

Western Australia

## **Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Amendment Bill 2018**

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Western Australia

LEGISLATIVE ASSEMBLY

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

**A Bill for**

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

The Parliament of Western Australia enacts as follows:

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1     **1.       Short title**

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

4     **2.       Commencement**

5             This Act comes into operation as follows —

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

9     **3.       Act amended**

10            This Act amends the *Railway and Port (The Pilbara*  
11            *Infrastructure Pty Ltd) Agreement Act 2004*.

12    **4.       Section 3 amended**

13            (1)   In section 3 delete the definition of *the Agreement*.

14            (2)   In section 3 insert in numerical order:

15  
16                         ***2018 variation agreement*** means the agreement a copy  
17                         of which is set out in Schedule 3;  
18

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

20  
21                         ***Agreement*** means the scheduled agreement —

- 22                         (a)   as varied from time to time in accordance with  
23                               its terms; and  
24                         (b)   as varied by the 2010 variation agreement; and  
25                         (c)   as varied by the 2018 variation agreement.  
26

1   **5.       Section 4 amended**

2       After section 4(2A) insert:

3

4       (2B)   The 2018 variation agreement is ratified.

5

6   **6.       Section 6 amended**

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

9

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

12

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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**

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

**RATIFIED VARIATION AGREEMENT**

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[Solicitor's details]

1     **THIS AGREEMENT** is made this 13<sup>th</sup> day of March 2018

2     **BETWEEN**

3     **THE HONOURABLE MARK McGOWAN**, BA LLB MLA, Premier of the  
4     State of Western Australia, acting for and on behalf of the said State and its  
5     instrumentalities from time to time (hereinafter called the "**State**") of the first  
6     part,

7     **AND**

8     **THE PILBARA INFRASTRUCTURE PTY LTD** ACN 103 096 340 of  
9     87 Adelaide Terrace, East Perth, Western Australia, (hereinafter called the  
10    "**Company**" in which term shall be included its successors and permitted  
11    assigns) of the second part,

12    **AND**

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

16    **RECITALS:**

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

22    **B.**     The State, the Company and the Guarantor wish to vary the  
23            provisions of the Principal Agreement on the terms and conditions set  
24            out in this Agreement.

25    **THE PARTIES AGREE AS FOLLOWS:**

26    **1.       Ratification and operation**

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

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

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- 1       (3)   The State must introduce in the Parliament of Western Australia  
2       before 30 April 2018 or a later date agreed by the parties to this  
3       Agreement a Bill to ratify this Agreement and must endeavour to  
4       secure its passage as an Act.
- 5       (4)   If by 30 September 2018 this Agreement has not been ratified by an  
6       Act of the Parliament of Western Australia then, unless the parties to  
7       this Agreement otherwise agree, this Agreement terminates on that  
8       day and no party hereto will have any claim against any other party  
9       hereto with respect to any matter or thing arising out of, done,  
10      performed, or omitted to be done or performed under this Agreement.
- 11      (5)   The parties agree that if the Principal Agreement is otherwise  
12      determined in accordance with its provisions on a day prior to the  
13      Operative Date, then this Agreement shall also terminate on and from  
14      that day and no party hereto will have any claim against any other  
15      party hereto with respect to any matter or thing arising out of, done,  
16      performed, or omitted to be done or performed under this Agreement.
- 17      **2.       Variations of the Principal Agreement**
- 18      The Principal Agreement is hereby varied as follows:
- 19      (1)   in clause 1:
- 20              (a)   by inserting after the definition of "approved  
21              proposal" the following new definition:
- 22                      **"Australian Consumer Law"** means the  
23                      *Competition and Consumer Act 2010*;
- 24              (b)   by inserting after the definition of "LAA" the  
25              following new definition:
- 26                      **"LAA Minister"** means the Minister for Lands, a  
27                      body corporate under section 7 of the LAA;
- 28              (c)   by deleting the definition of "Port Authority" and  
29              substituting the following new definition:
- 30                      **"Port Authority"** means the Pilbara Ports  
31                      Authority, being the body corporate having  
32                      management and control of the Port under the Port  
33                      Authorities Act;



1 (d) in the definition of "Rail Safety Act" by deleting the  
2 words "*Rail Safety Act 1998*" and substituting "*Rail*  
3 *Safety National Law (WA) Act 2015*";

4 (e) by inserting after the definition of "said State" the  
5 following new definition:

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

13 (f) by deleting the definition of "Trade Practices Act";

