

**NORTH WEST GAS DEVELOPMENT (WOODSIDE) AGREEMENT
AMENDMENT BILL 2019**

EXPLANATORY MEMORANDUM

Section 1

Contains the short title of the Act.

Section 2

Provides that

- (a) sections 1 and 2 of the Act come into operation on the day on which it receives Royal Assent.
- (b) the remainder of the Act comes into operation on the day after the day the Act receives Royal Assent.

Section 3

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

Section 4

Amends section 2 of the *North West Gas Development (Woodside) Agreement Act 1979* by inserting a definition of the phrase ***Fifth Supplementary Agreement***, being the agreement a copy of which is set out in Schedule 6 of the *North West Gas Development (Woodside) Agreement Act 1979*.

Section 5

Inserts new section 6B (Fifth Supplementary Agreement) by which:

- (1) the Fifth Supplementary Agreement is ratified;
- (2) the implementation of the Fifth Supplementary Agreement is authorised; and
- (3) without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Fifth Supplementary Agreement operates and takes effect despite any other Act or law.

Section 6

Inserts as Schedule 6 to the *North West Gas Development (Woodside) Agreement Act 1979* a copy of the Fifth Supplementary Agreement.

SCHEDULE 6 – FIFTH SUPPLEMENTARY AGREEMENT

PARTIES

The Honourable Mark McGowan, Premier of the State of Western Australia, acting for and on behalf of the State and its instrumentalities (the “**State**”); and

Woodside Energy Ltd., Shell Australia Pty Ltd, BHP Billiton Petroleum (North West Shelf) Pty. Ltd., BP Developments Australia Pty. Ltd., Chevron Australia Pty Ltd and Japan Australia LNG (MIMI) Pty. Ltd. (together collectively the “**Joint Venturers**”).

RECITALS

- A. Provides that the parties to the Variation Agreement are now parties to the North West Gas Development (Woodside) Agreement dated 27 November 1979 (“**1979 Agreement**”), as originally ratified by the *North West Gas Development (Woodside) Agreement Act 1979*. The 1979 Agreement as 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 the Variation Agreement.

THE PARTIES AGREE AS FOLLOWS

Ratification and operation

Clause 1(1)

Provides that the Variation Agreement (except clause 1) does not come into operation except in accordance with clause 1(2).

Clause 1(2)

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

Clause 1(3)

Requires the State to introduce into Parliament a Bill to ratify this Variation Agreement prior to 31 October 2019 (or at a later date as agreed by the parties) and to endeavour to secure its passage as an Act.

Clause 1(4)

Provides, unless the parties otherwise agree, for the termination of the Variation Agreement (and without a party having claim against the other in relation to the Variation Agreement) if by 31 March 2020 the Variation Agreement has not been ratified.

Clause 1(5)

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

Variations of the Principal Agreement

Clause 2(1)

Amends Clause 1 (Definitions) by inserting new definitions: “Second Variation Agreement”; and “Second Variation Date”.

Clause 2(2)

Inserts after clause 11 new clauses 11A and 11B in respect to the Joint Venturers providing a Community Development Plan and a Local Participation Plan.

Clause 11A - Community development plan

Subclauses (1)(a)-(e) define what “community and social benefits” include.

Subclause (2) states that the Joint Venturers acknowledge the need for community and social benefits flowing from the Principal Agreement.

Subclauses (3)(a) – (c) require the Joint Venturers to prepare a draft Community Development Plan and to confer with the Minister on the plan within 2 months after the Second Variation Date. Following that conferral, and within 3 months after the Second Variation Date, the Joint Venturers are required to provide to the Minister the Community Development Plan.

Subclause (4) requires the Joint Venturers, at least 3 months before the anticipated submission of additional proposals, to advise the Minister about how their proposed activities will affect the Community Development Plan.

Subclause (5) requires the Joint Venturers to implement the Community Development Plan.

Subclause (6) requires the Joint Venturers to report annually to the Minister on the implementation of the Community Development Plan.

Subclause (7) allows the Minister and the Joint Venturers to confer as to any amendments desired to the Community Development Plan.

