

Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Amendment Bill 2010

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Western Australia

LEGISLATIVE ASSEMBLY

**Railway and Port (The Pilbara Infrastructure
Pty Ltd) Agreement Amendment Bill 2010**

A Bill for

An Act to amend the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* and the *Railways (Access) Act 1998*.

The Parliament of Western Australia enacts as follows:

1

Part 1 — Preliminary matters

2

1. Short title

3

This is the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Amendment Act 2010*.

4

5

2. Commencement

6

This Act comes into operation as follows —

7

(a) Part 1 — on the day on which this Act receives the Royal Assent;

8

9

(b) the rest of the Act — on the day after that day.

1 **Part 2 — *Railway and Port (The Pilbara Infrastructure***
2 ***Pty Ltd) Agreement Act 2004* amended**

3 **3. Act amended**

4 This Part amends the *Railway and Port (The Pilbara*
5 *Infrastructure Pty Ltd) Agreement Act 2004*.

6 **4. Section 3 amended**

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

8 (2) In section 3 before the first alphabetical definition insert in
9 numerical order:

11 *2010 variation agreement* means the agreement a copy
12 of which is set out in Schedule 2;

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

16 *the Agreement* means the scheduled agreement —

17 (a) as varied from time to time in accordance with
18 its terms; and

19 (b) as varied by the 2010 variation agreement.

21 Note: The heading to amended section 3 is to read:

22 **Terms used**

24 **5. Section 4 amended**

25 After section 4(1) insert:

27 (2A) The 2010 variation agreement is ratified.

28

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1 **6. Section 6 amended**

2 In section 6(2) after “agreement” insert:

3

4 or the 2010 variation agreement

5

6 **7. Section 7A inserted**

7 At the end of Part 2 insert:

8

9 **7A. Validation of certain licences**

10 (1) The Special Railway Licence (**SRL**) granted or
11 purportedly granted pursuant to the Agreement
12 clause 14(1)(a) before the commencement of the
13 *Railway and Port (The Pilbara Infrastructure Pty Ltd)*
14 *Agreement Amendment Act 2010* section 7 is, and is
15 taken always to have been, as valid as the SRL would
16 have been if consent from each title holder in respect of
17 the land affected by the SRL had been obtained as
18 required by the Agreement clause 7(3).

19 (2) Each Lateral Access Road Licence (**LARL**) granted or
20 purportedly granted pursuant to the Agreement
21 clause 14(1)(b) before the commencement of the
22 *Railway and Port (The Pilbara Infrastructure Pty Ltd)*
23 *Agreement Amendment Act 2010* section 7 is, and is
24 taken always to have been, as valid as the LARL would
25 have been if consent from each title holder in respect of
26 the land affected by the LARL had been obtained as
27 required by the Agreement clause 7(3).

28

1 **8. Schedule 2 inserted**

2 After Schedule 1 insert:

3

4 **Schedule 2 — 2010 variation agreement**

5

[s. 3]

6

2010

7

8

THE HONOURABLE COLIN JAMES BARNETT

9

PREMIER OF THE STATE OF WESTERN AUSTRALIA

10

AND

11

THE PILBARA INFRASTRUCTURE PTY LTD

12

ACN 103 096 340

13

AND

14

FORTESCUE METALS GROUP LTD

15

ACN 002 594 872

16

17

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

18

19

20

RATIFIED VARIATION AGREEMENT

21

22

23

24

[Solicitor's details]

25

26

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- 1 **THIS AGREEMENT** is made this 19th day of November 2010
2
3
4 **BETWEEN**
5
6
7 **THE HONOURABLE COLIN JAMES BARNETT MLA.**, Premier
8 of the State of Western Australia acting for and on behalf of the said
9 State and its instrumentalities from time to time (**State**)
10
11 **AND**
12 **THE PILBARA INFRASTRUCTURE PTY LTD ACN**
13 103 096 340 of Level 2, 87 Adelaide Terrace, East Perth, Western
14 Australia (**Company**)
15
16 **AND**
17
18 **FORTESCUE METALS GROUP LTD ACN 002 594 872** of
19 Level 2, 87 Adelaide Terrace, East Perth, Western Australia
20 (**Guarantor**).
21
22 **RECITALS**
23 **A.** The State, the Company and the Guarantor are the parties to the
24 agreement ratified by the *Railway and Port (The Pilbara*
25 *Infrastructure Pty Ltd) Agreement Act 2004* and which is
26 referred to in this Agreement as the “**Principal Agreement**”.
27 **B.** The State, the Company and the Guarantor wish to vary the
28 Principal Agreement.
29
30 **THE PARTIES AGREE AS FOLLOWS:**
31 **1.** Subject to the context, the words and expressions used in this
32 Agreement have the same meanings respectively as they have in
33 and for the purpose of the Principal Agreement.
34 **2.** The State shall sponsor a Bill in the Parliament of Western
35 Australia to ratify this Agreement and shall endeavour to secure

