

**IRON ORE AGREEMENTS LEGISLATION (AMENDMENT, TERMINATION
AND REPEALS) BILL 2011**

EXPLANATORY MEMORANDUM

PART 1 – PRELIMINARY

Section 1 Short Title

Contains the short title of the Act.

When enacted the Bill will be cited as the *Iron Ore Agreements Legislation (Amendment, Termination and Repeals) Bill 2011*.

Section 2 Commencement

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

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

PART 2 – IRON ORE (MOUNT NEWMAN) AGREEMENT ACT 1964 AMENDED

Section 3 Act Amended

States that this Part amends the *Iron Ore (Mount Newman) Agreement Act 1964* (referred to below as **the subject Act** for the purposes of explaining this Part).

Section 4 Section 2 Amended

Inserts a definition for "the Seventh Variation Agreement" into section 2 of the subject Act and makes consequential amendments for that purpose.

Section 5 Section 4D Inserted

Inserts section 4D into the subject Act which ratifies and authorises the implementation of the Seventh Variation Agreement (a variation to the agreement approved by the subject Act and known as the Iron Ore (Mount Newman) Agreement 1964).

Section 6 Eighth Schedule

Inserts the Seventh Variation Agreement as the Eighth Schedule to the subject Act.

EIGHTH SCHEDULE– SEVENTH VARIATION AGREEMENT

IRON ORE (MT NEWMAN) AGREEMENT ACT 1964

VARIATION AGREEMENT

Parties

The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (**the State**) and BHP Billiton Minerals Pty. Ltd., Mitsui-Itochu Iron Pty. Ltd. and Itochu Minerals & Energy of Australia Pty. Ltd. (**the Joint Venturers**).

Recitals

- A. Provides details of the State Agreement as originally approved and acknowledges past variations made to it. The State Agreement as so varied is called the Principal Agreement.
- B. Advises that the parties wish to vary the Principal Agreement on the terms and conditions set out in the Variation.

Clause 1 Interpretation

Provides subject to the context for words and expressions used in the Variation Agreement to have the same meanings respectively as they have in and for the purpose of the Principal Agreement.

Clause 2 Ratification and Operation

- (1) The State commits to introduce and sponsor a Bill into State Parliament prior to 31 December 2011 to ratify the Variation Agreement and endeavour to secure its passage as an Act.
- (2) The provisions of this Agreement will not come into operation until the day after the day on which the Bill has been passed by the State Parliament and commences to operate as an Act
- (3) If by 30 June 2012 this Bill has not commenced to operate as an Act then, unless the parties hereto otherwise agree, this Agreement will then cease.
- (4) On the day after the day on which the said Bill commences to operate as an Act all the provisions of this Agreement will operate and take effect

Clause 3 Variation of Principal Agreement

Sets out the proposed variations to the Principal Agreement.

**Subclause (1)
varies clause 1 definitions**

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

"Eligible Existing Tenure" – defined as

- (a) a miscellaneous licence or general purpose lease granted to the Company under the Mining Act 1978; or a lease or easement granted to the Company under the Land Administration Act, or
- (b) an application by the Company for the grant of such a tenement and not held pursuant to this Agreement and where that tenure was granted or that application was made on or before 1 October 2011

"LAA" means the Land Administration Act 1997 (WA);

"Relevant Land", in relation to Eligible Existing Tenure or Special Advance Tenure, means the land which is the subject of that Eligible Existing Tenure or Special Advance Tenure;

"second variation date" means the date on which clause 3 of the variation agreement comes into operation;

"Special Advance Tenure" means:

- (a) a miscellaneous licence or general purpose lease to be granted to the Company under the Mining Act 1978; or
- (b) an easement or a lease to be granted to the Company under the Land Administration Act,

references to the Land Act also apply to the Land Administration Act

**Subclause (2) inserts new clauses
7D (Community Development Plan) and
7E (Local Participation Plan)**

Clause 7D (Community Development Plan)

Requires the Company to prepare a plan which describes the Company's proposed strategies for achieving community and social benefits in connection with its activities under this Agreement. This plan shall include a process for regular consultation with respect to the need for community and social benefits and for reporting to the Minister about the outcomes of this consultation.

At least 3 months before the anticipated submission of proposals relating to a proposed development, the Company must give to the Minister information about how the proposed development may affect the Community Development Plan as approved.

Requires the Company to report at least annually to the Minister about the Company's implementation of the plan.

Provision is also made for amendment of the Community Development Plan or adoption of a new plan as requested by either the Minister or the Company.

Clause 7E (Local Participation Plan)

Requires the Company to prepare a plan which describes proposed strategies the Company will use, and require a third party supplier to use, to maximise the uses and procurement of materials and services within Western Australia.

This plan is to include detailed information on the procurement practices the Company will adopt in calling for tenders and letting contracts and how such practices will provide fair and reasonable opportunity for suitably qualified Western Australian suppliers, manufacturers and contractors to tender for works, materials, plant, equipment and supplies.

