

North West Gas Development (Woodside) Agreement Amendment Bill 2014

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)

Provides that the Act amends the *North West Gas Development (Woodside) Agreement Act 1979* ("Agreement Act").

Section 4 (Section 2 amended)

Inserts into Section 2 of the Act a definition of the "Fourth Supplementary Agreement", namely variation agreement dated 20 November 2014, a copy of which is set out in Schedule 5 of the Agreement Act.

Section 5 (Section 6A inserted – Fourth Supplementary Agreement)

Inserts section 6A "Fourth Supplementary Agreement" into the Agreement Act which ratifies and authorises the implementation of the Fourth Supplementary Agreement, and provides that, without limiting or affecting the application of the *Government Agreements Act 1979*, the Fourth Supplementary Agreement operates and takes effect despite any other Act or law.

Section 6 (Schedule 5 inserted)

Inserts Schedule 5 into the Agreement Act, comprising a copy of the Fourth Supplementary Agreement being the variation agreement dated 20 November 2014.

Schedule 5 – Fourth Supplementary Agreement Variation Agreement dated 20 November 2014

Overview of the Variation Agreement

The Variation Agreement gives effect to a new liquefied natural gas (LNG) export approval process and a new domestic gas arrangement for the Joint Venturers under the *North West Development (Woodside) Agreement 1979* (as varied), consistent with the Western Australian Government's domestic gas policy.

Provision of the Agreement

[Note: References to "the Minister" in the Variation Agreement are references to the Minister responsible from time to time for administration of the Agreement Act.]

Parties

The Honourable Colin James Barnett, Premier of the State of Western Australia, acting for and on behalf of the State, and Woodside Energy Ltd., Shell Development (Australia) Proprietary Limited, BHP Billiton Petroleum (North West Shelf) Pty. Ltd., BP Developments Australia Pty. Ltd., Chevron Australia Pty Ltd, Japan Australia LNG (MIMI) Pty. Ltd. (together collectively the “Joint Venturers”).

Recitals

- A. Provides details of the original agreement dated 27 November 1979 as ratified by the *North West Gas Development (Woodside) Agreement Act 1979* and of previous variations made to it. The agreement as so varied is called the “Principal Agreement”.
- B. Advises that the Parties wish to vary the Principal Agreement in accordance with the terms and conditions of this Variation Agreement.

Clause 1 Ratification and operation

Subclause (1) and (2)

States that other than clause 1 the Variation Agreement will come into operation on the day of its ratification by an Act of the Parliament of Western Australia.

Subclause (3)

Requires the State to introduce into Parliament a Bill to ratify this Variation Agreement before 27 November 2014 (or at a later date agreed by the parties).

Subclause (4)

States that the Variation Agreement will terminate if it is not ratified by an Act of Parliament by 30 June 2015 (unless the parties agree otherwise).

Subclause (5)

States that if the Principal Agreement is determined in accordance with its provisions prior to the Operative Date of the Variation Agreement, then the Variation Agreement will terminate on the same day.

Clause 2 Variations of the Principal Agreement

Subclause (1)

Inserts the following new definitions into clause 1 (Definitions) of the Principal Agreement:

- Agreement Area;
- Petroleum Titles;
- Variation Agreement; and
- Variation Date.

Subclause (2)

Expands the definition of “overall project” in Principal clause (1) of the Principal Agreement to include the project as modified, expanded or varied in accordance with the Principal Agreement.

Subclause (3)

Amends and renumbers existing clause 9 (Additional Proposals) of the Principal Agreement as clause 9(1) and inserts new subclauses (2), (3) and (4).

Expands clause 9 (Additional Proposals) of the Principal Agreement to include as part of the overall project the Joint Venturers utilising at the onshore facilities natural gas recovered from wells outside the Agreement Area in the production of natural gas for delivery and use in Western Australia, condensate, LPG and LNG for use, supply or sale overseas ("for export") and, in the case of LNG, provided the Minister is satisfied that:

- the holder of the Petroleum Title from the well or wells in which the gas is to be recovered has provided on terms acceptable to the State a commitment for the delivery and use in Western Australia of natural gas from wells in that title which is consistent with the Joint Venturers' Domgas Commitment (as defined in Clause 46A(1)), as that commitment exists at the Variation Date; and
- the production of such LNG will not result in a breach of the Joint Venturers' Domgas Commitment (as defined in Clause 46A(1)).