- 1 its passage as an Act prior to 30 June 2011 or such later date as
2 the parties may agree.
- 3 **3.** (a) Clause 4 does not come into operation unless or until an
4 Act passed in accordance with clause 2 ratifies this
5 Agreement.
- 6 (b) If by 31 December 2011 or such later date as may be
7 agreed pursuant to clause 2, clause 4 has not come into
8 operation then unless the parties hereto otherwise agree
9 this Agreement shall cease and determine and none of the
10 parties shall have any claim against the other parties with
11 respect to any matter or thing arising out of or done or
12 performed or omitted to be done or performed under this
13 Agreement.
- 14 **4.** The Principal Agreement is hereby varied as follows:
- 15 (1) in clause 1:
- 16 (a) by deleting the existing definition of “Additional
17 Infrastructure” and substituting the following new
18 definition:
19 “Additional Infrastructure” means:
20 (a) Train Loading Infrastructure;
21 (b) Train Unloading Infrastructure;
22 (c) a conveyor, train unloading and other
23 infrastructure necessary for the transport of
24 iron ore products, freight goods or other
25 products from the SRL Railway to the
26 Company’s Port Facilities within the Port;”;
- 27 (b) in the definition of “Lateral Access Road Licence”
28 by inserting “or clause 14(1a) as the case may be”
29 after “clause 14(1)(b)”;
- 30 (c) by inserting after the definition of “Pilbara Iron
31 Ore Railways” the following new definition:
32 “Plan” means the plan marked “A” initialled by or
33 on behalf of the parties for the purpose of
34 identification and which shows the land the subject

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- 1 of the Special Railway Licence as at
2 18 November 2010;
- 3 (d) in the definition of “Port Additional Infrastructure
4 Area” by inserting “and after the grant of the Port
5 Additional Infrastructure Licence means the area
6 from time to time the subject of that licence” after
7 “clause 8(1)(b)(i)”;
- 8 (e) in the definition of “Port Additional Infrastructure
9 Licence” by inserting “, as varied in accordance
10 with clauses 14(10) or 14(11)” after
11 “clause 14(7)(b)”;
- 12 (f) by inserting after the definition of “Port
13 Authorities Act” the following new definition:
14 “Port Authorities Minister” means the Minister in
15 the Government of the State for the time being
16 responsible for the administration of the Port
17 Authorities Act;
- 18 (g) in the definition of “Port Facilities Area” by
19 inserting “and after the grant of the Port Lease
20 means the area from time to time the subject of that
21 lease” after “clause 8(1)(a)”;
- 22 (h) in the definition of “Port Lease” by inserting “, as
23 varied in accordance with clause 14(10),” after
24 “clause 14(7)(a)”;
- 25 (i) in the definition of “Project” by deleting “each
26 approved pursuant to proposals submitted under
27 clause 10,” and substituting “in accordance with
28 approved proposals and”;
- 29 (j) in the definition of “Railway” by deleting
30 “extension or enlargement” and substituting
31 “expansion or extension”;
- 32 (k) in the definition of “Railway Corridor” by:
33 (i) deleting “upon” and substituting “after”;
34 (ii) inserting “from time to time” between
35 “land” and “the subject of the Special
36 Railway Licence”; and

- 1 (iii) deleting “less any portion of the Railway
2 Corridor surrendered by the Company from
3 time to time in accordance with the terms of
4 the Special Railway Licence”;
- 5 (l) in the definition of “Railway Operation Date” by
6 inserting “15 May 2008 being” after “means”;
- 7 (m) in the definition of “Special Railway Licence” by
8 inserting “, as varied in accordance with
9 clauses 14(4a), 14(4b), 14(6), 14(6a) or 14(6b),”
10 after “clause 14(1)(a)”;
- 11 (n) by inserting after the definition of “Special
12 Railway Licence” the following new definitions:
13 “**SRL Railway spur line**” means a standard gauge
14 heavy haul railway spur line from a mine, or from
15 in the vicinity of a mine, in the Pilbara region of
16 the said State connecting to the SRL Railway (and
17 whether to the initial railway line the subject of
18 approved proposals under clauses 10 and 11 or to
19 an expansion or extension thereof, including a spur
20 line, which is the subject of additional proposals
21 approved in accordance with clause 12) for
22 transport upon the SRL Railway to the Port of iron
23 ore products, freight goods or other products and
24 for the avoidance of doubt includes the approved
25 Christmas Creek to Cloud Break railway spur line
26 and the proposed (as at 18 November 2010)
27 Investigator railway spur line;
28 “**SRL Railway spur line Operation Date**” means
29 in respect of a SRL Railway spur line, the date of
30 the first carriage of iron ore products, freight goods
31 or other products over that spur line (other than for
32 construction or commissioning purposes);
- 33 (o) by deleting “and” at the end of the definition of
34 “this Agreement”;
- 35 (p) by deleting the full stop at the end of the definition
36 of “Trade Practices Act” and substituting a semi
37 colon; and