This plan is also to include details of the communication strategies the Company will use to alert Western Australian suppliers, manufacturers and contractors to services opportunities and procurement opportunities

At least 6 months before the anticipated submission of proposals relating to a proposed development, the Company must give to the Minister information about the implementation of this plan in relation to the proposed development

Provision is also made for amendment of the Local Participation Plan or adoption of a new plan as requested by either the Minister or the Company.

Subclause (3)

**inserts a paragraph following subclause 8(1)(b)(ii)
inserts new subclauses 8(2a) (Application for Eligible Existing Tenure to be held pursuant to this Agreement),
8(2b) (Application for Special Advance Tenure to be granted pursuant to this Agreement)
and 8(2c)**

Inserts a paragraph following Subclause 8(1)(b)(ii) to allow for detailed proposals to refer to activities on tenure proposed to be granted pursuant to this paragraph.

New subclause 8(2a) which makes provision for the Company to, with the Minister's consent bring existing infrastructure tenure (and applications) under the State Agreement, on such conditions as the Minister sees fit.

New subclause 8(2b) which makes provision for the Company to, with the Minister's consent apply for (and if necessary have granted) tenure to be used for State Agreement purposes before it submits proposals, under special circumstances.

New subclause 8(2c) states that the Minister's decisions under subclauses 8(2a) and 8(2b) are not subject to arbitration.

Subclauses 8(3) and 8(3B) are amended to refer to the new subclauses 8(2a) and 8(2b).

Subclause (4)

**modifies subclause 9(2)(a),
inserts a new subclause 9(2)(aa) (Crossings over Railway) and
amends clause 9(2)(j) (Royalties)**

Deletes part of clause 9(2)(a) which refers to provision of crossing places for roads, stock and other railways as this concept is addressed in the new paragraph (aa) of Clause 9(2)

Crossings over Railway

New subclause 9(2)(aa) which strengthens provisions to facilitate third party crossings of railways built under State Agreements by providing for the Minister to determine whether there is undue prejudice and interference to the company's operations, subject to prior consultation with the State Agreement company.

Royalties

Subclause (c) amends clause 9(2)(j) to introduce a phased increase in the royalty rate for fines ore from:

- 5.625% to 6.5% from 1 July 2012; and
- 6.5% to 7.5% from 1 July 2013.

Subclause (5)

**deletes the definition of "LAA",
inserts a new subclause 9E(3)(d) (Railway Corridor),
amends clause 9E(4)(a) (Company to submit proposals for Railway)
and
amends part of clause 9E(7)(c) (Construction and operation of a railway)**

The definition of "LAA" in subclause 9E(1)(c) is deleted as this definition has been included in clause 1.

New subclause 9E(3)(d) enables the Minister to waive a consent requirement under the Special Railway License provisions in

circumstances where it has not been possible to reach agreement with an affected land holder, and where consents have been obtained or a determination has been made under the Mining Act 1978 processes in relation to that tenure.

The amendment to subclause 9E(4)(a) clarifies the intent of this clause.

The amendments to subclause 9E(7)(c) deletes the requirement to allow for crossings of roads, railways, conveyors, pipelines and other utilities as this is more generally addressed for all railways under this Agreement in the new Clause 9(2)(aa)

The addition of subclause 9E(7)(k) refers to new Clause 9(2)(aa)

NOTE: Given that the majority of the amendments made to the Iron Ore (Mount Newman) Agreement 1964 by the Seventh Supplementary Agreement Variation (herein "*the Newman Agreement*") are also made in respect of the four other State Agreements varied by this Act, the following commentary in relation to the other four Variation Agreements will:

- **focus on significant differences between the content of each of the following Variations and the content of the Newman Agreement; and**
- **where similar amendments are made by each of the following Variations to those made by the Newman Agreement, the commentary will be cross-referenced to the equivalent clause of the Iron Ore (Hamersley Range) Agreement 1963, as it will be varied by the Newman Agreement (herein "*the Newman Agreement*"), rather than repeat those comments.**

PART 3 – IRON ORE (MOUNT GOLDSWORTHY) AGREEMENT ACT 1964 AMENDED

Section 7

States that this Part amends the *Iron Ore (Mount Goldsworthy) Agreement Act 1964* (referred to below as **the subject Act** for the purposes of explaining this Part).

Section 8

Inserts a definition for "the fifth Variation Agreement" into section 3 of the subject Act and makes consequential changes for the purpose.

Section 9

Inserts section 5D into the subject Act which ratifies and authorises the implementation of the Fifth Variation Agreement (a variation to the agreement approved by the subject Act and known as the Iron Ore (Mount Goldsworthy) Agreement 1964).

Section 10

Inserts the Fifth Variation Agreement as the Sixth Schedule to the subject Act.

SIXTH SCHEDULE– FIFTH VARIATION AGREEMENT
IRON ORE (MOUNT GOLDSWORTHY) AGREEMENT ACT 1964
VARIATION AGREEMENT

Parties

The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (**the State**) and BHP Billiton Minerals Pty. Ltd., Mitsui Iron Ore Corporation Pty. Ltd. and Itochu Minerals & Energy of Australia Pty. Ltd. (**the Joint Venturers**).

