

COLLIE COAL (WESTERN COLLIERIES) AGREEMENT.

No. 76 of 1985.

AN ACT to amend the Collie Coal (Western Collieries) Agreement Act 1979.

[Assented to 4 December 1985.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Collie Coal (Western Collieries) Agreement Amendment Act 1985*. Short title and principal Act.

(2) In this Act the Collie Coal (Western Collieries) Agreement Act 1979 is referred to as the principal Act. Act No. 4 of 1979.

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Commence-
ment.

2. This Act shall come into operation on the day on which it is assented to by the Governor.

Section 2
amended.

3. Section 2 of the principal Act is amended—

(a) by deleting “the Schedule to this Act” and substituting the following—

“ Schedule 1 ”;

(b) by deleting the full stop at the end of the section and substituting a semicolon; and

(c) by inserting at the end of the section the following definition—

“ “the Supplementary Agreement” means the agreement a copy of which is set out in Schedule 2. ”.

Section 4
inserted.

4. After section 3 of the principal Act the following section is inserted—

Supple-
mentary
Agreement.

“ 4. (1) The Supplementary Agreement is ratified.

(2) The implementation of the Supplementary Agreement is authorised.

(3) Without limiting or otherwise affecting the application of the Government Agreement Act 1979, the Supplementary Agreement shall operate and take effect notwithstanding any other Act or law. ”.

Schedule
amended.

5. The Schedule to the principal Act is amended by deleting the heading thereto and substituting the following heading—

“ SCHEDULE 1. ”.

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6. After Schedule 1 to the principal Act the following Schedule is added—

Schedule 2
added.

“

SCHEDULE 2.

THIS AGREEMENT is made the 7th day of October 1985 BETWEEN THE HONOURABLE BRIAN THOMAS BURKE, 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 (hereinafter called “the State”) of the one part and WESTERN COLLIERIES LTD a company incorporated under the provisions of the Statutes of Western Australia and having its registered office at 29th Floor, 44 St. George’s Terrace, Perth in the said State (hereinafter called “the Company” in which term shall be included the Company and its successors and permitted assigns and appointees) of the other part.

WHEREAS:

- (a) the parties hereto are the parties to the agreement dated the 17th day of January, 1979 which was ratified by and is scheduled to the Collie Coal (Western Collieries) Agreement Act 1979 (hereinafter called “the principal Agreement”); and
- (b) the parties desire to vary the provisions of the principal Agreement.

NOW THIS AGREEMENT WITNESSETH:

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the principal Agreement.
2. The provisions of this Agreement shall not come into operation until a Bill to approve and ratify this Agreement is passed by the Legislature of the said State and comes into operation as an Act.
3. The principal Agreement is hereby varied as follows—

(1) Clause 1—

- (a) by deleting the definition of “Coal Mining Lease”;

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- (b) by deleting the definition of "Mining Act" and inserting the following definition—

“ “Mining Act” means the Mining Act 1978; ”;

- (c) by inserting in the definition of "mining areas" after "applied for coal mining leases" the following—

“ and following the grant of the Mining Lease includes the land leased thereby and any area or areas added thereto pursuant to the provisions of subclause (2a) of Clause 21 ”;

- (d) by deleting the definition of "Minister for Mines" and inserting the following definition—

“ “Minister for Minerals and Energy” means the Minister in the Government of the State for the time being responsible for the administration of the Mining Act; ”;

- (e) by inserting after the definition of "State forest" the following definition—

“ “the Mining Lease” means the mining lease referred to in subclause (1) of Clause 21 and includes any renewal thereof and according to the requirements of the context shall describe the land leased as well as the instrument by which it is leased and any area or areas added thereto pursuant to the provisions of subclause (2a) of Clause 21; ”.

(2) Clause 5—

by deleting "the Coal Mining Lease" and substituting the following—

“ the Mining Lease ”.