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- 1 (q) by inserting after the definition of “Trade Practices
2 Act” the following new definitions:
3 “**Train Loading Infrastructure**” means
4 conveyors, stockpile areas, blending and screening
5 facilities, stackers, re-claimers and other
6 infrastructure reasonably required for the loading
7 of iron ore products, freight goods or other
8 products onto the SRL Railway for transport to the
9 Port;
10 “**Train Unloading Infrastructure**” means train
11 unloading infrastructure reasonably required for
12 the unloading of iron ore from the SRL Railway to
13 be processed at processing facilities in the vicinity
14 of that train unloading infrastructure and with the
15 resulting iron ore products then loaded onto the
16 SRL Railway for transport to the Port; and
17 “**variation date**” means the date on which the Bill
18 to ratify the agreement made on or about
19 19 November 2010 between the State, the
20 Company and the Guarantor comes into operation
21 as an Act.”;
- 22 (2) in clause 4 by inserting “(unless the Minister otherwise
23 allows)” after “and subject to the Company”;
- 24 (3) in clause 6(a) by inserting “as varied from time to time”
25 after “ACN 002 594 872”;
- 26 (4) in clause 7(3) by:
27 (a) inserting “(except as required by any waiver
28 pursuant to clause 4 for the issue of the requisite
29 authority under the LAA as referred to in it)”
30 between “and” and “for obtaining”;
- 31 (b) inserting “unconditional and irrevocable” between
32 “all” and “consents”;
- 33 (c) inserting in paragraph (a) “(including as applying
34 pursuant to clause 12(2))” after “clause 5(1)”;

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- 1 (d) deleting the comma at the end of paragraph (c) and
2 substituting “(including as applying pursuant to
3 clause 12(2)); and”;
- 4 (e) inserting after paragraph (c) the following new
5 paragraph:
6 “(d) the inclusion of additional land in the
7 Special Railway Licence as referred to in
8 clauses 14(6), 14(6a) or 14(6b) as the case
9 may be,”;
- 10 (f) deleting “mining or petroleum right” and
11 substituting “mining, petroleum or geothermal
12 energy right”;
- 13 (g) deleting “(b) and (c)” and substituting “(b), (c) and
14 (d)”;
- 15 (h) inserting “including as applying pursuant to
16 clauses 12(4) or 12A(3)(c) as the case may be or in
17 respect of clause 14(6b) as referred to in that
18 subclause” before the full stop at end of the clause;
- 19 (5) by deleting the second sentence of clause 7(4);
- 20 (6) in clause 9(3) by inserting “, 12A” after “12”;
- 21 (7) in clause 12(1) by:
- 22 (a) deleting “clause 13” and substituting “clauses 12A
23 and 13”;
- 24 (b) deleting the reference to “a spur line” where it
25 appears first and substituting “a SRL Railway spur
26 line”;
- 27 (c) inserting “otherwise” after “or desires to”; and
- 28 (d) inserting “and in the case of the proposed
29 construction of a SRL Railway spur line, the
30 proposed capacity of such spur line” before the full
31 stop at the end of this clause;
- 32 (8) in clause 12(2) by inserting “is given before the variation
33 date and” after “If the notice”;

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- 1 (9) by inserting after subclause (2) of clause 12 the following
2 new subclause:
- 3 “(2a) If the notice is given on or after the variation date
4 and relates to a SRL Railway spur line, the
5 Minister shall within one month of receipt of such
6 notice advise the Company whether or not he
7 approves in principle the proposed construction of
8 such spur line. If the Minister gives in principle
9 approval the Company may (but not otherwise)
10 submit detailed proposals in respect thereof
11 provided that the provisions of clauses 4, 5, 7 and 9
12 shall mutatis mutandis apply prior to submission of
13 detailed proposals in respect thereof.”;
- 14 (10) in clause 12(3) by inserting “(or in the case of a notice
15 referred to in subclause (2a) after the giving of the
16 Minister’s in-principle consent as referred to in that
17 subclause)” after “in subclause (1)”;
- 18 (11) in clause 12(4) by deleting “other than subclause (5)(a)”
19 and substituting “other than subclause (2)(a)(i) and with
20 the reference in subclause (5)(b) to clause 7(3)(b) being
21 read as a reference to clause 7(3)(d)”;
- 22 (12) by inserting after clause 12 the following new clause:
- 23 “12A. (1) The Company shall not be permitted to:
- 24 (a) construct Train Loading Infrastructure
25 or Train Unloading Infrastructure; or
- 26 (b) change the nature and characteristics
27 of Train Loading Infrastructure or
28 Train Unloading Infrastructure from
29 that specified in approved proposals,
30 without the prior consent of the Minister and
31 approval of detailed proposals in regard
32 thereto in accordance with this clause.
- 33 (2) (a) If the Company desires to do anything
34 mentioned in subclause (1) it shall
35 give notice thereof to the Minister and

- 1 furnish to the Minister with that notice
2 an outline of its proposals in respect
3 thereto including:
- 4 (i) of any area outside the Railway
5 Corridor within which the Train
6 Loading Infrastructure or Train
7 Unloading Infrastructure is to be
8 constructed;
- 9 (ii) the nature and characteristics of
10 the Train Loading Infrastructure
11 or Train Unloading Infrastructure
12 to be constructed including the
13 capacity of such infrastructure;
14 and
- 15 (iii) such matters mentioned in
16 paragraphs (e), (f), (g), (i) and (j)
17 of clause 10(1) or as the Minister
18 otherwise requires.
- 19 (b) The Minister shall within one month
20 of receipt of a notice under
21 paragraph (a) of this subclause advise
22 the Company whether or not he
23 approves in principle the proposed
24 action by the Company so notified.
25 An approval by the Minister under
26 this subclause may be given subject to
27 conditions including conditions as to
28 the matters referred to in
29 paragraph (a) (i) and (ii) provided that
30 any such condition shall not without
31 the consent of the Company require
32 variations of:
- 33 (i) the term of the Special Railway
34 Licence, Lateral Access Road
35 Licences, the Port Lease, the Port
36 Additional Infrastructure Licence
37 or the Port Railway Licence;

