

**COLLIE COAL
(WESTERN COLLIERIES)
AGREEMENT AMENDMENT ACT**

No. 9 of 1990

AN ACT to ratify an agreement between the State of Western Australia, Western Collieries Ltd., Western Collieries & Dampier Pty. Ltd., and BHP Minerals Limited, to amend the *Collie Coal (Western Collieries) Agreement Act 1979* and to repeal the *Collie Coal (Western Collieries & Dampier) Agreement Act 1981*.

[Assented to 7 August 1990.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Collie Coal (Western Collieries) Agreement Amendment Act 1990*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Principal Act

3. In this Act the *Collie Coal (Western Collieries) Agreement Act 1979** is referred to as the principal Act.

[*Act No. 4 of 1979 amended by Act No. 76 of 1985.]

Section 2 amended

4. Section 2 of the principal Act is amended—

- (a) by deleting the full stop at the end of the section and substituting a semicolon; and
- (b) by inserting at the end of the section the following definition—

“ “the Supplementary Agreement (1990)” means the agreement a copy of which is set out in Schedule 3. ”.

Section 5 inserted

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

Supplementary Agreement (1990)

“ 5. (1) The Supplementary Agreement (1990) is ratified.

(2) The implementation of the Supplementary Agreement (1990) is authorized.

(3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Supplementary Agreement (1990) shall operate and take effect notwithstanding any other Act or law. ”.

Repeal

6. The *Collie Coal (Western Collieries & Dampier) Agreement Act 1981** is repealed.

[*Act No. 83 of 1981.]

Schedule 3 added

7. After Schedule 2 to the principal Act the following Schedule is added—

“

SCHEDULE 3

THIS AGREEMENT is made the 30th day of April 1990

BETWEEN:

THE HONOURABLE CARMEN MARY LAWRENCE, B. Psych., Ph.D., 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 first part WESTERN COLLIERIES LTD. a company incorporated in Western Australia and having its registered office at 10th Floor, 40 The Esplanade, Perth (hereinafter called “the Company”) of the second part WESTERN COLLIERIES & DAMPIER PTY. LTD. a company incorporated in Western Australia and having its registered office at 10th Floor, 40 The Esplanade, Perth (hereinafter called “WCD”) of the third part and BHP MINERALS LIMITED a company incorporated in Western Australia and having its registered office at 12 Level, 221 St George’s Terrace, Perth (hereinafter called “BHPM”) of the fourth part.

WHEREAS:

- (a) the State and the Company are the parties to the agreement dated 17 January 1979 ratified by the Collie Coal (Western Collieries) Agreement Act 1979 which agreement has been varied by the agreement dated 7 October 1985 ratified by the Collie Coal (Western Collieries) Agreement Amendment Act 1985 and as so varied is hereinafter called “the principal Agreement”;
- (b) the State, WCD, the Company and BHPM are the parties to the agreement dated 28 May 1981 which was ratified by the Collie Coal (Western Collieries & Dampier) Agreement Act 1981 and is hereinafter called “the WCD Agreement”;
- (c) the parties to this Agreement have agreed that the WCD Agreement shall be determined and the State and the Company have agreed that the principal Agreement shall be varied, inter alia to include the land the subject of the WCD Agreement in the principal Agreement, in manner hereinafter set forth.

NOW THIS AGREEMENT WITNESSES:

1. Subject to the context the words and expression used in this Agreement have the same meanings respectively as they have in and for the purpose of the principal Agreement.
2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act.

3. The subsequent clauses of this Agreement shall not operate unless and until the Bill to ratify this Agreement referred to in clause 2 hereof is passed as an Act before the 31st December 1990 or such later date if any as the parties hereto may mutually agree upon.
4. The State and the Company agree that the principal Agreement shall be varied with effect from the coming into operation of this Agreement as follows—
 - (1) Clause 1—
 - (a) by deleting the definitions of “Conservator of Forests” and “Forests Act”;
 - (b) by inserting, in the appropriate alphabetical positions, the following definitions—

“ “CALM Act” means the Conservation and Land Management Act 1984;

“Executive Director” means the person holding, or acting in, the office established by section 36(1) of the CALM Act;

“the blue areas” means the areas delineated and coloured blue on the plan marked “B” initialled by or on behalf of the parties hereto for the purposes of identification;”;
 - (c) in the definition of “associated company” by deleting “section 6 of the Companies Act, 1961” and substituting the following—

“section 7 of the Companies (Western Australia) Code”;
 - (d) by deleting the definition of “Minister for Minerals and Energy” and substituting the following definition—

“ “Minister for Mines” means the Minister in the Government of the State for the time being responsible for the administration of the Mining Act;”;
 - (e) in the definition of “private road”, by deleting “its proposals as approved by the Minister pursuant to Clause 7” and substituting the following—

“proposals approved under this Agreement”;
 - (f) in the definition of “State Energy Commission”, by deleting “established pursuant to the State Energy Commission Act, 1945” and substituting the following—

“preserved and continued by the State Energy Commission Act 1979”;
 - (g) by deleting the definition of “State forest” and substituting the following definition—

“ “State forest” has the meaning given to it in section 3 of the CALM Act;”;

- (h) by deleting the definition of "timber reserve" and substituting the following definition—

" "timber reserve" has the meaning given to it in section 3 of the CALM Act;".