(3) Clause 6—

by deleting "the Coal Mining Lease" wherever it occurs and substituting the following—

“ the Mining Lease ”.

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(4) Clause 9—

by deleting “the Coal Mining Lease” and substituting the following—

“ the Mining Lease ”.

(5) Clause 10—

by deleting “Clauses 7 and 8” and substituting the following—

“ Clause 7 and Clause 8 (other than sub-clauses (5) and (6)) ”.

(6) Clause 11—

(a) subclause (2)—

by deleting subclause (2) and substituting the following—

“ (2) The Company shall during the currency of this Agreement submit to the Minister—

(a) not later than 31st May, 1986 and the 31st May in each year thereafter (except those years in which a detailed report is required to be submitted pursuant to paragraph (b) of this subclause) an interim report concerning investigations and research carried out pursuant to subclause (1) of this Clause during the year ending 31st March immediately preceding the due date for the interim report; and

(b) not later than 31st May, 1988 and the 31st May in each third year thereafter, a detailed report on the result of such investigations and research during the three year period ending 31st March immediately preceding the due date for the detailed report. ”;

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(b) subclause (4)—

by deleting “Clauses 7 and 8” and substituting the following—

“ Clause 7 and Clause 8 (other than subclauses (5) and (6)) ”;

(c) subclause (5)—

by deleting subclause (5) and substituting the following—

“ (5) The Company shall implement the decision of the Minister or an award made on arbitration as the case may be in accordance with the terms thereof. ”.

(7) Clause 14—

by deleting Clause 14 and the marginal note thereto and substituting the following—

“ 14. On 11th September, 1987 (or such later date as the Minister may agree as hereinafter provided) and thereafter during the currency of this Agreement at 5 yearly intervals or such longer periods as the Minister may agree (commencing from the date of the first submission of a plan pursuant to this Clause) furnish to the Minister a plan of the Company's proposed mine development and coal production pursuant to the approved proposals for the ensuing 5 years. ”.

Mining
Plan to be
furnished.

(8) Clause 17—

by deleting “the Coal Mining Lease” wherever it occurs and substituting the following—

“ the Mining Lease ”.

(9) Clause 18—

by deleting subclause (2) and substituting the following—

“ (2) The Company may from time to time request the State Energy Commission to divert any portion of its transmission lines, and on receipt of

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such request the State Energy Commission shall with reasonable expedition determine an alternative route for the transmission lines satisfactory to the State Energy Commission and for this purpose may require the Company to provide land at the Company's expense. The State Energy Commission shall subject to the availability of land and agreement on cost and payment terms divert at the expense of the Company the transmission lines within 12 months of the determination of the alternative route as aforesaid. ”.

(10) Clause 19—

by deleting “the Coal Mining Lease” wherever it occurs and substituting the following—

“ the Mining Lease ”.

(11) Clause 21—

(a) subclause (1)—

by deleting subclause (1) and the marginal note thereto and substituting the following—

“ (1) (a) On application made by the Company within 12 months after all its proposals submitted pursuant to Clause 7 have been approved for a mining lease for the mining of coal over so much of the land in the red areas and the yellow areas as the Company desires and in respect of which the Company then holds mining leases, the State shall upon the surrender by the Company of all such mining leases cause to be granted to the Company, at a rental equal to eighty per cent of the rental specified from time to time in the Mining Act in respect of a mining lease, a mining lease for the mining of coal of any part or parts of such land within the mining areas so applied for (notwithstanding that the survey in respect thereof has not been completed but subject to such

Mining
Lease.

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corrections to accord with the survey when completed at the Company's expense) such Mining Lease to be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act but in the form of the Schedule hereto and subject to such of the conditions of the surrendered mining leases as the Minister for Minerals and Energy determines and such other conditions as the Minister for Minerals and Energy may reasonably require from time to time for the purpose of reducing or making good injury to the surface of the land in the Mining Lease or injury to anything on or below the surface of that land.

