



Western Australia

**Cement Works (Cockburn Cement Limited)  
Agreement Amendment Act 2015**

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As at 02 Nov 2015

No. 33 of 2015

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Western Australia

# **Cement Works (Cockburn Cement Limited) Agreement Amendment Act 2015**

## **Contents**

1.	Short title	2
2.	Commencement	2
3.	Act amended	2
4.	Section 2 amended	2
5.	Section 7 inserted	2
7.	Ratification of Fourth Variation Agreement	2
6.	Sixth Schedule inserted	3
	<b>Sixth Schedule — Fourth Variation Agreement</b>	





Western Australia

## **Cement Works (Cockburn Cement Limited) Agreement Amendment Act 2015**

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**No. 33 of 2015**

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**An Act to amend the *Cement Works (Cockburn Cement Limited)  
Agreement Act 1971*.**

*[Assented to 2 November 2015]*

The Parliament of Western Australia enacts as follows:

**s. 1**

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**1. Short title**

This is the *Cement Works (Cockburn Cement Limited) Agreement Amendment Act 2015*.

**2. Commencement**

This Act comes into operation as follows —

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

**3. Act amended**

This Act amends the *Cement Works (Cockburn Cement Limited) Agreement Act 1971*.

**4. Section 2 amended**

In section 2 insert in alphabetical order:

*Fourth Variation Agreement* means the agreement a copy of which is set forth in the Sixth Schedule;

**5. Section 7 inserted**

After section 6 insert:

**7. Ratification of Fourth Variation Agreement**

- (1) The Fourth Variation Agreement is ratified.
- (2) The implementation of the Fourth Variation Agreement is authorised.
- (3) Without limiting or otherwise affecting the *Government Agreements Act 1979*, the Fourth

Variation Agreement operates and takes effect despite any other Act or law.

**6. Sixth Schedule inserted**

After the Fifth Schedule insert:

**Sixth Schedule — Fourth Variation Agreement**

[s. 2]

**2015**

**THE HONOURABLE COLIN JAMES BARNETT  
PREMIER OF THE STATE OF WESTERN AUSTRALIA**

**AND**

**THE HONOURABLE DEAN CAMBELL NALDER  
MINISTER FOR TRANSPORT**

**AND**

**FREMANTLE PORT AUTHORITY**

**AND**

**COCKBURN CEMENT LIMITED**

**ACN 008 673 470**

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**CEMENT WORKS (COCKBURN CEMENT LIMITED) AGREEMENT  
1971**

**RATIFIED VARIATION AGREEMENT**

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[Solicitor's details]

**THIS AGREEMENT** is made this 20th                      day of April                      2015

**BETWEEN**

**THE HONOURABLE COLIN JAMES BARNETT**, M.Ec., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the Government of the said State and its instrumentalities (**State**) of the one part,

**AND**

**THE HONOURABLE DEAN CABELL NALDER** M.L.A., Minister for Transport, being the Minister in the Government of the State of Western Australia for the time being responsible for the administration of the *Port Authorities Act 1999* (**Port Authorities Minister**)

**AND**

**FREMANTLE PORT AUTHORITY**, a body corporate established pursuant to the *Port Authorities Act 1999* (WA) (**Authority**)

**AND**

**COCKBURN CEMENT LIMITED** ACN 008 673 470 of Level 1, 157 Grenfell Street, Adelaide, South Australia (**Company**).

**RECITALS**

- A.** The parties to this Agreement are now the parties to the agreement dated 18 February 1971 (as amended by an agreement dated 25 August 1971), the execution of which by the State was ratified by the *Cement Works (Cockburn Cement Limited) Agreement Act 1971*, as varied by:
- (a) an agreement dated 24 October 1986, ratified by the Cement Works (Cockburn Cement Limited) Agreement Amendment Act 1986;



- (b) an agreement dated 14 May 1997, ratified by the Cement Works (Cockburn Cement Limited) Agreement Amendment Act 1997; and
- (c) an agreement dated 14 June 2010, ratified by the Cement Works (Cockburn Cement Limited) Agreement Amendment Act 2010.

The first mentioned agreement as so amended and varied is referred to in this Agreement as the **Principal Agreement**.

- B.** The parties wish to add to and vary the provisions of the Principal Agreement on the terms and conditions set out in this Agreement.

**NOW THIS AGREEMENT WITNESSES:**

**1. Ratification and operation**

- (1) This Agreement, other than this clause, does not come into operation except in accordance with subclause (2).
- (2) This Agreement, other than this clause, comes into operation on the day on which it is ratified by an Act of the Parliament of Western Australia (**Operative Date**) unless, before that day, it terminates under subclauses (4) or (5).
- (3) The State must introduce in the Parliament of Western Australia before 30 June 2015 or a later date agreed between the parties to this Agreement, a Bill to ratify this Agreement and must endeavour to secure its passage as an Act.
- (4) If by 31 December 2015 this Agreement has not been ratified by an Act of the Parliament of Western Australia then, unless the parties to this Agreement otherwise agree, this Agreement terminates on that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (5) The parties agree that if the Principal Agreement is otherwise determined in accordance with its provisions on a day prior to the Operative Date, then this Agreement shall also terminate on and from that day and no party hereto will have any claim against any other

**s. 6**

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party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