- (2) Clause 9—

by inserting after "Mining Lease" the following—

"(other than the blue areas)".

- (3) By inserting after Clause 9 the following clause—

"9A (1) The Company shall not mine any area or areas comprised within the blue areas except in accordance with proposals approved or determined under this Agreement.

- (2) The Company may at any time prior to the end of year 30 submit to the Minister to the fullest extent reasonably practicable its detailed proposals for the exploration and development of the coal resource within the blue areas which proposals shall address the matters referred to in paragraphs (a), (b) and (d) to (m) of Clause 7(1) and also the total tonnage of coal which the Company proposes to mine pursuant to those proposals for sale to all purchasers including the State Energy Commission from the blue areas during the remaining term of this Agreement. The provisions of Clause 8 (other than subclauses (5) and (6)) shall mutatis mutandis apply to detailed proposals submitted pursuant to this subclause. 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.

- (3) The Company shall forthwith on the request of the State made at any time after the expiration of year 30 surrender to the State out of the Mining Lease all land within the blue areas which at the date of the request is within the Mining Lease but is not the subject of proposals approved or determined under this Agreement."

- (4) Clause 11 subclause (2)—

- (a) by deleting "31st May" wherever it occurs and substituting in each place the following—

"30th November";

- (b) by deleting "31st March" wherever it occurs and substituting in each place the following—

"30th September".

(5) Clause 13—

by deleting “Conservator of Forests” wherever it occurs and substituting in each place the following—

“Executive Director”.

(6) By inserting after Clause 13 the following Clause—

- “13A (1) On 28th February 1991 and the 28th February in each year thereafter the Company shall submit to the Department of Mines a report of all exploration carried out within the Mining Lease during the preceding calendar year such reports to be in accordance with the Code for Reporting of Identified Coal Resources and Reserves ratified by the Australian Minerals and Energy Council on 8th November 1986 as amended from time to time or otherwise as agreed between the Company and the State.
- (2) The exploration and other reports provided to the Department of Mines pursuant to this Agreement or the Mining Act shall if required by the Director General of Mines and provided the Company has suitable data and transmission equipment be reported in total or in part by electronic reporting formats and/or devices.
- (3) The Company shall progressively explore the land within the Mining Lease to determine the coal resources present to the “indicated” level as described in the Code referred to in subclause (1) of this Clause to a minimum depth of 450 metres where technically appropriate. The Company shall complete at least the following cumulative amounts of exploration drilling and associated downhole geophysical logging within the lease by 31st December 1994:

Calendar Year	Cumulative Drilling and Electric Logging
1990	2,000 metres
1991	4,000 metres
1992	6,000 metres
1993	8,000 metres
1994	10,000 metres

provided the Minister for Mines at the request of the Company may, in exceptional circumstances, agree to vary the timetable and allow a lesser amount of drilling and logging in any one year. Before the commencement of 1991 and at the corresponding time each year thereafter until 10,000 metres has been drilled the Company shall discuss its exploration programme for the ensuing year

with the Department of Mines and will use reasonable endeavours to include in the programme any reasonable requirements of the Department not inconsistent with the provisions of this Clause.”.

(7) Clause 15—

(a) subclause (1)—

(i) by deleting paragraph (a) and substituting the following paragraph—

“(a) use the services of engineers surveyors architects professional consultants experts and specialists, project managers, manufacturers, suppliers and contractors resident and available within the said State or if such services are not available within the said State then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;”;

(ii) by inserting in paragraph (b) after “State” the following—

“or if such labour is not available then use labour otherwise available within Australia”;

(iii) by deleting paragraph (c) and substituting the following paragraph—

“(c) during design and when preparing specifications calling for tenders and letting contracts for works materials plant equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that Western Australian and Australian suppliers manufacturers and contractors are given fair and reasonable opportunity to tender or quote;”;

(iv) in paragraph (d) by deleting “elsewhere.” and substituting the following—

“elsewhere or, subject to the foregoing, give that consideration and where possible preference to other Australian suppliers manufacturers and contractors; and”;

(v) by inserting after paragraph (d) the following paragraph—

“(e) if notwithstanding the foregoing provisions of this subclause a contract is to be let or an order is to be placed with other than a Western Australian or Australian supplier, manufacturer or contractor, proper consideration and where possible preference shall be given to tenders arrangements or proposals that include Australian participation including without limitation joint ventures technology transfers or offsets.”;