Subclause (4)

Replaces clause 46(1A) in the Principal Agreement with three new subclauses:

- 46(1A) lists previous approvals for quantities of LNG (produced from natural gas processed through the onshore facilities) being marketed for export;
- 46(1B) provides that the Joint Venturers shall keep the Minister informed of their intended arrangements for the processing of natural gas to be recovered from wells in the Agreement Area through the onshore facilities for the purpose of producing LNG for export. Further, before any arrangements are entered into (whether by the Joint Venturers or otherwise) for export of such LNG (not being LNG the subject of approvals referred to in subclauses (1A) or (1C)) the Joint Venturers shall consult the Minister on, and obtain the Minister's approval of, the quantity of such LNG which may, in addition to the approvals referred to in subclauses (1A) and (1C), be marketed for export;
- 46(1C) provides that with effect on the Variation Date the Minister shall be deemed to have approved pursuant to subclause (1B) an additional 86 million tonnes of LNG being marketed for export. The Joint Venturers may request of the Minister a reduction in the quantity approved under subclause (1C) if they can demonstrate that the quantity of LNG to be produced from natural gas from wells in the Agreement area over the remaining term of the Principal Agreement will be materially less than 86 million tonnes.

Subclause (5)

Inserts a new clause 46A (New Domgas Commitment) into the Principal Agreement which sets out a new domestic gas arrangement consistent with the State's domestic gas policy.

New Domgas Commitment**Clause 46A(1)**

Defines a number of terms relevant to the new domestic gas arrangement, in particular:

- "Domgas" is defined as natural gas produced as part of the overall project from natural gas recovered after the Variation Date from wells in the Agreement Area for delivery and use in Western Australia but excluding (a) natural gas which the Minister is satisfied has been (as at the Variation Date) committed for delivery and use in Western Australia

except to the extent the Minister approves such natural gas being treated as Domgas, (b) natural gas for the operation of the Joint Venturers' Facilities, (c) natural gas processed or to be processed for export (whether or not as LNG), and (d) natural gas sold or delivered or to be sold or delivered to any Affiliate of a Joint Venturer for any purpose referred to in (b) or (c) above.

- "Domgas Commitment" is defined to mean the Joint Venturers' commitments set out in Clause 46A.
- "Domgas Facilities" is defined to mean the Common Property, Domgas Property and LNG Property required for the production of natural gas for delivery and use in Western Australia.
- "New Domgas" is defined as the quantity of Domgas which has an energy value equal to the equivalent of at least the Relevant Percentage of New Export Gas, as reduced by the quantities of Domgas delivered into the domestic market in compliance with the Domgas Commitment.
- "New Export Gas" is defined as the aggregate of the quantities of LNG which the Minister has, on or after the Variation Date, approved pursuant to clause 46(1B) for marketing for export (including the quantity the Minister is deemed to have approved under clause 46(1C)).
- "Operational" is defined to mean the relevant Domgas Facilities are in operation and producing natural gas for delivery and use in Western Australia (subject to interruptions in operation due to planned maintenance and outages due to unplanned breakdowns).
- "Relevant Percentage" is defined as 15 per cent or such lesser percentage approved by the Minister in accordance with clause 46A(6).

Clause 46A(2)

Describes when an entity is taken to "Control" another for the purposes of the definition of "Affiliate" in clause 46A(1).

Clause 46A(3)

Requires the Joint Venturers to market and make available New Domgas in accordance with clause 46A and states that the Domgas Commitment shall commence on the Variation Date and continue until the Minister is satisfied there is no longer an outstanding Domgas Commitment.

Clause 46A(4)

Sets out the detail of the Domgas Commitment.

Marketing obligations

Clause 46A(4)(a)

Requires the Joint Venturers to actively and diligently undertake ongoing marketing (whether collectively or otherwise) of New Domgas for sale to a range of buyers in Western Australia with a view to achieving a reasonably stable and regular supply profile for Domgas over the duration of the Principal Agreement and avoiding any unreasonable accumulation of New Domgas.

Clause 46A(4)(b)

Requires the Joint Venturers to discharge their ongoing marketing obligations in good faith, actively and diligently (exercising the degree of skill, prudence and foresight which would reasonably be exercised by a

skilled and experienced person engaged in the same type of undertaking).

Clause 46A(4)(c)

Requires the Joint Venturers to negotiate in good faith with any bona fide purchaser of New Domgas as to as to price and terms of supply of New Domgas available for sale.

Access and maintenance obligations

Clause 46A(4)(d)

Requires the Joint Venturers to use available proven technology in developing or obtaining access to Domgas Facilities for the purpose of meeting their Domgas Commitment.

Clause 46A(4)(e)

Subject to clause 46A(16), requires the Joint Venturers to maintain or procure the maintenance of the Domgas Facilities in an Operational state at all times to the extent necessary to meet the Domgas Commitment.

Clause 46A(4)(f)

Requires the Joint Venturers to maintain or procure the maintenance of access to sufficient capacity in the Domgas Facilities to enable the Joint Venturers to meet their Domgas Commitment in accordance with good industry practice in order to ensure production and delivery of New Domgas to the domestic market in compliance with the Domgas Commitment.