(b) Upon the granting of the Mining Lease the rights of the Company as the holder of any mining lease over so much of the red areas and the yellow areas respectively as are outside the Mining Lease shall forthwith cease and determine (but without any refund of rent already paid) but nothing in this paragraph shall limit any obligation of the Company to rehabilitate as provided by the relevant approved proposal.”;

(b) subclause (2)—

by deleting “the Coal Mining Lease” wherever it occurs and substituting the following—

“ the Mining Lease ”;

(c) by inserting after subclause (2) the following subclauses—

“ (2a) Notwithstanding the provisions of the Mining Act the Company may, from time to time during the currency of this Agreement apply to the Minister for Minerals and Energy for areas (outside the mining areas) held by the Company under a mining lease granted or deemed to be granted under the Mining Act to be

included in the Mining Lease and the Minister for Minerals and Energy may in his discretion upon the surrender by the Company of the relevant mining lease include the land the subject thereof in the Mining Lease subject to such of the conditions of the surrendered mining lease as the Minister for Minerals and Energy determines but otherwise subject to the same terms covenants and conditions as apply to the Mining Lease (with such apportionment of rents as is necessary), notwithstanding that the survey of such additional land has not been completed (but subject to correction to accord with the survey when completed at the Company's expense).

(2b) Notwithstanding anything contained in paragraph (a) of subclause (1) or subclause (2a) of this Clause the surrender by the Company of mining leases under those subclauses for the purpose of the grant to the Company of the Mining Lease or the inclusion therein of additional land shall not include mining plant affixed to the land comprised in such surrendered mining leases. ”;

(d) subclause (3)—

by deleting subclause (3) and the marginal note thereto and substituting the following—

“ (3) The State shall ensure that during the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the expenditure conditions imposed by or under the Mining Act in regard to the Mining Lease. ”;

Expenditure
conditions.

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(e) subclause (4)—

by deleting subclause (4) and substituting the following—

“ (4) Notwithstanding anything contained in the Mining Act or this Agreement or the Mining Lease the State may grant or register in favour of persons other than the Company mining leases and other mining tenements in respect of the area subject to the Mining Lease for minerals other than coal unless the Minister for Minerals and Energy determines (after considering proposals by the person applying for any such lease or other mining tenement to avoid undue prejudice to or interference with the operations (present or future) of the Company and consulting with the Company thereon) that such grant or registration is likely unduly to prejudice or interfere with the operations of the Company hereunder assuming the taking by the Company of reasonable steps to avoid the prejudice or interference. Upon the grant of any such lease or other mining tenement the land contained therein shall be deemed to be automatically excised from the Mining Lease (with abatement of future rent in respect to the area excised but without any abatement of rent already paid or any rent which has become due and has been paid in advance). ”;

(f) subclause (5)—

(i) by deleting “the Coal Mining Lease” and substituting the following—

“ the Mining Lease ”;

(ii) by deleting, in the marginal note thereto, “coal”;

(g) subclause (6)—

by deleting “the Coal Mining Lease” and substituting the following—

“ the Mining Lease ”;

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(h) subclause (7)—

(i) by deleting “Minister for Mines” wherever it occurs and substituting the following—

“ Minister for Minerals and Energy ”;

(ii) by deleting “the Coal Mining Lease” and substituting the following—

“ the Mining Lease ”;

(iii) by deleting, in the marginal note thereto, “coal”;

(i) subclause (8)—

by deleting subclause (8);

(j) subclause (9)—

(i) by deleting “a Coal Mining Lease” and substituting the following—

“ the Mining Lease ”;

(ii) by deleting “coal”.

(12) By inserting after Clause 21 the following clauses—

“ 21A. (1) Subject to the provisions of this Clause the Company shall have the right during the currency of this Agreement to extract in addition to coal but in conjunction with and as part of its coal mining operations minerals other than bauxite from the minesites within the Mining Lease. Extraction of other minerals.

