



Western Australia

Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Amendment Act 2018

As at 15 May 2018

No. 6 of 2018

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Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Amendment Act 2018

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Western Australia

Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Amendment Act 2018

No. 6 of 2018

An Act to amend the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004.*

[Assented to 15 May 2018]

The Parliament of Western Australia enacts as follows:

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1. Short title

This is the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Amendment Act 2018*.

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 *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004*.

4. Section 3 amended

- (1) In section 3 delete the definition of *the Agreement*.
- (2) In section 3 insert in numerical order:

2018 variation agreement means the agreement a copy of which is set out in Schedule 3;

- (3) In section 3 insert in alphabetical order:

Agreement means the scheduled agreement —

- (a) as varied from time to time in accordance with its terms; and
- (b) as varied by the 2010 variation agreement; and
- (c) as varied by the 2018 variation agreement.

5. Section 4 amended

After section 4(2A) insert:

(2B) The 2018 variation agreement is ratified.

6. Section 6 amended

In section 6(2) delete “scheduled agreement or the 2010 variation agreement” and insert:

scheduled agreement, the 2010 variation agreement or the 2018 variation agreement

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7. Schedule 3 inserted

After Schedule 2 insert:

Schedule 3 — 2018 variation agreement

[s. 3]

2018

THE HONOURABLE MARK McGOWAN

THE STATE OF WESTERN AUSTRALIA

and

THE PILBARA INFRASTRUCTURE PTY LTD

ACN 103 096 340

and

FORTESCUE METALS GROUP LTD

ACN 002 594 872

**RAILWAY AND PORT (THE PILBARA INFRASTRUCTURE PTY
LTD) AGREEMENT 2004**

RATIFIED VARIATION AGREEMENT

[Solicitor's details]

THIS AGREEMENT is made this 13th day of March 2018

BETWEEN

THE HONOURABLE MARK McGOWAN, BA LLB MLA, 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 first part,

AND

THE PILBARA INFRASTRUCTURE PTY LTD ACN 103 096 340 of 87 Adelaide Terrace, East Perth, Western Australia, (hereinafter called the "**Company**" in which term shall be included its successors and permitted assigns) of the second part,

AND

FORTESCUE METALS GROUP LTD ACN 002 594 872 of 87 Adelaide Terrace, East Perth, Western Australia, (hereinafter called the "**Guarantor**") of the third part.

RECITALS:

- A.** The State, the Company and the Guarantor are the parties to the agreement dated 10 November 2004 which was ratified by and is scheduled to the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* and which as subsequently varied is referred to in this Agreement as the "**Principal Agreement**".
- B.** The State, the Company and the Guarantor 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

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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 30 April 2018 or a later date agreed by the parties to this Agreement a Bill to ratify this Agreement and must endeavour to secure its passage as an Act.
- (4) If by 30 September 2018 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:
 - (a) by inserting after the definition of "approved proposal" the following new definition:

"Australian Consumer Law" means the *Competition and Consumer Act 2010*;
 - (b) by inserting after the definition of "LAA" the following new definition:

"LAA Minister" means the Minister for Lands, a body corporate under section 7 of the LAA;
 - (c) by deleting the definition of "Port Authority" and substituting the following new definition:

"Port Authority" means the Pilbara Ports Authority, being the body corporate having management and control of the Port under the Port Authorities Act;

- (d) in the definition of "Rail Safety Act" by deleting the words "*Rail Safety Act 1998*" and substituting "*Rail Safety National Law (WA) Act 2015*";
- (e) by inserting after the definition of "said State" the following new definition:

"second variation date" means the date on which clause 2 of the variation agreement made on or about 12 March 2018 between the Honourable Mark McGowan, Premier of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time, the Company and the Guarantor comes into operation;

- (f) by deleting the definition of "Trade Practices Act";
- (2) by deleting clause 4 and substituting the following new clause:

"Obligations of the State"

4. (1) The State shall subject to subclause (3) and the adequate protection of the environment (including flora and fauna) and the land affected (including improvements thereon) arrange for the issue of requisite authority under one or both of (as determined by the State in its discretion):

- (a) section 91 of the LAA; or
- (b) section 182 of the LAA,

to allow the Company to enter upon Crown land (within the meaning of the LAA and including, if applicable, land the subject of a pastoral lease but excluding land within the Port) to carry out all works to the extent

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reasonably necessary for the purposes of undertaking its obligations under clause 5(1) as applied pursuant to clause 12(2a).

- (2) For the purposes of paragraph (b) of subclause (1), section 182 of the LAA shall apply as if the Project (including a significant modification, expansion or other variation of it for which detailed proposals are required) is a proposed public work for which the LAA Minister is under that section authorised to take interests in land within the meaning of that section.
 - (3) The Company acknowledges that it shall be responsible for obtaining all consents of each person whose consent the LAA Minister (acting with the concurrence of the Minister in respect of any such Crown land the subject of a Government agreement) requires for the grant of any requisite authority referred to in subclause (1) and in a form and substance acceptable to the LAA Minister.";
- (3) in clause 7(3) by deleting paragraph (a);
 - (4) by inserting after clause 9 the following new clause:

"9A. Local participation plan

- (1) 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.
- (2) The Company acknowledges the need for local industry participation benefits flowing from this Agreement.
- (3) The Company agrees that within 3 months after the second 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 clause 21(2) to use, to maximise the uses and procurement referred to in subclause (1);
- (b) detailed information on the procurement practices the Company will adopt, and require a third party as referred to in clause 21(2) 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

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- 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 clause 21(2) 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 clause 21(2) 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 subclause (1).