Recitals

- A. Provides details of the State Agreement as originally approved and of past variations made to it. The State Agreement as so varied is called the Principal Agreement.
- B. Advises that the parties wish to add to and vary the Principal Agreement on the terms and conditions set out in the Variation.

Clauses 1 and 2 are identical to the corresponding clauses 1 and 2 in the Newman Agreement

Clause 3

Sets out the proposed variations to the Principal Agreement.

Subclause (1) varies clause 1 definitions

The new definitions are substantially the same as described in the equivalent clause 1 of the Newman Agreement.

Subclause (2) adds a paragraph to Clause 8(2)(b)(ii)

This paragraph is substantially the same as the equivalent paragraph added to subclause 8(1)(b)(ii) of the Newman Agreement.

Subclause (3) inserts new clauses

**7D (Community Development Plan) and
7E (Local Participation Plan)**

These clauses are equivalent in application to those in the corresponding clauses 7D and 7E of the Newman Agreement.

Subclause (4)

inserts new subclauses 8(3a) (Application for Eligible Existing Tenure to be held pursuant to this Agreement) , 8(3b) (Application for Special Advance Tenure to be granted pursuant to this Agreement) and 8(3c)

These clauses are equivalent in application to those in the corresponding clauses 8(2a), 8(2b) and 8(2c) of the Newman Agreement.

Subclause (5) amends subclauses 8(4) and 8(4a)

This clause is equivalent in application to the corresponding clauses 8(3) and 8(3B) of the Newman Agreement.

Subclause (6)

modifies subclause 8(5) and inserts new Subclause 8(5)(g) (Reservation of land within the Port of Port Hedland for leases)

The modifications to subclause 8(5) are associated with the insertion of new subclause 8(5)(g).

This subclause also inserts new Subclause 8(5)(g) which refers to Plan "D" which identifies land which will be reserved for BHP Billiton in the marine and landside area for the Outer Harbour until the end of 2030 subject to the submission of proposals for development by 2014. The reservation falls away if the company does not submit proposals by the required timeframe and once tenure is granted for the initial development (2 berths and associated infrastructure). The reservation will remain in place for the remaining future 6 berths, until developed and tenure is granted.

Subclause (7) deletes a portion of subclause 9(2)(a) (Operation of Railway)

This clause is equivalent in application to the corresponding clause 9(2)(a) of the Newman Agreement.

Subclause (8) inserts a new subclause 9(2)(aa) (Crossings over Railway)

This clause is equivalent in application to the corresponding clause 9(2)(aa) of the Newman Agreement.

Subclause (9) amends clause 9(2)(j) (Royalties)

This clause is equivalent in application to the corresponding clause 9(2)(j) of the Newman Agreement.

Subclause (10) deletes clause 9(2)(j)(iia)

This clause refers to royalties for beneficiated ore and is no longer relevant.

Subclause (11) inserts new clause 9DA (Transfer of rights to section of Goldsworthy-Nimingarra Railway)

Subclause (6) inserts new clause 9DA which grants the ability to transfer the Goldsworthy railway from the *Iron Ore (Goldsworthy-Nimingarra) Agreement 1972* to the Mount Goldsworthy Agreement.

Subclause (12) amends clause 9E (Miscellaneous Licenses for Railways):

This clause is equivalent in application to the corresponding clause 9E of the Newman Agreement.

Subclause (13)

deletes a portions of subclauses 12(1) and 12(5)(a) and all of subclauses 12(6), 12(7), 12(8), and 12(9) and replaces them with a new Subclause 12(6)

These amendments are to remove production limits which were linked to the company's processing obligations which have been discharged and the clauses are therefore spent.

Subclause (14) deletes Clause 12A

This provides for the deletion of Plan "C" under the Mount Goldsworthy Agreement, which reserved certain lands on Finucane Island at Port Hedland as the reservation has been spent and the need for the provision is no longer required;

PART 4 – IRON ORE (GOLDSWORTHY-NIMINGARRA) AGREEMENT ACT 1972 AMENDED

Section 11

States that this Part amends the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972* (referred to below as **the subject Act** for the purposes of explaining this Part).

Section 12

Inserts a definition for "the Third Variation Agreement" into section 2 of the subject Act and makes consequential amendments for that purpose.

Section 13

Inserts section 8 into the subject Act which ratifies and authorises the implementation of the Third Variation Agreement (a variation to the agreement ratified by the subject Act and known as the Iron Ore (Goldsworthy-Nimingarra) Agreement 1972).

Section 14

Inserts the Third Variation Agreement as Schedule 4 to the subject Act.

FOURTH SCHEDULE– THIRD VARIATION AGREEMENT
IRON ORE (GOLDSWORTHY- NIMINGARRA) AGREEMENT ACT 1972
VARIATION AGREEMENT

Parties

The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (**the State**) and Pty Ltd BHP Billiton Minerals, Mitsui Iron Ore Corporation Pty Ltd and Itochu Minerals & Energy of Australia Pty Ltd (**Joint Venturers**).