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- 1 (ii) the rentals payable under any
2 lease or licence granted under or
3 pursuant to this Agreement
4 (except where the Company
5 desires any additional land to be
6 included in the Special Railway
7 Licence); or
8 (iii) this Agreement.
9 The Minister shall afford the
10 Company full opportunity to consult
11 with him in respect of any decision of
12 the Minister under this subclause.
- 13 (3) (a) If the Minister approves in principle
14 the proposed action of the Company
15 the Company shall within 18 months
16 or such longer period as the Minister
17 may from time to time allow of that
18 approval submit to the Minister
19 detailed proposals in respect thereof
20 in accordance with any conditions of
21 that approval, otherwise that approval
22 shall lapse.
- 23 (b) The Company acknowledges that the
24 provisions of clause 9 must be
25 complied with before the Company
26 submits its detailed proposals and that
27 notwithstanding the plan required to
28 be approved pursuant to clause 9 has
29 not been approved, the Minister's
30 in-principle approval will lapse as
31 provided in paragraph (a) if the
32 Company's detailed proposals are not
33 submitted within the time required by
34 that paragraph.
- 35 (c) The provisions of clause 10 (with the
36 reference in subclause (5)(b) to
37 clause 7(3)(b) being read as a
38 reference to clause 7(3)(d)) and

1 clause 11 (other than
2 subclauses (5)(a), (6) and (7) of
3 clause 11) shall mutatis mutandis
4 apply to detailed proposals submitted
5 pursuant to this clause with the
6 proviso that the Company may
7 withdraw such proposals at any time
8 before approval thereof or, where any
9 decision of the Minister in respect
10 thereof is referred to arbitration,
11 within 3 months after the award by
12 notice to the Minister that it shall not
13 be proceeding with the same. Subject
14 to and in accordance with the EP Act
15 and any approvals or licences required
16 under that Act, the Company shall
17 implement approved proposals
18 pursuant to this clause in accordance
19 with the terms thereof.

20 (4) On and after approval or determination of
21 any such proposal pursuant to
22 subclause (3)(c) the provisions of this clause
23 shall apply mutatis mutandis to any
24 subsequent desires of the Company referred
25 to in subclause (1).”;

26 (13) in clause 13(2) by:

27 (a) in paragraph (a) deleting all the words after
28 “proposals in respect thereto” and substituting:

29 “including:

30 (i) if Port Facilities or Port Additional
31 Infrastructure are to be constructed outside
32 the then Port Facilities Area or Port
33 Additional Infrastructure Area as the case
34 may be:

35 (A) the area or areas of the Port within
36 which any such Port Facilities are to
37 be constructed;

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- 1 (B) the nature and characteristics of such
2 Port Facilities, including the capacity
3 of the Port Facilities;
4 (C) the area or areas of the Port within
5 which such Port Additional
6 Infrastructure is to be constructed; and
7 (D) the nature and characteristics of such
8 Port Additional Infrastructure,
9 including the capacity of such Port
10 Additional Infrastructure; and
11 (ii) such matters mentioned in paragraphs (e) -
12 (g), (i) and (j) of clause 10(1) or as the
13 Minister otherwise requires.”; and
14 (b) in paragraph (b):
15 (i) inserting “(or within 2 months after receipt
16 of such notice if it relates to the construction
17 of Port Facilities or Port Additional
18 Infrastructure as referred to in
19 paragraph (a)(i))” after “under paragraph (a)
20 of this subclause”;
21 (ii) deleting “clauses 8(1)(b)(ii) and 8(1)(d)” and
22 substituting “paragraphs (a)(i)(A)-(D) of this
23 subclause”; and
24 (iii) inserting in subparagraph (ii) “(except where
25 the Company desires any additional area to
26 be included in the Port Lease or the Port
27 Additional Infrastructure Licence as the case
28 may be)” after “pursuant to this
29 Agreement”;
30 (14) by deleting paragraph (c) of clause 13(3) and substituting
31 the following new paragraphs:
32 “(c) The provisions of clause 10 (with the reference in
33 subclause (5)(b) to clauses 7(3)(b) and 7(3)(c)
34 being read as references to paragraph (d) of this
35 subclause) and clause 11 (other than
36 subclauses (5)(a), (6) and (7) of clause 11) shall
37 mutatis mutandis apply to detailed proposals

1 submitted pursuant to this clause with the proviso
2 that the Company may withdraw such proposals at
3 any time before approval thereof or, where any
4 decision of the Minister in respect thereof is
5 referred to arbitration, within 3 months after the
6 award by notice to the Minister that it shall not be
7 proceeding with the same. Subject to and in
8 accordance with the EP Act and any approvals or
9 licences required under that Act, the Company
10 shall implement approved proposals pursuant to
11 this clause in accordance with the terms thereof.