**2. Variations of the Principal Agreement**

The Principal Agreement is hereby varied as follows:

- (a) in clause 1(2) by:
  - (i) in the definition of "alternative material" deleting "cement and clinker " and substituting "cement or clinker ";
  - (ii) in the definition of "specified mineral" deleting "cement and clinker" and substituting "cement or clinker"
  - (iii) in the definition of "works site":
    - (A) deleting "and clinker"; and
    - (B) inserting "and clinker manufacturing operations may be carried out by the Company in accordance with this Agreement" after "are carried out"; and
    - (C) inserting ", excluding any part or parts of such site disposed of by the Company pursuant to clause 7A hereof" before the semi colon at the end of that definition;
  - (iv) inserting in its appropriate alphabetical position the following new definition:

"clinker" means clinker manufactured from limestone and other raw materials for use in the manufacture hereunder of cement;
- (b) in clause 3(1) by:
  - (i) deleting "and clinker"; and
  - (ii) inserting after the current sentence the following additional sentence:

"During the currency of this Agreement the Company may also carry out clinker manufacturing operations on the works site in accordance with this Agreement.";

- (c) in clause 6(1) by deleting "cement and clinker manufacturing operations" and substituting "cement manufacturing operations hereunder, clinker manufacturing operations hereunder";
- (d) in paragraph (b) of clause 6E by deleting "as a neutralising agent" with such deletion to take effect from and including the date those words were inserted in the Principal Agreement;
- (e) in clause 7(2) by:
  - (i) deleting "and clinker"; and
  - (ii) inserting "(other than clinker manufacturing operations)" after "and any other operations";
- (f) in clause 7(3) by deleting "cement and clinker manufacturing operations" and substituting "cement manufacturing operations hereunder, clinker manufacturing operations hereunder";
- (g) in clause 7(4) deleting "cement and clinker manufacturing operations" and substituting "cement manufacturing operations hereunder, clinker manufacturing operations hereunder";
- (h) in clause 10 by numbering the existing provision as subclause (1) and inserting immediately after it the following new subclause:
  - "(2) The Company shall from time to time when requested by the Minister submit to the Minister a report concerning the implementation of the provisions of subclause (1) of this clause.";
- (i) in clause 10B(1) by:

**s. 6**

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- (i) deleting "cement and clinker" where it appears first and substituting "cement"; and
- (ii) deleting "cement and clinker" where it appears second and substituting "cement or clinker";
- (j) in clause 10B by inserting after subclause (7) the following new subclauses:
  - "(8) If the Company at any time during the currency of this Agreement suspends or ceases (whether or not after a period of suspension) to carry out its clinker manufacturing operations on the works site it shall promptly notify the Minister of the date of such suspension or cessation and:
    - (a) in the case of a suspension of such operations, its anticipated recommencement date if and when known;
    - (b) in the case of a cessation of operations, its plans to decommission the facilities upon the works site used in such operations if and when formulated.
  - (9) The Company must, if required by the Minister, consult from time to time with the Minister in regard to such suspension or cessation of operations including in relation to any decommissioning plans notified to the Minister under subclause (8).
  - (10) Subject to the EP Act, the Company may recommence the carrying out on the works site of clinker manufacturing operations in accordance with this Agreement after suspending or after ceasing such operations provided that:
    - (a) it has not decommissioned the facilities upon the works site used

in the carrying out of such operations;

- (b) such recommencement of operations will be within the then operational manufacturing capacity of such facilities; and
- (c) it has given notice to the Minister that it intends to recommence its clinker manufacturing operations hereunder and of the date of its anticipated recommencement date.

(11) If the Company desires:

- (a) to recommence the carrying out hereunder of clinker manufacturing operations upon the works site after decommissioning the facilities upon the works site previously used in such operations; or
- (b) to otherwise significantly modify, expand or otherwise vary the clinker manufacturing operations it is carrying on upon the works site beyond the then operational manufacturing capacity of the facilities upon the works site used in such operations (including after the recommencement of operations as referred to in subclause (10)),

it shall give notice of such desire to the Minister. If required by the Minister within 2 months of the giving of such notice the Company shall then submit to the Minister (within such period as the Minister may reasonably allow) to the fullest extent reasonably practicable detailed proposals in

**s. 6**

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respect of all matters covered by such notice and other relevant information as the Minister may reasonably require. The provisions of subclauses (2) – (7) above shall mutatis mutandis apply in relation to such proposals."

**EXECUTED** as a deed.

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

[Signature]  
Signature of witness

NICOLE JANE HENDERSON  
Name of witness

**SIGNED** by **THE HONOURABLE DEAN** ) [Signature]  
**CAMBELL NALDER** in the presence of: )

[Signature]  
Signature of witness

DARREN CLIFFORD MUDGE ASM  
Name of witness

**THE COMMON SEAL of FREMANTLE** )  
**PORT AUTHORITY** was hereunto affixed in ) [C. S.]  
the presence of: )

[Signature]

Director

[Signature]

Chief Executive Officer

**THE COMMON SEAL of COCKBURN** )  
**CEMENT LIMITED** ACN 008 673 470 was ) [C. S.]  
hereunto affixed in accordance with its )  
constitution in the presence of: )

[Signature]

Director BRADLEY DONALD LEMMON

[Signature]

Secretary MARCUS ROLAND DEAN CLAYTON

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