Recitals

- A. Provides details of the State Agreement as originally approved and of past variations made to it. The State Agreement as so varied is called the Principal Agreement.
- B. Advises that the parties wish to add to and vary the Principal Agreement on the terms and conditions set out in the Variation.

Clauses 1 and 2 are identical to the corresponding clauses 1 and 2 in the Newman Agreement.

Clause 3

Sets out the proposed variations to the Principal Agreement.

Subclause (1) varies clause 1 definitions

The new definitions are substantially the same as described in the equivalent clause 1 of the Newman Agreement.

**Subclause (2) inserts new clauses
8C (Community Development Plan) and
8D (Local Participation Plan)**

These clauses are equivalent in application to those in the corresponding clauses 7D and 7E of the Newman Agreement.

Subclause (3) inserts Subclause 11(3a) (Lands)

This paragraph is substantially the same as the equivalent paragraph added to subclause 8(1)(b)(ii) of the Newman Agreement.

Subclause (4)

inserts new subclauses 11(5a) (Application for Eligible Existing Tenure to be held pursuant to this Agreement) , 11(5b) (Application for Special Advance Tenure to be granted pursuant to this Agreement) and 11(5c)

These clauses are equivalent in application to those in the corresponding clauses 8(2a), 8(2b) and 8(2c) of the Newman Agreement.

Subclause (5) amends subclauses 11(6) and (6a)

This clause is equivalent in application to the corresponding clauses 9(2) and (2a) of the Newman Agreement.

Subclause (6) deletes a portion of clause 12A (Operation of Railway)

This clause is equivalent in application to the corresponding clause 9(2)(a) of the Newman Agreement.

Subclause (7) inserts a new clause 12B (Crossings over Railway)

This clause is equivalent in application to the corresponding clause 9(2)(aa) of the Newman Agreement.

Subclause (8) inserts new clause 16BA (Transfer of rights to section of Goldsworthy-Nimingarra Railway)

Subclause (7) inserts new clause 16BA which grants the ability to transfer the Goldsworthy railway from the *Iron Ore (Goldsworthy-Nimingarra) Agreement 1972* to the Mount Goldsworthy Agreement.

Subclause (9) amends clause 16C (Miscellaneous Licenses for Railways):

This clause is equivalent in application to the corresponding clause 9E of the Newman Agreement.

Subclause (10) amends clause 33(1) (Royalties)

This clause is equivalent in application to the corresponding clause 9(2)(j) of the Newman Agreement.

**PART 5 – IRON ORE (MCCAMEY'S MONSTER) AGREEMENT
AUTHORISATION ACT 1972 AMENDED**

Section 15

States that this Part amends the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972* (referred to below as **the subject Act** for the purposes of explaining this Part).

Section 16

Inserts a new section 10 which ratifies and authorises the implementation of the Fifth Variation Agreement (a variation to the agreement authorised by the subject Act and known as the Iron Ore (McCamey's Monster) Agreement 1972).

Section 17

Inserts the Fifth Variation Agreement as Schedule 6 to the subject Act.

SIXTH SCHEDULE– FIFTH VARIATION AGREEMENT
IRON ORE (MCCAMEY’S MONSTER) AGREEMENT 1972
VARIATION AGREEMENT

Parties

The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (**the State**) and BHP Billiton Iron Ore (Jimblebar) Pty. Ltd. (**Company**).

Recitals

- A. Provides details of the State Agreement as originally approved and of past variations made to it. The State Agreement as so varied is called the Principal Agreement.
- B. Advises that the parties wish to add to and vary the Principal Agreement on the terms and conditions set out in the Variation.

Clauses 1 and 2 are identical to the corresponding clauses 1 and 2 in the Newman Agreement.

Clause 3

Sets out the proposed variations to the Principal Agreement.

Subclause (1) varies clause 1 definitions

The new definitions are substantially the same as described in the equivalent clause 1 of the Newman Agreement.

Subclause (2) modifies subclauses 9(1) and 9(6)

These modifications are to delete references to clause 11A, which is deleted.

Subclause (3) inserts new clauses

**9BA (Community Development Plan) and
9BB (Local Participation Plan)**

Clauses 9BA and 9BB are equivalent in application to those in the corresponding clauses 7D and 7E of the Newman Agreement.

Subclause (4) deletes clause 11A

This deletion is to remove production limits which were linked to the company's processing obligations which have been discharged and the clauses are therefore spent.

Subclause (5) deletes a portion of subclause 11B(4)

This deletes part of the last line of subclause 11B(4) which refers to the deleted clause 11A.

Subclause (6) deletes a portion of subclause 11C(2)(a)

This deletes part of the last line of subclause 11C(2)(a) which refers to the deleted clause 11A.

Subclause (7) amends clause 11E (Miscellaneous Licenses for Railways):

This clause is equivalent in application to the corresponding clause 9E of the Newman Agreement.

