

**NATURAL GAS (CANNING BASIN JOINT VENTURE) AGREEMENT
(TERMINATION) BILL 2017**

EXPLANATORY MEMORANDUM

Explanation of the Bill

Section 1 (Short Title)

Contains the short title of the Act.

Section 2 (Commencement)

Paragraph (a) provides that section 1 and 2 come into operation on the day on which the Act receives Royal Assent.

Paragraph (b) provides that the remainder of the Act comes into operation on the day after the Act receives Royal Assent.

Section 3 (Act Amended)

Specifies that the Act amends the *Natural Gas (Canning Basin Joint Venture) Agreement Act 2013* (“Agreement Act”).

Section 4 (Long title amended)

Section 4 inserts into the long title the words “**to ratify a further agreement for the termination of that agreement**” after “**State**”.

Section 5 (Section 3 Amended)

Section 5 amends section 3 of the Agreement Act by inserting a new definition of the “**termination agreement**”, which means the termination agreement, a copy of which is set out in Schedule 3.

Section 6 (Section 4A inserted)

Inserts a new section after section 4A of the Agreement Act which ratifies the termination agreement.

Section 7 (Section 6 amended)

Provides that if a provision of the termination agreement purports to modify any other Act or law, then that provision shall operate and take effect so as to modify that other Act or law.

Section 8 (Schedule 3 inserted)

Inserts Schedule 3 into the Agreement Act, comprising a copy of the termination agreement dated 27 November 2017.

SCHEDULE 3

NATURAL GAS (CANNING BASIN JOINT VENTURE) AGREEMENT 2012 2017 TERMINATION AGREEMENT

PARTIES

The Honourable Mark McGowan, Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (“the State”), Buru Energy Limited, Diamond Resources (Fitzroy) Pty Ltd, and Diamond Resources (Canning) Pty Ltd (collectively “the Joint Venturers”) and Mitsubishi Corporation (the “Guarantor”).

RECITALS:

- A. Advises that the State, the Joint Venturers and the Guarantor are parties to the agreement ratified by the *Natural Gas (Canning Basin Joint Venture) Agreement Act 2013*. This agreement is referred to in the Termination Agreement as the "**Principal Agreement**".
- B. Advises that the State, the Joint Venturers and the Guarantor wish to terminate the Principal Agreement on the terms set out in the Termination Agreement.

Clause 1 – Definitions

Provides the following definitions:

“**Operative Date**” has the meaning given in clause 3(2).

“**Petroleum Act**” means the *Petroleum and Geothermal Energy Resources Act 1967 (WA)*.

“**Petroleum Minister**” means the Minister responsible for the administration of the Petroleum Act.

“**Petroleum Titles**” has the same meaning as in the Principal Act and at the date of this Agreement comprises the titles listed in the Schedule.

“**Ratifying Act**” means the Act of the Parliament of Western Australia to ratify this Agreement referred to in clause 3.

“**this Agreement, hereof**” and “**hereunder**” refer to this Agreement, whether in its original form or as from time to time added to, varied or amended.

Clause 2 – Interpretation

Sets out principles for interpreting the Termination Agreement

Clause 3 – Ratification and operation

Subclause (1)

Provides that the Termination Agreement (except clauses 1 to 3) does not come into operation except in accordance with subclause (2).

Subclause (2)

States that the Termination Agreement (except clauses 1 to 3) comes into operation on the day after the date on which it is ratified by an Act of Parliament (“**Operative Date**”), unless it terminates prior to that day under subclauses (4) or (5).

Subclause (3)

Requires the State to introduce into Parliament a Bill to ratify this Termination Agreement prior to 31 March 2018 (or such later date as the parties may agree) and must endeavour to secure its passage as an Act.

Subclause (4)

Provides, unless the parties otherwise agree, for the termination of the Termination Agreement (and without a party having a claim against another) if by 31 December 2018 the Termination Agreement has not been ratified by an Act.

Subclause (5)

Specifies that if the Principal Agreement is determined on a day prior to the Operative Date, then the Termination Agreement will also terminate on and from that day, and without any party having a claim against any other.

Clause 4 – Termination of Principal Agreement

Throughout the duration of the State Agreement, the evaluation of the natural gas resources in the Canning Basin has taken longer than was originally planned.

The Joint Venturers have not been able to commit to the Domgas Project by the date required in the State Agreement (31 March 2018). Several factors have influenced this decision including the negotiations with various traditional owner groups, access issues relating to the wet seasons and the recent change in policy regarding hydraulic fracture stimulation (fracking). This situation is further complicated by a recent decision by Mitsubishi Corporation and its subsidiaries, and Buru Energy to pursue different commercial objectives in the Canning Basin.

Subclause (1)

States, subject to this clause, that the Principal Agreement is terminated on and from the Operative Date and without the State or the Joint Venturers having any claim against the other except as otherwise provided in the Termination Agreement.

Subclause (2)

Provides that, notwithstanding Subclause (1), the Joint Venturers shall remain liable for any antecedent breach or default and in respect of any indemnity given under the Principal Agreement.

Subclause (3)

Provides that, notwithstanding Subclause (1), the Guarantor shall remain liable in respect of any guarantee given under the Principal Agreement in relation to any antecedent breach or default by the Joint Venturers.

Subclause (4) (a)

Provides that each Petroleum Title shall continue in force subject to the Petroleum Act, and the benefits of the rights and privileges conferred by the State Agreement shall cease to apply.

Subclause (4) (b)

Provides that any modification of the Petroleum Act made by the Principal Agreement in relation to a Petroleum Title shall cease to apply and the Petroleum Title will continue under and subject to the Petroleum Act for the balance of its term as extended in accordance with Subclauses (4) (c) and (4) (d).

Subclause (4) (c)

Deems, upon endorsement in the relevant register, that Petroleum Titles EP 371, EP 428, EP 431 and EP 436 shall continue in force until 30 July 2023, and that the year end for each work requirement relating to these titles will be suspended and extended for the additional period of 4 years.

Subclause (4) (d)

Deems, upon endorsement in the relevant registers, that Petroleum Title EP 391 shall continue in force until 31 January 2024 and that the year end for each work requirement relating to this title will be suspended and extended for the additional period of 4 years.

Subclause (4) (e)

Provides that the period in which application may be made for a retention lease or a production licence in relation to the declaration of location made over the Valhalla-Asgard Field affecting Petroleum Title EP 371 ends on 30 June 2021.

Subclause (4) (f)

Confirms that on and from the Operative Date, clauses 39 (Effect of cessation or determination of Agreement) and 45 (Mitsubishi Corporation guarantee of subsidiaries' performance) of the principal Agreement will not survive termination of the Principal Agreement.

Subclause (5)

Requires that the Joint Venturers indemnify and keep indemnified the State in respect of all actions, claims etc of third parties arising out of or in connection with any work carried out by the Joint Venturers or its assignees pursuant to the Principal Agreement or relating to their operations under the Principal Agreement. The indemnity will remain in force for 20 years from the Operative Date.

Clause 5 – Mitsubishi Corporation guarantee of subsidiaries performance

States that the Guarantor hereby guarantees to the State the due performance by each of its subsidiaries of all their obligations under the Termination Agreement.

Clause 6 – Applicable law and submission to jurisdiction

States that the Termination Agreement is subject to the laws and courts of Western Australia.

Schedule

Lists the Petroleum Titles