14 (2) by deleting clause 4 and substituting the following new  
15 clause:

16 **"Obligations of the State**

17 4. (1) The State shall subject to subclause (3) and  
18 the adequate protection of the environment  
19 (including flora and fauna) and the land  
20 affected (including improvements thereon)  
21 arrange for the issue of requisite authority  
22 under one or both of (as determined by the  
23 State in its discretion):

24 (a) section 91 of the LAA; or

25 (b) section 182 of the LAA,

26 to allow the Company to enter upon Crown  
27 land (within the meaning of the LAA and  
28 including, if applicable, land the subject of a  
29 pastoral lease but excluding land within the  
30 Port) to carry out all works to the extent  
31 reasonably necessary for the purposes of  
32 undertaking its obligations under clause 5(1)  
33 as applied pursuant to clause 12(2a).

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- 1 (2) For the purposes of paragraph (b) of  
2 subclause (1), section 182 of the LAA shall  
3 apply as if the Project (including a  
4 significant modification, expansion or other  
5 variation of it for which detailed proposals  
6 are required) is a proposed public work for  
7 which the LAA Minister is under that  
8 section authorised to take interests in land  
9 within the meaning of that section.
- 10 (3) The Company acknowledges that it shall be  
11 responsible for obtaining all consents of  
12 each person whose consent the LAA  
13 Minister (acting with the concurrence of the  
14 Minister in respect of any such Crown land  
15 the subject of a Government agreement)  
16 requires for the grant of any requisite  
17 authority referred to in subclause (1) and in  
18 a form and substance acceptable to the LAA  
19 Minister.";
- 20 (3) in clause 7(3) by deleting paragraph (a);
- 21 (4) by inserting after clause 9 the following new clause:
- 22 "9A. **Local participation plan**
- 23 (1) In this clause, the term "local industry  
24 participation benefits" means:
- 25 (a) the use and training of labour  
26 available within the said State;
- 27 (b) the use of the services of  
28 engineers, surveyors, architects  
29 and other professional  
30 consultants, experts, specialists,  
31 project managers and  
32 contractors available within the  
33 said State; and
- 34 (c) the procurement of works,  
35 materials, plant, equipment and

- 1 supplies from Western  
2 Australian suppliers,  
3 manufacturers and contractors.
- 4 (2) The Company acknowledges the need for  
5 local industry participation benefits  
6 flowing from this Agreement.
- 7 (3) The Company agrees that within 3 months  
8 after the second variation date it shall  
9 prepare and provide to the Minister a plan  
10 which contains:
- 11 (a) a clear statement on the  
12 strategies which the Company  
13 will use, and require a third  
14 party as referred to in  
15 clause 21(2) to use, to  
16 maximise the uses and  
17 procurement referred to in  
18 subclause (1);
- 19 (b) detailed information on the  
20 procurement practices the  
21 Company will adopt, and  
22 require a third party as referred  
23 to in clause 21(2) to adopt, in  
24 calling for tenders and letting  
25 contracts for works, materials,  
26 plant, equipment and supplies  
27 and how such practices will  
28 provide fair and reasonable  
29 opportunity for suitably  
30 qualified Western Australian  
31 suppliers, manufacturers and  
32 contractors to tender or quote  
33 for works, materials, plant,  
34 equipment and supplies;
- 35 (c) detailed information on the  
36 methods the Company will use,  
37 and require a third party as

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- 1 referred to in clause 21(2) to  
2 use, to have their respective  
3 procurement officers promptly  
4 introduced to Western  
5 Australian suppliers,  
6 manufacturers and contractors  
7 seeking such introduction; and
- 8 (d) details of the communication  
9 strategies the Company will  
10 use, and require a third party as  
11 referred to in clause 21(2) to  
12 use, to alert Western Australian  
13 engineers, surveyors, architects  
14 and other professional  
15 consultants, experts, specialists,  
16 project managers and  
17 consultants and Western  
18 Australian suppliers,  
19 manufacturers and contractors  
20 to services opportunities and  
21 procurement opportunities  
22 respectively as referred to in  
23 subclause (1).
- 24 It is acknowledged by the Company that  
25 the strategies of the Company referred to in  
26 subclause (3)(a) will include strategies of  
27 the Company in relation to supply of  
28 services, labour, works, materials, plant,  
29 equipment or supplies for the purposes of  
30 this Agreement.
- 31 (4) During the currency of this Agreement the  
32 Company shall implement the plan  
33 provided under this clause.
- 34 (5) At the request of either of them made at  
35 any time and from time to time, the  
36 Minister and the Company shall confer as  
37 to any amendments desired to any plan  
38 provided under this clause and may agree