Subclause (8)

Adds to clause 13(1) (Other Leases) and inserts new subclauses 13(2a) (Application for Eligible Existing Tenure to be held pursuant to this Agreement), 13(2b) (Application for Special Advance Tenure to be granted pursuant to this Agreement) and 13(2c) and renumbers subclause 13(2a) to 13(2d)

This clause is equivalent in application to the corresponding clause 8(1)(b)(iii) of the Newman Agreement.

These clauses are equivalent in application to those in the corresponding clauses 8(2a), 8(2b) and 8(2c) of the Newman Agreement.

Clause 11(2a) is renumbered to 2(d) and inserts references to the new clauses 13(2a) and 13(2b).

Subclause (9)

deletes a portion of subclause 19(2) (Operation of Railway) and inserts a new subclause 19(2aa) (Crossings over Railway)

These clauses are equivalent in application to the corresponding clauses 9(2)(a) and 10(2)(aa) of the Newman Agreement.

Subclause (10) amends clause 31(1) (Royalties)

This clause is equivalent in application to the corresponding clause 9(2)(j) of the Newman Agreement.

**PART 6 – IRON ORE (MARILLANA CREEK) AGREEMENT ACT 1991
AMENDED**

Section 18

States that this Part amends the *Iron Ore (Marillana Creek) Agreement Act 1991* (referred to below as **the subject Act** for the purposes of explaining this Part).

Section 19

Inserts a definition for "the Fourth Variation Agreement" into section 3 of the subject Act and makes consequential amendments for that purpose.

Section 20

Inserts section 10 into the subject Act which ratifies the Fourth Variation Agreement (a variation to the agreement ratified by the subject Act and known as the Iron Ore (Marillana Creek) Agreement 1991).

Section 21

Inserts the Fourth Variation Agreement as Schedule 5 to the subject Act.

FIFTH SCHEDULE– FOURTH VARIATION AGREEMENT

IRON ORE (MARILLANA CREEK) AGREEMENT 1991

VARIATION AGREEMENT

Parties

The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (**the State**) and BHP Billiton Minerals Pty. Ltd., Itochu Minerals & Energy of Australia Pty. Ltd. and Mitsui Iron Ore Corporation Pty. Ltd. (**the Joint Venturers**).

Recitals

- A. Provides details of the State Agreement as originally approved and of past variations made to it. The State Agreement as so varied is called the Principal Agreement.
- B. Advises that the parties wish to add to and vary the Principal Agreement on the terms and conditions set out in the Variation.

Clauses 1 and 2 are identical to the corresponding clauses 1 and 2 in the Newman Agreement.

Clause 3

Sets out the proposed variations to the Principal Agreement.

Subclause (1) varies clause 1 definitions

The new definitions are substantially the same as described in the equivalent clause 1 of the Newman Agreement.

Subclause (2) deletes a portion of subclause 10(1)

Subclause (2) deletes a portion of subclause 10(1) which refers to production limits.

Subclause (3) inserts new clauses

**10C (Community Development Plan) and
10D (Local Participation Plan)**

These clauses are equivalent in application to those in the corresponding clauses 7D and 7E of the Newman Agreement.

Subclause (4)

deletes portions of subclauses 11(1), 11(2), 11(3) 11(8)(a) and 11(5) and

inserts subclause 11(9)

These subclauses remove references to production and workforce limits which were linked to the company's processing obligations which have been discharged and the clauses are therefore spent. The new subclause 11(9) clarifies that the company is no longer required to seek the Minister's approval to increase production limits

Subclause (5) amends clause 13(1) (Royalties)

This clause is equivalent in application to the corresponding clause 9(2)(j) of the Newman Agreement.

Subclause (6) amends clause 14C (Miscellaneous Licenses for Railways):

This clause is equivalent in application to the corresponding clause 9E of the Newman Agreement.

Subclause (7) deletes a portion of subclause 21(2)(a)

Subclause (7) deletes a portion of subclause 21(2)(a) which refers to production limits.

Subclause (8)

Adds to Subclause 22(1) (Lands), inserts new subclauses 22(2a) (Application for Eligible Existing Tenure to be held pursuant to this Agreement),

22(2b) (Application for Special Advance Tenure to be granted pursuant to this Agreement)

and 22(2c)

and renumbers subclause 22(2a) to 22(2d)

The paragraph added to subclause 22(1) is substantially the same as the equivalent paragraph added to subclause 8(1)(b)(ii) of the Newman Agreement.

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Subclauses 22(2a), 22(2b) and 22(2c) are equivalent in application to those in the corresponding clauses 8(2a), 8(2b) and 8(2c) of the Newman Agreement.

Clause 22(2a) is renumbered to 2(d) and inserts references to the new clauses 22(2a) and 22(2b).

Subclause (9) deletes part of clause 23(1) (Rail Spur)

This clause is equivalent in application to the corresponding clause 9E(7)(c) of the Newman Agreement.

Subclause (10) inserts new clause 23A (Crossings over Rail Spur)

This clause is equivalent in application to the corresponding clause 9(2)(aa) of the Newman Agreement.