12 (d) The Company acknowledges that it shall be
13 responsible for liaising with every title holder in
14 respect of the land affected and for obtaining in a
15 form and substance acceptable to the Minister all
16 unconditional and irrevocable consents of each
17 such title holder to, and all statutory consents
18 required in respect of the land affected for the
19 inclusion of additional land in the Port Lease or the
20 Port Additional Infrastructure Licence as referred
21 to in clauses 14(10) or 14(11) as the case may be,
22 in accordance with this Agreement. For the
23 purposes of this paragraph (d) “title holder” means
24 a person who holds a mining, petroleum or
25 geothermal energy right (as defined in the LAA) in
26 respect of any part of the affected land, a person
27 who holds a lease or licence under the Port
28 Authorities Act in respect of any part of the
29 affected land, a person who holds any other title
30 granted under or pursuant to a Government
31 agreement in respect of any part of the affected
32 land, a person who holds a lease or licence in
33 respect of any part of the affected land under any
34 other Act applying in the said State and a person
35 (other than the Port Authority) in whom any part of
36 the affected land is vested, immediately before the
37 provision of such consents to the Minister as
38 referred to in clause 10(5)(b) (as applying pursuant
39 to paragraph (c) above). For the purpose of this

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- 1 paragraph (d) “title holder” does not include the
2 Port Authority.”;
- 3 (15) by inserting after subclause (1) of clause 14 the following
4 new subclause:
- 5 “(1a) On application made by the Company to the
6 Minister in such manner as the Minister may
7 determine, not later than 3 months after its
8 proposals submitted pursuant to clause 12(1) for
9 the construction of Lateral Access Roads for
10 access to the Railway Corridor to construct a SRL
11 Railway spur line have been approved or deemed
12 to be approved and the Company has complied
13 with the provisions of clause 10(5)(b) (as applying
14 pursuant to clause 12(4)), the State
15 notwithstanding the Mining Act shall cause to be
16 granted to the Company a miscellaneous licence or
17 licences to allow the construction, use and
18 maintenance of Lateral Access Roads within the
19 routes agreed for those Lateral Access Roads under
20 clause 7(1) (as applying pursuant to clause 12(2))
21 (each a “**Lateral Access Road Licence**”), each
22 such licence to be granted under and subject to,
23 except as otherwise provided in this Agreement,
24 the Mining Act in the form of Schedule 3 hereto
25 and subject to such terms and conditions as the
26 Minister for Mines may from time to time consider
27 reasonable and at the rentals from time to time
28 prescribed under the Mining Act.”;
- 29 (16) by inserting after subclause (4) of clause 14 the following
30 new subclauses:
- 31 “(4a) The Special Railway Licence shall be deemed
32 amended on the variation date by:
- 33 (a) the deletion of condition 1 in the schedule of
34 conditions set out in it and the substitution
35 of the following conditions:
- 36 “1. (a) The Company shall within 5 years
37 after the variation date surrender in

- 1 accordance with the provisions of
2 the Mining Act those portions of
3 this licence outlined and coloured
4 red on the Plan which are then not
5 being specifically used, or
6 approved for specific use, by the
7 Company pursuant to an approved
8 proposal.
- 9 (b) If after 18 November 2010 land is
10 included in this licence pursuant to
11 clause 14(6) of the Agreement, the
12 Company shall as soon as possible
13 after the construction of the SRL
14 Railway spur line upon the land
15 surrender in accordance with the
16 provisions of the Mining Act that
17 land down to a maximum width of
18 100 metres or as otherwise
19 approved by the Minister for the
20 safe operation of that SRL Railway
21 spur line and associated access
22 road within that area of land.
- 23 For the purpose of the conditions the
24 terms “approved proposal”, “Minister”,
25 “Plan” and “variation date” have the
26 meanings given in the Agreement.”;
27 and
- 28 (b) the deletion of “(excluding the taking of
29 stone, sand, clay and gravel) and the
30 substitution of “(including the taking of
31 stone, sand, clay and gravel in accordance
32 with the Agreement)”; and
- 33 (c) the insertion under the heading “In this
34 licence” of the following provision:
35 “- Reference to “the Agreement” includes
36 such agreement as varied from time to time.

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- 1 (4b) (a) From and including the variation date the
2 Company may, in accordance with approved
3 proposals, take stone, sand, clay and gravel:
4 (i) from the land included in the Special
5 Railway Licence pursuant to
6 subclauses (6) (in accordance with
7 approved proposals which were
8 submitted after the variation date),
9 (6a) or (6b) and while it is so
10 included, for the construction,
11 operation and maintenance of the
12 Railway and Additional Infrastructure
13 constructed within or approved for
14 construction within the Railway
15 Corridor; and
16 (ii) subject to paragraph (b), from any
17 other land within the Railway
18 Corridor and while such land is part
19 of the Railway Corridor, for the
20 construction, operation and
21 maintenance of the Railway and
22 Additional Infrastructure constructed
23 within or approved for construction
24 within such Railway Corridor.
25 (b) Before commencing the taking of stone,
26 sand, clay or gravel as referred to in
27 paragraphs (a)(ii) the Company must obtain
28 the consent of all of the then underlying title
29 holders of the land from which such taking
30 is to occur.
31 (c) Notwithstanding the Mining Act no royalty
32 shall be payable under the Mining Act in
33 respect of stone, sand, clay and gravel which
34 the Company is permitted to obtain from the
35 land the subject of the Special Railway
36 Licence.”;

