



Western Australia

Collie Coal (Griffin) Agreement Amendment Act 2023

As at 26 Jun 2023

No. 14 of 2023

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Collie Coal (Griffin) Agreement Amendment Act 2023

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Western Australia

Collie Coal (Griffin) Agreement Amendment Act 2023

No. 14 of 2023

An Act to amend the *Collie Coal (Griffin) Agreement Act 1979*.

[Assented to 26 June 2023]

The Parliament of Western Australia enacts as follows:

s. 1

1. Short title

This is the *Collie Coal (Griffin) Agreement Amendment Act 2023*.

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 *Collie Coal (Griffin) Agreement Act 1979*.

4. Section 2 replaced

Delete section 2 and insert:

2. Terms used

In this Act —

2023 variation agreement means the agreement a copy of which is set out in Schedule 2;

Agreement means the agreement a copy of which is set out in Schedule 1 and includes that agreement —

- (a) as varied from time to time in accordance with its provisions; and
- (b) as varied by the 2023 variation agreement.

5. Section 4 inserted

After section 3 insert:

4. Ratification of 2023 variation agreement

- (1) The 2023 variation agreement is ratified.
- (2) The implementation of the 2023 variation agreement is authorised.
- (3) Without limiting or otherwise affecting the *Government Agreements Act 1979*, the 2023 variation agreement operates and takes effect despite any enactment or other law.

6. Schedule heading replaced

Delete the heading to the Schedule and insert:

Schedule 1 — Collie Coal (Griffin) Agreement

[s. 2]

s. 7

7. Schedule 2 inserted

After the Schedule insert:

Schedule 2 — 2023 variation agreement

[s. 2]

2023

**THE HONOURABLE MARK McGOWAN
PREMIER OF THE STATE OF WESTERN AUSTRALIA**

AND

**THE GRIFFIN COAL MINING COMPANY PTY LIMITED
(RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION)**

ACN 008 667 285

COLLIE COAL (GRIFFIN) AGREEMENT 1979

RATIFIED VARIATION AGREEMENT

[Solicitor's details]

THIS AGREEMENT is made this 4th day of May 2023

BETWEEN

THE HONOURABLE MARK McGOWAN, BA, LLB, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time ("**the State**") of the one part

AND

THE GRIFFIN COAL MINING COMPANY PTY LIMITED ACN 008 667 285 (receivers and managers appointed) (in liquidation) of Level 1, 7 Rheola Street, West Perth, Western Australia ("**the Company**") of the other part.

RECITALS

- A.** The State and the Company are the parties to the agreement dated 5 November 1979 ratified by and scheduled to the *Collie Coal (Griffin) Agreement Act 1979* and which is referred to in this Agreement as the "**Principal Agreement**".
- B.** The parties wish to vary the provisions of the Principal Agreement on the terms and conditions set out in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

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).

s. 7

- (3) The State must introduce in the Parliament of Western Australia on or before 22 June 2023 or a later date agreed between the parties to this Agreement, a Bill to ratify this Agreement however the State is not obliged to endeavour to secure its passage as an Act.
- (4) If by 30 June 2023 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 party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (6) The State acknowledges and agrees that, notwithstanding any other provision of this Agreement or the Principal Agreement:
 - (a) Matthew Donnelly, Sean Holmes and Grant Sparks ("**Receivers**") execute this Agreement as joint and several receivers and managers of the assets of the Company for and on behalf of and as agents of the Company;
 - (b) the Receivers are not liable in their personal capacity in any way in connection with this Agreement or the Principal Agreement, except to the extent any liability is caused or contributed to by the recklessness, fraud, gross negligence or wilful misconduct of any Receiver;
 - (c) to the maximum extent permitted by law, the State releases and forever discharges the Receivers personally from any liability under this Agreement or the Principal Agreement, except to the extent any liability is caused or contributed to by the recklessness, fraud, gross negligence or wilful misconduct of any Receiver; and

- (d) the limitations on the Receivers' liability under this Agreement will continue notwithstanding the Receivers ceasing to act as receivers and managers of the assets of the Company or this Agreement being terminated or amended.