PART 7 – PORT HEDLAND IRON ORE PROCESSING PROJECTS

Division 1 – Termination Agreement

Section 22

States that this Part ratifies the *Iron Ore (Beneficiation (BHP) Agreement Act 1996 – Termination Agreement* (referred to below as **the subject Act** for the purposes of explaining this Part).

Division 2 – Repeal of Acts relating to the Port Hedland iron ore processing projects

Section 23

- (a) Repeals the *Iron Ore Beneficiation (BHP) Agreement Act 1996*.
- (b) Repeals the *Iron Ore - Direct Reduced Iron (BHP) Agreement Act 1996*
- (c) Repeals the *Iron Ore Processing (BHP Minerals) Agreement Act 1994*

SCHEDULE 1

IRON ORE BENEFICIATION (BHP) AGREEMENT 1996 – TERMINATION AGREEMENT

PARTIES

The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities ("**the State**"), BHP Billiton Direct Reduced Iron Pty. Ltd. ("**the Company**"), BHP Billiton Minerals Pty. Ltd., Mitsui Iron Ore Corporation Pty. Ltd. and Itochu Minerals & Energy of Australia Pty. Ltd. (together "**Joint Venturers**").

RECITALS

- A. Provides details of the *Iron Ore Beneficiation (BHP) Agreement Act 1996* (WA) as originally ratified and of past variations made to it. This State Agreement as so varied is called "**the Beneficiation Agreement**".
- B. Provides details of the *Iron Ore (Mount Goldsworthy) Agreement Act 1964* as originally ratified and of past variations made to it. This State Agreement as so varied is called the "**Mount Goldsworthy Agreement**".
- C. Advises that the State and the Company wish to terminate the Beneficiation Agreement, including the transfer to the Joint Venturers of rights to certain land, in the manner and on the terms set out in the Termination Agreement.

OPERATIVE CLAUSES

Definitions

Clause 1

Provides the following definitions:

"**Beneficiation Agreement Minister**" defined as the State Government Minister for the time being responsible for the administration of the Beneficiation Agreement.

"**Boodarie GPLs**" defined as the general purpose leases granted under the Mining Act and held by the Company as at the date of this Agreement as described in schedule A and "Boodarie GPL" defined as the context requires any or a particular one of them.

"**EP Act**" defined as the *Environmental Protection Act 1986* (WA).

"**Goldsworthy-Nimingarra Agreement**" defined as the agreement ratified by and scheduled to the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*

(WA), as from time to time added to, varied or amended;

"Land Administration Act" defined as the *Land Administration Act 1997 (WA)*.

"laws relating to native title" defined as the laws applicable from time to time in Western Australia in respect of native title and includes the *Native Title Act 1993 (Commonwealth)*.

"Mining Act" defined as the *Mining Act 1978 (WA)*.

"Minister" defined as the State Government Minister for the time being responsible for the administration of the Act to ratify the Termination Agreement and pending the passing of that Act means the Minister, including successors, for the time being designated in a notice from the State to the Company.

"Minister for Mines" defined as the State Government Minister for the time being responsible for the administration of the Mining Act.

"Minister for Environment" defined as the State Government Minister for the time being responsible for the administration of the EP Act.

"Ministerial Statement" defined as Statement number 393 entitled "Hot Briquetted Iron Project, Port Hedland (899) BHP Direct Reduced Iron Pty Ltd" and issued by the then Minister for Environment on 4 September 1995.

"Mount Goldsworthy Agreement Minister" defined as the State Government Minister for the time being responsible for the administration of the Mount Goldsworthy Agreement.

"Operative Date" has the meaning given in clause 3(4).

"PEP Agreement" means the agreement ratified by the *Pilbara Energy Project Agreement Act 1994 (WA)*, as from time to time added to, varied or amended.

"PEP Joint Venturers" defined as the Joint Venturers as defined in the PEP Agreement.

"Port Authorities Act" defined as the *Port Authorities Act 1999 (WA)*.

"Port Authority" defined as the Port Hedland Port Authority established by the Port Authorities Act.

"Surrender GPLs" defined as the general purpose leases granted under the Mining Act and held by the Company as at the date of this Agreement as and to the extent described in schedule B.

"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.

"**Utah Jild lease**" defined as registered lease K693814L of the land the subject of Deposited Plan 59462 being portion of Lot 370 on Deposited Plan 35619, part of the land in Crown Land Title Volume LR3118 Folio 753 granted to the Company by the Port Authority under the Port Authorities Act and pursuant to the Beneficiation Agreement.

"**Water Agreement**" defined as the Water Supply Agreement dated 8 February 2000 between the Water Corporation and BHP Iron Ore Pty Ltd.

Interpretation

Clause 2(1)

Sets out the principles for interpreting the Termination Agreement.

Clause 2(2)

Provides that nothing in the Termination Agreement shall be construed to exempt the State or the Company from compliance with laws relating to native title. The State or Port Authority are not required to grant or vary any title until all processes necessary under any laws relating to native title have been completed.