Reservation of agreement area natural gas

Clause 46A(4)(g)

Requires the Joint Venturers to reserve or procure the reservation of a quantity of natural gas to be recovered from wells within the Agreement Area to meet their Domgas Commitment.

Clause 46A(4)(h)

Requires the Joint Venturers to submit New Domgas Reports to the Minister on an annual and confidential basis and prescribes the required content of such reports. The reports will assist monitoring compliance with the Domgas Commitment by providing details about (i) LNG exports; (ii) domestic gas sales and contracts; and (iii) maintenance of Domgas Facilities.

Clause 46A(5)

Enables the Minister to appoint an agreed person to assess and advise the Minister as to the performance of the Joint Venturers of their obligations under clause 46A(4).

Clause 46A(6)

Enables the Minister, at the request of the Joint Venturers, to approve a lesser percentage than 15 per cent as the Relevant Percentage of New Export Gas in calculating New Domgas and sets out the matters the Minister is to be satisfied of before so approving.

Clause 46A(7)

Provides that the obligations of the Joint Venturers under clause 46A(4)(a), (b), (c) and (h) shall be separate and individual in proportion to their respective ownership interests in the LNG Venture, but may be discharged collectively.

Clause 46A(8)

Provides that clause 28 (Force Majeure) of the Principal Agreement shall not apply to Clause 46A(4)(a), (b), (c), (g) and (h).

Clause 46A(9)

Provides that if the Minister considers that all or any of the Joint Venturers ("affected Joint Venturers") have defaulted in the performance of the Domgas Commitment and such default is not remedied within 180 days after notice is given, the Minister may by notice suspend in respect of the affected Joint Venturers all or any part of the Minister's approvals referred to or given under clauses 46(1A), 46(1B) or 46(1C) in respect of LNG which at the date of such notice has not yet been sold or agreed to be sold under an unconditional contract, to the intent that until the suspension is limited the affected Joint Venturers may not enter into arrangements for export of LNG in reliance upon such approvals.

Clause 46A(10)

Specifies the required content of a notice given by the Minister under clause 46A(9).

Clause 46A(11)

Provides that if the affected Joint Venturers contest an alleged default referred to in clause 46A(9) they may refer the matter to arbitration.

Clause 46A(12)

Requires the affected Joint Venturers to comply with any arbitration award within a reasonable time fixed by the award provided that if the question is decided against them and the arbitrator finds there was a bona fide dispute, the time for compliance will not be less than 90 days.

Clause 46A(13)

Provides that the exercise by the Minister of rights conferred by clause 46A shall be without prejudice to the rights of the State under clause 30 (Determination of the Agreement) of the Principal Agreement.

Clause 46A(14)

Provides that the Minister will lift a suspension under clause 46A(9) when satisfied that the affected Joint Venturers have remedied the default of implemented a cure plan acceptable to the Minister.

Clause 46A(15)

Provides that the Domgas Commitment is binding on the Joint Venturers in their capacity as LNG Joint Venturers and, to the extent that they are Domgas Joint Venturers, in their capacity as Domgas Joint Venturers.

Clause 46A(16)

Provides that if the Joint Venturers are in compliance with their obligations under clause 46A(4), and will have no contracted gas to supply, the Joint Venturers may give to the Minister not less than 6 months' notice of their intention to place the Domgas Facilities on non-Operational status. If the Minister is not satisfied with the notification, the Minister will so advise the Joint Venturers within one month of receiving the notification. The Minister may then appoint an agreed person in accordance with clause 46A(5) in which case the Domgas Facilities will remain Operational until the agreed person has reported and is of the view that the Joint Venturers are in compliance with their

obligations and will have no contracted gas to be supplied and hence the Domgas Facilities can be placed on non-Operational status.

The Minister is to inform the Joint Venturers of the agreed person's view within 2 weeks of receiving the agreed person's report and the agreed person's view will prevail at that time. If the State or the Joint Venturers dispute the agreed person's view that party may refer the dispute to arbitration.

Nothing in this subclause relieves the Joint Venturers of their obligations under clause 46A(4)(a), (b), (c), (g) and (h).

Clause 46B

Provides the Joint Venturers with the possibility to submit a domestic gas offset proposal to the Minister.

Subclause (5) also inserts new Clause 46B

Clause 46B

Provides that a Joint Venturer may make a request of the Minister to offset all or part of the Domgas Commitment by offering commitments in respect of natural gas and capacity from alternative sources and facilities. Consideration of any such request shall be at the discretion of the State.

Subclause (6)

Inserts after clause 47 of the Principal Agreement a Schedule listing Petroleum Titles comprising the Agreement Area as at the date of the Variation Agreement.