2. Variations of the Principal Agreement

The Principal Agreement is varied as follows:

- (1) in clause 1 by inserting in the appropriate alphabetical position the following new definition:

"variation date" means the date on which Clause 2 of the variation agreement made on or about 4 May 2023 between the Honourable Mark McGowan, Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time and the Company comes into operation;

- (2) by inserting after clause 10 the following new clause:

"Proposals after variation date

Extension of timeframes of approved proposals

- 11A. (1) Subject to Clause 10 and this Clause generally, all timeframes (whether express or implied) for any activities obliged and authorised to be undertaken by the Company pursuant to this Agreement and approved proposals hereunder (including measures to be taken for the protection and management of the environment) on or prior to 30 June 2023 shall be deemed extended on and from the variation date to 30 June 2024.

Additional proposals for financial year ending 30 June 2024

- (2) The Company shall, not later than 3 months after the variation date (or such extended time as the Minister may allow), submit detailed proposals under and in accordance with Clause 10 for the financial year ending 30 June 2024 for the exploration and development of the coal resource contained in the Company's Coal Mining Leases and as to such of the matters mentioned in paragraphs (a) to (l) of

subclause (1) of Clause 7 as the Minister may require and such proposals shall be deemed to meet the requirement of Clause 10 that the proposals evidence a significant variation of the Company's activities under this Agreement to a greater extent than those specified in any approved proposals.

Additional proposals for financial year ending 30 June 2025

- (3) If the term of the Agreement is extended by the Minister pursuant to subclause (3) of Clause 49 then the draft additional proposals accompanying the notice given pursuant to subclause (2) of Clause 49 shall be deemed, on the date of the Minister's decision under subclause (3) of that Clause, to be submitted by the Company under and in accordance with Clause 10 and without limitation to the Minister's consideration of such proposals under that Clause."

- (3) in clause 21 by:

- (a) inserting after subclause (2) the following new subclause:

"Extended term of coal mining leases granted under this Clause

- (2a) The term of each coal mining lease, granted to the Company pursuant to subclause (1) of this Clause and subsisting immediately prior to the variation date, is deemed to continue until:
- (a) 30 June 2024; or
- (b) if the Minister extends the term of the Agreement under subclause (3) of Clause 49, 30 June 2025,

subject in each case to the sooner determination of such term upon the cessation or determination of this Agreement. "

- (b) inserting in subclause (3) after the word "Agreement" and before the full stop the following:
- ", including as extended by and in accordance with Clause 49";
and
- (4) by inserting after clause 48 the following new clause:

"Term of Agreement

49. (1) Subject to the provisions of Clauses 36 and 37 and of this Clause, this Agreement shall expire on 30 June 2024.
- (2) The Company may give notice to the Minister not earlier than 1 March 2024 and not later than 31 March 2024 of its desire for the provisions of this Agreement to be extended for a further period of 12 months expiring on 30 June 2025 and such notice shall be accompanied by detailed additional proposals in draft form for the further period for the exploration and development of the coal resource contained in the Company's Coal Mining Leases and as to such of the matters mentioned in paragraphs (a) to (l) of subclause (1) of Clause 7 as the Minister may require.
- (3) The Minister may, if the Minister thinks fit, extend the term of this Agreement and any such extended term shall be subject to the provisions of Clauses 36 and 37."

s. 7

EXECUTED as a deed.

SIGNED by **THE HONOURABLE**)
MARK McGOWAN)
in the presence of:) [Signature]

[Signature]

Signature of witness

NADEEN LYN ROBERTS
Name of witness (block letters)

EXECUTED for and on behalf of)
THE GRIFFIN COAL MINING)
COMPANY PTY LIMITED)
(RECEIVERS AND MANAGERS)
APPOINTED) (IN LIQUIDATION))
by its joint and several receiver and)
manager in the presence of:)

[Signature]) [Signature]

Signature of witness) _____
Signature of receiver and
manager)

SEAN HOLMES) MATTHEW J DONNELLY
Full name of witness (block letters)) Name of receiver and manager
(block letters)

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