- 1 (17) in clause 14(5) by:
- 2 (a) deleting “and subclause (6)” and substituting “and
- 3 subclauses (6), (6a) and (6b)”;
- 4 (b) in paragraph (a)(ii):
- 5 (i) deleting the quotation marks immediately
- 6 after “the Company”; and
- 7 (ii) inserting “as varied from time to time” after
- 8 “ACN 002 594 872”;
- 9 (c) inserting in paragraph (a)(iii):
- 10 (i) “or clause 14(1a)” after ““clause 14(1)(b)”;
- 11 and
- 12 (ii) “as varied from time to time” after “ACN
- 13 002 594 872”; and
- 14 (d) by inserting in each of paragraphs (b), (e) and (i)
- 15 “as varied from time to time” after “ACN
- 16 002 594 872”;
- 17 (18) by deleting subclause (6) of clause 14 and inserting the
- 18 following new subclauses:
- 19 “(6) If additional proposals are approved in accordance
- 20 with clause 12 for the construction of a SRL
- 21 Railway spur line outside the then Railway
- 22 Corridor, the Minister for Mines shall include the
- 23 area of land within which such construction is to
- 24 occur in the Special Railway Licence by
- 25 endorsement. The area of such land may be
- 26 included notwithstanding that the survey of the
- 27 land has not been completed but subject to
- 28 correction to accord with the survey when
- 29 completed at the Company’s expense.
- 30 (6a) If additional proposals are approved in accordance
- 31 with clause 12A for the construction of Train
- 32 Loading Infrastructure or Train Unloading
- 33 Infrastructure outside the then Railway Corridor,
- 34 the Minister for Mines shall include the area of
- 35 land within which such infrastructure is approved
- 36 for construction in the Special Railway Licence by

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- 1 endorsement. The area of such land may be
2 included notwithstanding that the survey of the
3 land has not been completed but subject to
4 correction to accord with the survey when
5 completed at the Company's expense.
- 6 (6b) Notwithstanding the provisions of the Mining Act
7 the Company may apply to the Minister for that
8 part of the land held by the Company under
9 miscellaneous licence 45/199 which is outside the
10 Port to be included in the Special Railway Licence.
11 The Minister shall confer with the Minister for
12 Mines in regard to such application and if the
13 Minister shall approve the application the Minister
14 for Mines shall upon surrender by the Company of
15 that miscellaneous licence and the Company
16 furnishing to the Minister the written consents
17 referred to in clause 7(3)(d) in respect of the land
18 the subject of the Company's application include
19 such land in the Special Railway Licence subject to
20 such of the conditions of the surrendered
21 miscellaneous licence as the Minister for Mines
22 determines. In respect of such land:
- 23 (a) the land shall in addition to any conditions
24 so determined by the Minister for Mines be
25 subject to same terms covenants and
26 conditions as apply to the Special Railway
27 Licence;
- 28 (b) the Minister for Mines may make such
29 apportionment of rents as may be necessary
30 in connection therewith; and
- 31 (c) the land may be included notwithstanding
32 that the survey of the land has not been
33 completed but subject to correction to
34 accord with the survey when completed at
35 the Company's expense.”;

- 1 (19) by inserting after subclause (8) of clause 14 the following
2 new subclauses:
- 3 “(9) The Company shall not be entitled to surrender the
4 Port Lease or Port Additional Infrastructure
5 Licence or any part or parts of them without the
6 prior consent of the Minister.
- 7 (10) If additional proposals are approved in accordance
8 with clause 13 for the construction of Port
9 Facilities outside the then Port Facilities Area or
10 Port Additional Infrastructure outside the then Port
11 Additional Infrastructure Area, the State shall not
12 later than 3 months after approval of such
13 additional proposals arrange for the Port Authority
14 to grant to the Company a variation (consistent
15 with the approved proposals and any conditions to
16 which the Minister’s in-principle approval under
17 clause 13 was given) of the Port Lease and/or the
18 Port Additional Infrastructure Licence as the case
19 may be to include the area or areas within which
20 such Port Facilities or Port Additional
21 Infrastructure are to be constructed in the Port
22 Facilities Area the subject of the Port Lease (in the
23 case of Port Facilities) and in the Port Additional
24 Infrastructure Area the subject of the Port
25 Additional Infrastructure Licence (in the case of
26 Port Additional Infrastructure).
- 27 (11) Concurrently with its application under
28 clause 14(6b) the Company may apply to the
29 Minister for that part of the land held by the
30 Company under miscellaneous licence 45/199
31 which is within the Port to be included in the Port
32 Additional Infrastructure Licence as part of the
33 Port Additional Infrastructure Area the subject of
34 the Port Additional Infrastructure Licence. The
35 Minister shall confer with the Port Authorities
36 Minister in regard to such application and if the
37 Minister shall approve such application and the
38 Company accepts any conditions subject to which
39 the Minister’s approval is given, then the State

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- 1 shall within 3 months after such approval, and
2 subject to the Company surrendering such
3 miscellaneous licence, arrange for the Port
4 Authority to grant to the Company a variation
5 (consistent with any conditions of the Minister's
6 approval) of the Port Additional Infrastructure
7 Licence to include such land in the Port Additional
8 Infrastructure Licence as part of the Port
9 Additional Infrastructure Area the subject of the
10 Port Additional Infrastructure Licence.”;
- 11 (20) in clause 16(1) by:
- 12 (a) in the definition of “access” in paragraph (a)
13 inserting “and, for the avoidance of doubt, does not
14 in any event include use of Train Loading
15 Infrastructure or Train Unloading Infrastructure
16 constructed under this Agreement” after “Access
17 Act”); and
- 18 (b) inserting after the definition of “agreement” in
19 paragraph (c) the following new paragraph:
20 “(ca) “**Expansion Access Date**” in relation to an
21 expansion or extension (including any spur
22 line) of the Railway means the date on
23 which all of the documents referred to in
24 subclause (8)(d) are approved or determined
25 under the relevant section of the Access Act
26 or of the Access Code in connection with the
27 expansion or extension of the Railway;”;
- 28 (21) in clause 16(2) by:
- 29 (a) deleting paragraph (a) and substituting the
30 following new paragraph:
31 “(a) The State and the Company intend that the
32 Access Act and the Access Code shall apply:
33 (i) to the Railway the subject of approved
34 proposals under clauses 10 and 11 as
35 soon as possible after that Railway is
36 constructed but before the Railway
37 Operation Date; and