Clause 11B - Local participation plan

Subclauses (1)(a)-(c) define what “local industry participation benefits” mean.

Subclause (2) states that the Joint Venturers acknowledge the need for local industry participation benefits flowing from the Principal Agreement.

Subclause (3) requires the Joint Venturers to provide a Local Participation Plan to the Minister within 3 months of the Second Variation Date which contains:

- (a) the strategies which the Joint Venturers and its third party contractors will use, as far as it is reasonable and economically practicable, to maximise the local industry participation benefits;
- (b) detailed information on the procurement practices the Joint Venturers and its third party contractors will adopt for tenders and letting contracts, and how such practices will provide full, fair and reasonable opportunity to Western Australian suppliers, manufacturers and contractors;
- (c) detailed information on the methods the Joint Venturers and its third party contractors will use to have their procurement officers promptly introduced to Western Australian suppliers, manufacturers and contractors; and

- (d) details of the communication strategies the Joint Venturers and its third party contractors will use to alert Western Australian professionals, suppliers, manufacturers and consultants to services and procurement opportunities.

Subclause (4) requires the Joint Venturers to implement the Local Participation Plan.

Subclause (5) allows the Minister and the Joint Venturers to confer as to any amendments desired to the Local Participation Plan.

Subclause (6) requires the Joint Venturers, at least 3 months before the anticipated submission of additional proposals, to give the Minister information about the implementation of the Local Participation Plan in relation to the activities to be the subject of the proposals.

Clause 2(3)

Amends clause 12 (Use of local professional services labour and materials) by:

- (a) inserting in clause 12(1)(c) the words “full, fair and”, after the words “contractors are given”;
- (b) deleting the words “and where possible preference” in clause 12(1)(d);
- (c) inserting after clause 12(2), the new subclause (2a), which require the Joint Venturers’ third party contractors to undertake their procurement activities in accordance with the Local Participation Plan;
- (d) inserting in clause 12(3) the words “and of the relevant plan provided pursuant to clause 11B”, after the words “provisions of this Clause”, and deleting the words “subclause (2) of”; and
- (e) inserting after clause 12(3), a new subclause (4) which acknowledges that the State may enact general legislation in respect to local participation, in substitution for or modification of the provisions of the Principal Agreement relating to local participation (including clauses 11B and 12).

Clause 2(4)

Inserts after clause 18(4) a new subclause (5), titled: “**Cessation of water supply requirements under this Agreement**”.

This subclause acknowledges that the Joint Venturers and the Water Corporation have entered into a Water Supply Agreement dated 2 August 2019 which will replace, effective from the Second Variation Date, the current rights and obligations of the State (including the Water Corporation) and the Joint Venturers in respect to water supply and associated matters under the Principal Agreement.

On and from the Second Variation Date, the rights and the obligations of the State (including the Water Corporation) and the Joint Venturers, arising from clause 18 and from associated water-supply arrangements under previously approved proposals shall cease. The Joint Venturers shall however remain liable for any antecedent breach or default that arises from those prior arrangements.

Clause 2(5)

Amends clause 22 (Rating) relating to the payment of rates by excluding from the unimproved value rating exemption any part of the land which is a specified improvement. Specified improvements being accommodation, recreation or administration facilities and associated buildings, or maintenance workshops within 100 metres of such facilities.

Clause 2(6)

Amends clause 33 (Environmental protection) relating to compliance with environmental requirements by inserting specific reference to the *Environmental Protection Act 1986*.

Clause 2(7)

Amends clause 38 (Arbitration) by deleting the words "their umpire" and substituting with "a third and presiding arbitrator". Reference to the "*Arbitration Act 1895*" is also deleted and is replaced by the current "*Commercial Arbitration Act 2012*".

Clause 2(8)

Amends clause 46 by:

- (a) in subclause (1) extending the term of the Principal Agreement from 31 December 2034 to 31 December 2059; and
- (b) in subclause (2) extending the date on which the Joint Venturers may provide notice of their desire to extend the Principal Agreement from 30 September 2034 to 30 September 2059.

Clause 2(9)

Amends the applicable law provision by requiring the parties to the Principal Agreement to submit to the jurisdiction of the courts of Western Australia.