- 1 to the amendment of the plan or the  
2 provision of a new plan in substitution for  
3 the one previously provided.
- 4 (6) At least 3 months before the anticipated  
5 submission of detailed proposals under  
6 clauses 12, 12A or 13 (or such lesser  
7 period as the Minister may, at the request  
8 of the Company, approve in respect of any  
9 such anticipated proposals), the Company  
10 must, unless the Minister otherwise  
11 requires, give to the Minister information  
12 about the implementation of the plan  
13 provided under this clause in relation to the  
14 activities to be the subject of such detailed  
15 proposals. This obligation operates in  
16 relation to all detailed proposals submitted  
17 on or after the date that is 4 months after  
18 the date when a plan is first provided under  
19 this clause.";
- 20 (5) in clause 12(3):
- 21 (a) by deleting the word "and" after the words  
22 "subclause (2),"; and
- 23 (b) by inserting after the words "as referred to in  
24 clause 9" the words "and compliance with  
25 clause 9A";
- 26 (6) in clause 12A(3)(b) by deleting the first reference to  
27 "clause 9" and substituting "clauses 9 and 9A";
- 28 (7) in clause 13(3)(b) by deleting the first reference to "clause 9"  
29 and substituting "clauses 9 and 9A";
- 30 (8) by deleting clause 15(3) and substituting the following:
- 31 "The Company shall provide crossings for livestock and also  
32 for any roads, other railways, conveyors, pipelines and other  
33 utilities which exist in respect of land at the date such land is  
34 included in the Special Railway Licence or is made the  
35 subject of a Lateral Access Road Licence. In addition for the

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- 1 purposes of livestock and infrastructure such as roads,  
2 railways, conveyors, pipelines, transmission lines and other  
3 utilities proposed to cross the land the subject of the Special  
4 Railway Licence or land the subject of a Lateral Access Road  
5 Licence (as the case may be) the Company shall:
- 6 (a) if applicable, give its consent to, and otherwise  
7 facilitate, the grant by the State or any agency,  
8 instrumentality or other authority of the State of any  
9 lease, licence or other title over land the subject of the  
10 Special Railway Licence or of a Lateral Access Road  
11 Licence (as the case may be) so long as such grant  
12 does not in the Minister's opinion unduly prejudice or  
13 interfere with the activities of the Company under this  
14 Agreement; and
- 15 (b) on reasonable terms and conditions allow access for  
16 the construction and operation of such crossings and  
17 associated infrastructure,
- 18 provided that in forming his opinion under this clause, the  
19 Minister must consult with the Company.";
- 20 (9) in clause 16(6) by deleting the words "Trade Practices Act"  
21 and substituting "Australian Consumer Law";
- 22 (10) in clause 18(6) by deleting the words "Trade Practices Act"  
23 and substituting "Australian Consumer Law";
- 24 (11) in clause 21:
- 25 (a) by inserting after subclause (2) the following new  
26 subclause:
- 27 "(2a) Except as otherwise agreed by the Minister,  
28 the Company shall, in every contract  
29 entered into with a third party after the  
30 second variation date for the supply of  
31 services, labour, works, materials, plant,  
32 equipment or supplies for the purposes of  
33 this Agreement require as a condition  
34 thereof that such third party shall undertake  
35 procurement activities in accordance with

1                                   the relevant plan under clause 9A as and  
2                                   from the date of its provision to the  
3                                   Minister.";

4                           (b) in subclause (3) by inserting after the words  
5                           "concerning its implementation of the provisions of  
6                           this clause" the words "and of the relevant plan  
7                           provided pursuant to clause 9A";

8                   (12) in clause 35(1) by deleting the number "1985" and  
9                   substituting "2012"; and:

10           (13) in clause 41 by:

11                   (a) adding the words "and Submission to Jurisdiction" to  
12                   the clause heading; and

13                   (a) adding the following words after "State of Western  
14                   Australia":

15                                   "and the parties to this Agreement submit to the  
16                                   jurisdiction of the courts of Western Australia in  
17                                   relation to any action or proceeding to settle any  
18                                   dispute or question arising out of or in connection  
19                                   with this Agreement".

20   **3. Confirmation of Guarantee**

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

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**1 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**

**2**

**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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