- 1 (ii) to any expansion or extension thereof
2 (including a spur line) the subject of
3 approved proposals as soon as
4 possible after such expansion or
5 extension is constructed.”; and
- 6 (b) inserting after paragraph (c) the following new
7 paragraphs:
- 8 “(d) The Company shall from the date occurring
9 6 months before the date for completion of
10 construction of a SRL Railway spur line
11 specified in its time program for the
12 commencement and completion of
13 construction of that spur line submitted
14 under clause 12(1) keep the Minister fully
15 informed as to:
- 16 (i) the progress of that construction and
17 its likely completion; and
- 18 (ii) in respect of it, the likely date SRL
19 Railway spur line Operation Date.
- 20 (e) The Company shall on the SRL Railway
21 spur line Operation Date in respect of any
22 SRL Railway spur line notify the Minister
23 that the first carriage of iron ore products,
24 freight goods or other products as the case
25 may be over such spur line (other than for
26 construction or commissioning purposes)
27 has occurred.”;
- 28 (22) in clause 16(3) by inserting “)” after “Access Act”);
- 29 (23) by inserting after subclause (5) of clause 16 the following
30 new subclause:
- 31 “(5a) The provisions of subclause (5) shall apply mutatis
32 mutandis in respect of any expansion or extension
33 (including any spur line) of the Railway on the
34 basis that references in the provisions of
35 subclause (5) to “Railway” are to be read as
36 including the relevant expansion or extension and

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- 1 to “Access Date” are to be read as references to
2 “Expansion Access Date”.”;
- 3 (24) in clause 16(8) by:
- 4 (a) in paragraph (a) deleting “section 6” and
5 substituting “Part 2A”;
- 6 (b) deleting “and” after paragraph (b);
- 7 (c) deleting the full stop after “apply to the Railway”
8 at the end of paragraph (c) and substituting the
9 following:
10 “; and
- 11 (d) ensure the submission to the Regulator
12 within 3 months of the Access Act and the
13 Access Code applying to any expansion or
14 extension (including any spur line) of the
15 Railway of new or amended guidelines,
16 statements of policy, principles, rules,
17 arrangements and other documents and
18 matters referred to in this subclause (8) as
19 may be required by the Access Act and the
20 Access Code in respect of the relevant
21 expansion or extension of the Railway and
22 conduct itself in such manner as to, and do
23 all such things as are reasonable to, facilitate
24 the approval or determination of new or
25 amended documents or matters.”;
- 26 (25) by inserting after subclause (8) of clause 16 the following
27 new subclause:
- 28 “(9) The parties acknowledge, for the avoidance of
29 doubt, that the Company may provide train loading
30 services (using the Company’s Train Loading
31 Infrastructure) or train unloading services (using
32 the Company’s Train Unloading Infrastructure) to
33 a third party either as part of their agreement for
34 the Company to provide to the third party rail
35 transport services over the Railway or separately to
36 facilitate access by that third party to the Railway
37 pursuant to the Access Act and the Access Code.”;

- 1 (26) in clause 18(1) by inserting after the definition of
2 “Access Date” in paragraph (b) the following new
3 paragraph:
4 “(ba) “Additional Infrastructure” does not include Train
5 Loading Infrastructure or Train Unloading
6 Infrastructure;”;
- 7 (27) in clause 18(2) by:
8 (a) inserting “as well for the review of the regime
9 from time to time” after “constructed under this
10 Agreement”;
- 11 (b) inserting “and in reviewing the regime from time
12 to time” after “this clause is acceptable”; and
13 (c) deleting “(4)” after “6”;
- 14 (28) in clause 18(3) by inserting “from time to time” after
15 “regime approved”;
- 16 (29) in clause 19(2) by deleting “The” and substituting
17 “Except as otherwise provided in this Agreement, the”;
- 18 (30) in clause 21(3)(b) by:
19 (a) inserting “, 12A” between “12 or 13” in both
20 places;
21 (b) inserting “, 12A(2)” between “12(1) and 13(2)(a)”;
22 and

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1 (31) inserting after Schedule 2 the following new Schedule:

2 **“SCHEDULE 3**

3 **WESTERN AUSTRALIA**

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

6 **MINING ACT 1978**

7 **MISCELLANEOUS LICENCE FOR A LATERAL ACCESS**
8 **ROAD**

9 No.

10 WHEREAS by the Agreement (hereinafter called “the Agreement”)
11 ratified by the *Railway and Port (The Pilbara Infrastructure Pty Ltd)*
12 *Agreement Act 2004* the State agreed to grant to The Pilbara
13 Infrastructure Pty Ltd ACN 103 096 340 of Level 2, 87 Adelaide
14 Terrace, East Perth, Western Australia (hereinafter with its successors
15 and permitted assigns called “the Company”) a miscellaneous licence
16 for the construction use and maintenance of the Lateral Access Roads
17 (as defined in the Agreement) AND WHEREAS the Company
18 pursuant to clause 14(1a) of the Agreement has made application for
19 the said licence;