Clause 2(3)

Provides that nothing in the Termination Agreement shall be construed to exempt the Company from compliance with the EP Act.

Ratification and operation

Clause 3(1)

The State commits to introduce and sponsor a Bill into State Parliament prior to 31 December 2011 or such later date as the parties may agree and shall endeavour to secure its timely passage as an Act.

Clause 3(2)

Provides that the provisions of the Termination Agreement (except clauses 1 and 2) shall not come into operation until the day after the date on which the Bill has been passed by Parliament and commences to operate as an Act.

Clause 3(3)

Provides, unless the parties otherwise agree, for the cessation and determination of the Termination Agreement (and without any party having a claim against any other) if by 30 June 2012 the Bill has not commenced to operate as Act.

Clause 3(4)

Specifies that the provisions of the Termination Agreement will operate and take effect on the day after the date on which the Bill commences to operate as an Act ("**the Operative Date**") despite any enactment or other law.

Termination of Agreement

Clause 4(1)

States that the Beneficiation Agreement is terminated on and from the Operative Date and without the State or the Company having any claim against the other except as otherwise provided in the Termination Agreement.

Clause 4(2)

Provides that, notwithstanding subclause (1), the Company shall remain liable for any antecedent breach or default and for any indemnity given under the Beneficiation Agreement.

- (i) Confirms that, from the Operative Date the holder of the Boodarie GPLs and the Surrender GPLs shall cease to have the benefit of any rights and privileges conferred by the Beneficiation Agreement.
- (ii) Removes the condition attached to the Boodarie GPLs which refers to Clauses 6 and 7 of the *Iron Ore Processing (BHP Minerals) Agreement Act 1994*.

Clause 4(3)(b)

Provides that the Joint Venturers and the Company acknowledge that the Minister for Environment has given the requisite approval and nomination under the EP Act in passing the responsibility for the Hot Briquetted Iron Project to the Joint Venturers.

Clause 4(3)(c)

Obliges the State to transfer the Boodarie GPLs to the Joint Venturers upon application made by the Company under the Mining Act without being delayed due to the need for duty to be assessed and paid first.

- (i) From the date the transferred GPLs are registered under the Mining Act, they shall be held by the Joint Venturers under the Mount Goldsworthy Agreement.
- (ii) Once the transfers are registered
 - (A) The Company shall surrender the Surrender GPLs,
 - (B) Where portions of GPLs are so indicated, the Company shall surrender the portions as indicated.

Clause 4(3)(d)

Allows the Minister for Mines, with the agreement of the Mount Goldsworthy Agreement Minister, to make, vary or cancel such conditions in respect of the Boodarie GPLs, notwithstanding the Mining Act.

Clause 4(3)(e)(i)

Provides that the Joint Venturers and the Company acknowledge that plant, facilities and other works that have been constructed on the Boodarie GPLs by other persons, including the PEP Joint Venturers, will continue to be operated by those other persons.

Clause 4(3)(e)(ii)

Requires the Company and the Joint Venturers, upon the request of the Mount Goldsworthy Agreement Minister, to:

- (A) facilitate the grant under the Land Administration Act of any lease that is reasonably necessary for the plant, facilities and other works identified in Plan C of Schedule D by:
 - (I) surrendering the relevant portions of the Boodarie GPLs
 - (i) described in Schedule D and,
 - (ii) such further areas as are reasonably required for the operation of the plant, facilities or other works identified in Plan C
 - (II) if required, allowing third party access to the land subject of that lease
- (B) facilitate the grant under the Land Administration Act of any licences or easements that are reasonably necessary for the plant, facilities and other works referred to in subparagraph (i).

Clause 4(3)(e)(iii)

The Company and Joint Venturers acknowledge that the State proposes to develop an infrastructure corridor connecting the industrial estate to the Port of Port Hedland along or in the vicinity of the indicative corridor alignment set out in Plan D in Schedule E (the Boodarie Industrial Estate Corridor) and agree:

- (A) to use their best endeavours to facilitate the identification of and their agreement to the optimal infrastructure corridor.
- (B) to facilitate the establishment and operation of the infrastructure corridor:
 - (I) Surrender any Boodarie GPLs to the extent required to establish the Boodarie Industrial Estate Corridor.
 - (II) Give consent to the grant of tenure or other rights for the construction and operation of infrastructure and utilities within the Boodarie Industrial Estate Corridor Area.
 - (III) On reasonable terms and conditions facilitating and allowing such crossings for the infrastructure corridor and any future infrastructure and utilities within the Boodarie Industrial Estate Corridor.

Clause 4(3)(e)(iv)

Provides that the Joint Venturers further acknowledge that the State and third parties may in the future wish to have access to land the subject of the Boodarie GPLs to construct and operate infrastructure.

- (A) Provided that it does not unduly prejudice or interfere with its activities, the Joint Venturers shall give their consent for the State to grant title over the land and allow access for the construction and operation of the infrastructure.
- (B) allow access for the construction and operation of such infrastructure on reasonable terms and conditions.