(2) (a) The Company shall not extract any minerals pursuant to this Clause otherwise than in accordance with a mode or modes of operations first approved by the Minister.

(b) Any approval given by the Minister pursuant to this subclause may be given subject to such conditions as the Minister may reasonably determine.

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(3) The Company shall pay to the State in respect of minerals extracted pursuant to this Clause royalties at rates from time to time prescribed under the Mining Act and shall comply with the provisions of the Mining Act and regulations made thereunder with respect to the completion of production reports and payment of royalties.

Lease for
other
minerals.

21B. (1) Notwithstanding the existence of the Mining Lease the Company may mark out and apply for a mining lease or mining leases in respect of any part of the Mining Lease for minerals other than bauxite and coal subject to the provisions of the Mining Act and, subject to subclause (2) of this Clause, the Minister for Minerals and Energy may grant such mining lease or mining leases.

(2) No mining lease shall be granted pursuant to this Clause without the approval of the Minister.

(3) In the event of the grant of a mining lease pursuant to this Clause the land the subject thereof shall thereupon be deemed to be excised from the Mining Lease.

(4) A mining lease granted pursuant to this Clause shall in addition to any covenants and conditions that may be prescribed or imposed pursuant to the Mining Act be subject to the following special conditions—

- (a) a breach by the Company under the mining lease shall be deemed to be a breach of this Agreement;
- (b) the provisions of section 82 (1) (d) of the Mining Act shall be modified so that the mining lease may not be assigned or underlet except as part of an assignment or underletting pursuant to Clause 32 of this Agreement.

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(5) Where any mortgages or charges are registered in the Department of Mines against the Mining Lease and any part of the land the subject of the Mining Lease becomes the subject of a mining lease granted pursuant to this Clause then, unless the Company has with the consent of all relevant mortgagees or chargees notified the Minister to the contrary prior to the grant of such mining lease, that mining lease notwithstanding the provisions of the Mining Act shall be deemed to be subject to any such mortgages or charges as if it had been referred to therein and such mortgages or charges shall be registered as mortgages against that mining lease in the order in which they appear registered against the Mining Lease.

21C. On the expiration or sooner determination of any mining lease granted pursuant to Clause 21B hereof the land the subject of that mining lease shall thereupon be deemed to be part of the land in the Mining Lease and shall be subject to the terms and conditions of the Mining Lease and this Agreement (other than Clause 21B hereof). ”.

Effect of
termination
of mining
lease.

(13) Clause 26—

(a) by deleting “the Coal Mining Lease” wherever it occurs and substituting the following—

“ the Mining Lease ”;

(b) by deleting “Minister for Mines” wherever it occurs and substituting the following—

“ Minister for Minerals and Energy ”.

(14) Clause 27—

by deleting “the Coal Mining Lease” and substituting the following—

“ the Mining Lease ”.

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(15) Clause 31—

by deleting “the Coal Mining Lease” and substituting the following—

“ the Mining Lease ”.

(16) Clause 32 subclause (3)—

by deleting “the Coal Mining Lease” and substituting the following—

“ the Mining Lease ”.

(17) Clause 33—

by deleting “the Coal Mining Lease” wherever it occurs and substituting the following—

“ the Mining Lease ”.

(18) Clause 38—

(a) subclause (1) paragraph (a)—

(i) by deleting “the Coal Mining Lease” and substituting the following—

“ the Mining Lease ”;

(ii) by deleting “(notwithstanding the provisions of the Mining Act) under any coal mining leases granted pursuant to the Mining Act” and substituting the following—

“ (notwithstanding the provisions of the Mining Act) under any mining leases ”;

(b) subclause (2)—

(i) by deleting “the Coal Mining Lease” and substituting the following—

“ the Mining Lease ”;

(ii) by deleting “granted pursuant to the Mining Act”.

