Australia enacts as follows:

s. 1

1. Short title

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

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

3. Act amended

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

4. Section 2 amended

In section 2 before the 1st alphabetical definition insert in numerical order:

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

5. Section 3A deleted

Delete section 3A.

6. Section 3D inserted

After section 3C insert:

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.

7. Schedule 3 inserted

After Schedule 2 insert:

Schedule 3 — 2016 variation agreement

[s. 2]

2016

THE HONOURABLE COLIN JAMES BARNETT

THE STATE OF WESTERN AUSTRALIA

and

BP REFINERY (KWINANA) PROPRIETARY LIMITED

ACN 008 689 763

OIL REFINERY (KWINANA) AGREEMENT 1952

RATIFIED VARIATION AGREEMENT

s. 7

[Solicitor's details]

THIS AGREEMENT is made this 5th 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;
- (l) 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,

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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.

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- (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:
 - (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);
 - (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;
 - (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
 - (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).

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

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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 contractors; and
 - (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.
- (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.
 - (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

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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))

[Signature]
Signature of Director

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

DESMOND THOMAS GILLEN
Full Name

SUZANNE BROE
Full Name

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