Clause 4(3)(e)(v)

Provides that the State acknowledges that the Joint Venturers plan to develop a conveyor and associated infrastructure corridor connecting planned stockpile facilities to planned port facilities upon the land described in Plan E in Schedule F, and the State agrees to cause the grant of easements over so much of the described land as the Joint Venturers reasonably require subject to proposals approved in that regard under the Mount Goldsworthy Agreement,

- (i) Such easements shall be at commercial rental.
- (ii) Such easements shall be at such terms and conditions as approved by the Port Authorities Minister.

Clause 4(3)(f)

Specifies that the State shall make an endorsement in the Mining Act register that the provisions of this subclause apply to each of the Boodarie GPLs.

Clause 4(4)(a)

Provides that the Utah Jild lease continues in force subject to its terms and conditions and ceases to have the benefit of any rights or privileges conferred by the Beneficiation Agreement.

Clause 4(4)(b)

Specifies that the Company has received the necessary consents to allow the Joint Venturers to use the Utah Jild lease land for the following purposes:

- (i) Performing their obligations under subclause (5), the EP Act and the Ministerial Statement;
- (ii) Constructing a section of railway in accordance with proposals dated 27 May 2011; and
- (iii) Conducting studies relevant to the submission of detailed proposals under the Mount Goldsworthy Agreement in respect of that land.

Clause 4(4)(c)

Provides for a lease to be granted to the Joint Venturers under the Port Authorities Act in respect of the land the subject of the Utah Jild lease (or lesser area as agreed) and for the lease to be held pursuant to the Mount Goldsworthy Agreement.

- (i) This lease shall be at commercial rental.
- (ii) This lease shall be at such terms and conditions as approved by the Port Authorities Minister.
- (iii) This lease shall be held by the Joint Venturers for the purposes of the Mount Goldsworthy Agreement.
- (iv) This lease shall be for the purposes of performing the Joint Venturers' obligations under subclause (5), the EP Act and the Ministerial Statement;

Clause 4(4)(d)

Specifies that the proposals referred to in subclause (4)(b)(ii) are approved for the purposes of clause 7B(1) of the Mount Goldsworthy Agreement, but only to the extent that they relate to construction of the relevant section of railway.

Clause 4(5)

Upon the transfer of the Boodarie GPLs to the Joint Venturers as, the Joint Venturers shall:

Clause 4(5)(a)

Decommission and remove plant, facilities and other works established by the Company on the Boodarie GPLs and the Utah Jild lease, and

Clause 4(5)(b)

Rehabilitate the affected land.

Clause 4(6)

Confirms that the termination of the Beneficiation Agreement shall not affect the operation of the Water Agreement.

Clause 4(7)(a)

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 Company pursuant to or relating to its operations under the Beneficiation Agreement

Clause 4(7)(b)

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 on or subsequent to the Operative Date.

Clause 4(7)(c)

Specifies that the indemnities in paragraphs (a) and (b) shall remain in force for a period ending on the date which is 20 years after:

- (i) the date agreed between the State and the Joint Venturers; or
- (ii) if the parties fail to agree a date, the date determined by the State as being the date upon which the Joint Venturers have performed their obligations under subclause (5).

Clause 4(7)(d)

Provides that the Joint Venturers acknowledge that clause 19 of the Mount Goldsworthy Agreement applies in relation to any activities of the Joint Venturers upon or in relation to the land the subject of any of the Boodarie GPLs, the Utah Jild lease and the lease contemplated by subclause (4)(c) for the purposes of the Mount Goldsworthy Agreement.

Clause 5

Specifies that the Joint Venturers enter into this Agreement in the capacity as "Joint Venturers" as defined in and for the purpose of the Mount Goldsworthy Agreement and accept the obligations contained in clause 4(3)(e)(iii) also in their capacity as "Joint Venturers" as defined in and for the purpose of the Goldsworthy-Nimingarra Agreement.

SCHEDULE A

Lists the Boodarie GPLs to be transferred to the Joint Venturers pursuant to clause 4(3)(c).

SCHEDULE B

Lists the Boodarie GPLs to be surrendered by the Company pursuant to clause 4(3)(c)(ii)(A).

SCHEDULE C

Lists the portions of the Boodarie GPLs to be surrendered by the Company as shown on Plan A and pursuant to clause 4(3)(c)(ii)(B).

PLAN A

Shows and defines the portions of the Boodarie GPLs to be surrendered by the Company as listed in Schedule C.

PLAN B

Shows and defines the portions of the GPL 46/241 to be surrendered by the Company for the Port Hedland Power Station.

PLAN C and SCHEDULE D

Shows and defines the portions of the Boodarie GPLs to be surrendered by the Company as listed in Schedule D. These are to provide for infrastructure owned by third parties.

PLAN D and SCHEDULE E

Shows the indicative corridor alignment of the proposed Boodarie Industrial Estate Corridor pursuant to clause 4(3)(e)(iii).

PLAN E and SCHEDULE F

Shows the Joint Venturers' planned conveyor and associated infrastructure corridor pursuant to clause 4(3)(e)(iii).