- (19) The Schedule is deleted and the following Schedule substituted—

“ THE SCHEDULE
WESTERN AUSTRALIA
MINING ACT 1978
COLLIE COAL (WESTERN COLLIERIES)
AGREEMENT ACT
MINING LEASE

Mining Lease No.

The Minister for Minerals and Energy a corporation sole established by the Mining Act 1978 with power to grant leases of land for the purposes of mining in consideration of the rents hereinafter reserved and of the covenants on the part of the Lessee described in the First Schedule to this lease and of the conditions hereinafter contained and pursuant to the Mining Act 1978 (except as otherwise provided by the Agreement (hereinafter called “the Agreement” described in the Second Schedule to this lease) hereby leases to the Lessee the land more particularly delineated and described in the Third Schedule to this lease for coal subject however to the exceptions and reservations set out in the Fourth Schedule to this lease and to any other exceptions and reservations which subject to the Agreement are by the Mining Act 1978 and by any Act for the time being in force deemed to be contained herein and excepting and reserving out of this lease any portion of the said land which is now used for any public works or building whatsoever to hold to the Lessee for a term of twenty one years commencing on the date set out in the Fifth Schedule to this lease with the right to renew the same as provided in the Agreement for one further period of twenty one years (subject to sooner determination of the said term upon cessation or determination of the Agreement) upon and subject to such of the provisions of the Mining Act 1978 except as otherwise provided by the Agreement as are applicable to mining leases granted thereunder and to the terms covenants and conditions set out in the Agreement and to the covenants and conditions herein contained or implied and any further conditions stipulations set out in the Sixth

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Schedule to this lease the Lessee paying therefor the rents and royalties as provided in the Agreement PROVIDED ALWAYS that this lease is subject to the condition that the Company shall observe perform and carry out the provisions of the Coal Mines Regulation Act 1946 and PROVIDED FURTHER that this lease and any renewal thereof shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this lease—

- “Lessee” includes the successors and permitted assigns of the Lessee and if the Lessee be more than one the respective successors and permitted assigns of each Lessee.
- If the Lessee be more than one the liability of the Lessee hereunder shall be joint and several.
- Reference to any Act includes all amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations and by-laws for the time being in force thereunder.

FIRST SCHEDULE

WESTERN COLLIERIES LTD a company incorporated under the provisions of the Statutes of Western Australia and having its registered office at 29th Floor, 44 St. George's Terrace, Perth.

SECOND SCHEDULE

The Agreement ratified by the Collie Coal (Western Collieries) Agreement Act 1979 including any amendments to that Agreement.

THIRD SCHEDULE

(Description of land)

Locality:

Mineral Field (s): Area, etc.:

Being the land delineated on Original Plan(s)
No. and recorded in the Department of
Mines, Perth.

FOURTH SCHEDULE

All petroleum as defined in the Petroleum Act 1967 on or below the surface of the land the subject of this lease is reserved to the Crown in right of the State of Western Australia with the right of the Crown in the right of the State of Western Australia and any person lawfully claiming thereunder or otherwise authorised to do so to have access to the land the subject of this lease for the purpose of searching for and for the operations of obtaining petroleum (as so defined) in any part of the land.

FIFTH SCHEDULE

(Date of commencement of the lease)

SIXTH SCHEDULE

(Any further conditions or stipulations)

In witness whereof the Minister for Minerals and Energy has affixed his seal and set his hand hereto this day of

19 . .

IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore written.

SIGNED by THE HONOUR-
ABLE BRIAN THOMAS
BURKE, M.L.A. in the
presence of: }

BRIAN BURKE.

D. C. PARKER
MINISTER FOR MINERALS
AND ENERGY

THE COMMON SEAL of
WESTERN COLLIERIES LTD
was hereunto affixed by order
of and at a meeting of the
Directors of the said Company
this 18th day of September
1985 in the presence of: }

(C.S.)

Director: T. S. IVANKOVICH.

Director A. FOGARTY.

Secretary
DAVID I. CRAWFORD.