20 NOW in consideration of the rents reserved by and the provisions of
21 the Agreement and in pursuance of the *Railway and Port (The Pilbara*
22 *Infrastructure Pty Ltd) Agreement Act 2004* the Company is hereby
23 authorised to construct use and maintain a road on the land more
24 particularly delineated and described from time to time in the
25 Schedule hereto in accordance with the provisions of the Agreement
26 and proposals approved under the Agreement for a term of 4 years
27 commencing on the date hereof subject to the sooner determination or
28 cessation of the Agreement and for the purposes and upon and subject
29 to the terms covenants and conditions set out in the Agreement and the
30 *Mining Act 1978* as it applies to this licence, and any amendments to
31 the Agreement and the *Mining Act 1978* from time to time and to the
32 terms and conditions (if any) now or hereafter endorsed hereon and
33 the payment of rentals in respect of this licence in accordance with
34 clause 14(1a) of the Agreement PROVIDED ALWAYS that this

1 licence shall not be determined or forfeited otherwise than in
2 accordance with the Agreement.

3 In this licence:

- 4 - If the Company be more than one the liability of the Company
5 hereunder shall be joint and several.
- 6 - Reference to an Act includes all amendments to that Act for the
7 time being in force and also any Act passed in substitution
8 therefor or in lieu thereof and to the regulations and by-laws of
9 the time being in force thereunder.
- 10 - Reference to “the Agreement” includes such agreement as
11 varied from time to time.

12 **ENDORSEMENTS**

- 13 1. [Land to be surveyed at Company’s cost]
- 14 2. [Any further terms and conditions or stipulations as the Minister
15 for Mines may, consistent with the provisions of the
16 Agreement, determine and thereafter impose in respect of the
17 licence, including during the term of the Agreement.]

18 **SCHEDULE**

19 Description of land

20

21 DATED at Perth this day of .

22 **MINISTER FOR MINES”.**

- 23 5. The Guarantor confirms that its guarantee in favour of the State
24 contained in clause 39 of the Principal Agreement shall
25 continue notwithstanding the abovementioned variations to the
26 Principal Agreement.

27

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1 **EXECUTED** as a deed.

2 **SIGNED** by **THE HONOURABLE**)
3 **COLIN JAMES BARNETT**) [Signature]
4 in the presence of:)

5 Witness: [Signature]
6 Name: STEPHEN JOHN BOMBARDIERI

7 **THE COMMON SEAL** of **THE PILBARA)**
8 **INFRASTRUCTUREPTY LTD**) [C.S.]
9 ACN 103 096 340 was hereunto affixed)
10 in accordance with its constitution in the)
11 presence of:)

12 Director: [Signature]
13 Name: WILLIAM GRAEME ROWLEY

14 ~~Director~~/Secretary: [Signature]
15 Name: MARK ANDREW THOMAS

16 **THE COMMON SEAL** of **FORTESCUE)**
17 **METALS GROUP LTD** ACN 002 594 872) [C.S.]
18 was hereunto affixed in accordance)
19 with its constitution in the presence of:)

20 Director: [Signature]
21 Name: WILLIAM GRAEME ROWLEY

22 ~~Director~~/Secretary: [Signature]
23 Name: MARK ANDREW THOMAS
24

1 **Part 3 — *Railways (Access) Act 1998* amended**

2 **9. Act amended**

3 This Part amends the *Railways (Access) Act 1998*.

4 **10. Section 3 amended**

5 After section 3(4) insert:

6

7 (6) For the purposes of this Act and the Code, the railway
8 constructed pursuant to the TPI Railway and Port
9 Agreement includes the Christmas Creek to Cloud
10 Break spur line and is taken to have included that spur
11 line since construction of the spur line was completed.

12 (7) Subsections (3) and (4) do not apply to a siding or spur
13 line associated with the railway constructed pursuant to
14 the TPI Railway and Port Agreement.

15

16 **11. Section 11B replaced**

17 Delete section 11B and insert:

18

19 **11B. Amending Code for purposes of TPI Railway and**
20 **Port Agreement**

21 (1) The Minister may, by order published in the *Gazette*,
22 amend the Code for the purposes of its application to
23 the railway constructed pursuant to the TPI Railway
24 and Port Agreement.

25 (2) If, after the commencement of the *Railway and Port*
26 (*The Pilbara Infrastructure Pty Ltd*) *Agreement*
27 *Amendment Act 2010* section 11, the railway
28 constructed pursuant to the TPI Railway and Port
29 Agreement is expanded or extended (including by the
30 addition of a spur line), the Minister must, by order

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- 1 published in the *Gazette*, amend the Code so that it
2 applies to the expansion or extension.
- 3 (3) Sections 5 and 10 to 11A do not apply in relation to an
4 amendment made under this section.
- 5 (4) An amendment made under subsection (2) is not an
6 amendment of the Code for the purposes of
7 section 9(2) to (6) of this Act.
- 8

9