- (b) by inserting after subclause (1) the following subclause—
 - “(1a) The Company shall in every contract entered into with a third party for the supply of services labour works materials plant equipment and supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake the same obligations as are referred to in subclause (1) and shall report to the Company concerning such third party implementation of that condition.”;
 - (c) subclause (2)—
 - by inserting after “subclause (1)” the following—
“and subclause (1a)”.
- (8) Clause 18—
- (a) subclause (1)—
 - by deleting “The” and substituting the following—
“Subject to subclause (3) of this Clause the”;
 - (b) by inserting after subclause (2) the following subclause—
 - “(3) The Company shall not without the prior consent of the Minister carry out any operations on any part of the land outlined in yellow on the said plan marked “B” if there is a likelihood of the bores pumps pipelines and appurtenant works which supply water to the Muja Power Station being thereby interfered with or endangered. The consent of the Minister (which shall not be unreasonably withheld) may be given subject to such conditions as the Minister considers necessary to minimize or eliminate the likelihood of such interference or danger.”.
- (9) Clause 20—
- (a) by deleting “Conservator of Forests” and “Conservator” wherever they occur and substituting in each place the following—
“Executive Director”;
 - (b) by deleting “Forests Act” and substituting the following—
“CALM Act”;
 - (c) in subclause (2), by deleting “shall issue” and substituting the following—
“shall (provided in the case of a permit applied for in respect of the blue areas that the permit does not conflict with the relevant management plan of the Executive Director prepared pursuant to the CALM Act) issue”.

(10) Clause 21—

(a) subclause (1)—

by deleting “Minister for Minerals and Energy” wherever it occurs and substituting in each place the following—

“Minister for Mines”;

(b) by deleting subclause (2a) and substituting the following subclause—

“(2a) Notwithstanding the provisions of the Mining Act—

(a) the Company shall on or before 31st December 1990 or such later date as the parties hereto may agree surrender or cause to be surrendered to the State or withdraw or cause to be withdrawn as the case may require all mining tenements and other mining titles and all applications for mining tenements and other mining titles then existing in respect of the blue areas and upon such surrender and withdrawal the Minister for Mines shall include the blue areas in the Mining Lease by endorsement on the Mining Lease subject to such of the conditions of the surrendered mining tenements and mining titles as the Minister for Mines 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);

(b) the Company may from time to time during the currency of this Agreement apply to the Minister for Mines 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 Mines in his discretion and providing the land has been explored to his satisfaction may upon the surrender by the Company of the relevant mining lease likewise include the land subject thereof in the Mining Lease subject to such terms covenants and conditions as the Minister for Mines may determine.”;

(c) subclause (4)—

by deleting “Minister for Minerals and Energy” and substituting the following—

“Minister for Mines”;

- (d) subclause (6)–

by deleting “and has lodged a true copy of the agreement with the Department of Mines”;

- (e) subclause (7)–

by deleting “Minister for Minerals and Energy” wherever it occurs and substituting in each place the following–

“Minister for Mines”.

- (11) Clause 21B subclause (1)–

by deleting “Minister for Minerals and Energy” and substituting the following–

“Minister for Mines”.

- (12) Clause 25–

- (a) subclause (2)–

by deleting “the provisions of Clause 7 (1) (c) and Clause 8” and substituting the following–

“approved proposals”;

- (b) by inserting after subclause (3) the following subclause–

“(4) The Company shall when reasonably required by the Minister from time to time report to the Minister on its investigations and endeavours to promote the sale of coal and to secure markets for coal from the areas the subject of the Mining Lease.”.

- (13) Clause 26–

by deleting “Minister for Minerals and Energy” wherever it occurs and substituting in each place the following–

“Minister for Mines”.

- (14) By deleting Clause 33.

(15) Clause 38—

(a) subclause (1)—

by deleting “or (notwithstanding the provisions of the Mining Act) under any mining leases in respect of coal mining lease applications numbered 671, 672, 673, 674, 675, 684 and 731”;

(b) subclause (2)—

by deleting “or under any coal mining leases in respect of coal mining lease applications numbered 671, 672, 673, 674, 675, 684 and 731 ”.

(16) Clause 43 subclause (1)—

by deleting “Arbitration Act, 1895” and substituting the following—

“Commercial Arbitration Act 1985 and notwithstanding section 20(1) of that Act each party may be represented before the arbitrators by a duly qualified legal practitioner or other representative ”.

5. The WCD Agreement is hereby cancelled and the rights and obligations of the parties thereto hereby terminated.

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 said)	
THE HONOURABLE CARMEN)	
MARY LAWRENCE, B.Psych., Ph.D.,)	CARMEN MARY LAWRENCE
M.L.A. in the presence of—)	

DAVID CHARLES PARKER
MINISTER FOR RESOURCES AND TRADE

THE COMMON SEAL of)	
WESTERN COLLIERIES LTD.)	(C.S.)
was hereto affixed by)	
authority of its Directors—)	

Director M. A. CHANEY

Director D. I. CRAWFORD

Secretary M. A. EGERT

THE COMMON SEAL of)
WESTERN COLLIERIES &)
DAMPIER PTY. LTD. was) (C.S.)
hereto affixed by authority)
of its Directors—)

Director M. A. CHANEY

Director D. I. CRAWFORD

Secretary M. A. EGERT

THE COMMON SEAL of)
BHP MINERALS LIMITED was) (C.S.)
hereto affixed by authority)
of the Board of Directors—)

Director D. J. WOOD

Secretary G. J. HEATH

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