It is acknowledged by the Company that the strategies of the Company referred to in subclause (3)(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.

- (4) During the currency of this Agreement the Company shall implement the plan provided under this clause.
 - (5) 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.
 - (6) At least 3 months before the anticipated submission of detailed proposals under clauses 12, 12A or 13 (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 detailed proposals. This obligation operates in relation to all detailed proposals submitted on or after the date that is 4 months after the date when a plan is first provided under this clause.";
- (5) in clause 12(3):
- (a) by deleting the word "and" after the words "subclause (2),"; and
 - (b) by inserting after the words "as referred to in clause 9" the words "and compliance with clause 9A";
- (6) in clause 12A(3)(b) by deleting the first reference to "clause 9" and substituting "clauses 9 and 9A";

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- (7) in clause 13(3)(b) by deleting the first reference to "clause 9" and substituting "clauses 9 and 9A";
- (8) by deleting clause 15(3) and substituting the following:
- "The Company shall provide crossings for livestock and also for any roads, other railways, conveyors, pipelines and other utilities which exist in respect of land at the date such land is included in the Special Railway Licence or is made the subject of a Lateral Access Road Licence. In addition for the purposes of livestock and infrastructure such as roads, railways, conveyors, pipelines, transmission lines and other utilities proposed to cross the land the subject of the Special Railway Licence or land the subject of a Lateral Access Road Licence (as the case may be) the Company shall:
- (a) if applicable, give its consent to, and otherwise facilitate, the grant by the State or any agency, instrumentality or other authority of the State of any lease, licence or other title over land the subject of the Special Railway Licence or of a Lateral Access Road Licence (as the case may be) so long as such grant does not in the Minister's opinion unduly prejudice or interfere with the activities of the Company under this Agreement; and
- (b) on reasonable terms and conditions allow access for the construction and operation of such crossings and associated infrastructure,
- provided that in forming his opinion under this clause, the Minister must consult with the Company.";
- (9) in clause 16(6) by deleting the words "Trade Practices Act" and substituting "Australian Consumer Law";
- (10) in clause 18(6) by deleting the words "Trade Practices Act" and substituting "Australian Consumer Law";
- (11) in clause 21:
- (a) by inserting after subclause (2) the following new subclause:

- "(2a) Except as otherwise agreed by the Minister, the Company shall, in every contract entered into with a third party after the second variation date 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 procurement activities in accordance with the relevant plan under clause 9A as and from the date of its provision to the Minister.";
- (b) in subclause (3) by inserting after the words "concerning its implementation of the provisions of this clause" the words "and of the relevant plan provided pursuant to clause 9A";
- (12) in clause 35(1) by deleting the number "1985" and substituting "2012"; and:
- (13) in clause 41 by:
- (a) adding the words "and Submission to Jurisdiction" to the clause heading; and
- (a) adding the following words after "State of Western Australia":
- "and the parties to this Agreement submit to the jurisdiction of the courts of Western Australia in relation to any action or proceeding to settle any dispute or question arising out of or in connection with this Agreement".

3. Confirmation of Guarantee

The Guarantor confirms that its guarantee in favour of the State contained in clause 39 of the Principal Agreement shall continue notwithstanding the above-mentioned variations to the Principal Agreement.

s. 7

EXECUTED AS A DEED.

SIGNED by **THE HONOURABLE**)
MARK McGOWAN, in the)
presence of:)

[Signature]
.....
Signature of witness

JOSH JERGA
.....
Name of witness (block letters)

[Signature]
.....
Signature of **THE HONOURABLE
MARK McGOWAN**

EXECUTED by **THE PILBARA**)
INFRASTRUCTURE PTY LTD)
ACN 103 096 340 in accordance)
with section 127(1) of the)
Corporations Act 2001 (Cth) by)
authority of its directors:)

[Signature]
.....
Signature of director

Elizabeth Gaines
.....
Name of director (block letters)

[Signature]
.....
Signature of ~~director~~/company
secretary*
*delete whichever is not applicable

Cameron Wilson
.....
Name of ~~director~~/company
secretary* (block letters)
*delete whichever is not applicable

EXECUTED by **FORTESCUE**)
METALS GROUP LTD)
ACN 002 594 872 in accordance)
with section 127(1) of the)
Corporations Act 2001 (Cth) by)
authority of its directors:)

[Signature]

.....
Signature of director

Elizabeth Gaines

.....
Name of director (block letters)

[Signature]

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

*delete whichever is not applicable

Cameron Wilson

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

*delete whichever is not applicable

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