

# **COLLIE COAL (GRIFFIN) AMENDMENT BILL 2023**

## **EXPLANATORY MEMORANDUM**

### **Section 1**

Contains the short title of the *Collie Coal (Griffin) Agreement Amendment Act 2023* (Act).

### **Section 2**

Provides that:

- (a) sections 1 and 2 of the Act come into operation on the day on which it receives Royal Assent; and
- (b) the remainder of the Act comes into operation the day after it receives Royal Assent.

### **Section 3**

Specifies that the Act amends the *Collie Coal (Griffin) Agreement Act 1979*.

### **Section 4**

Deletes section 2 of the *Collie Coal (Griffin) Agreement Act 1979* and inserts a new section 2 (Terms used) defining the following terms:

**2023 variation agreement**, defined to mean the agreement a copy of which is set out in Schedule 2; and

**Agreement**, defined to mean the agreement a copy of which is set out in Schedule 1 and includes that agreement as varied from time to time in accordance with its provisions and as varied by the 2023 variation agreement.

### **Section 5**

Inserts new section 4 (Ratification of the 2023 variation agreement) by which:

- (1) the 2023 variation agreement is ratified;
- (2) the implementation of the 2023 variation agreement is authorised; and
- (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.

### **Section 6**

Retitles the Schedule to the *Collie Coal (Griffin) Agreement Act 1979* as:

Schedule 1 – Collie Coal (Griffin) Agreement

### **Section 7**

Inserts Schedule 2 (2023 variation agreement) into the *Collie Coal (Griffin) Agreement Act 1979*, being a copy of the 2023 variation agreement.

## SCHEDULE 2 – 2023 VARIATION AGREEMENT

### PARTIES

The Honourable Mark McGowan, Premier of the State of Western Australia, acting for and on behalf of the State and its instrumentalities (the “**State**”); and The Griffin Coal Mining Company Pty Limited (the “**Company**”) of the other part.

### RECITALS

- A. Provides that the State and the Company are the parties to the agreement dated 5 November 1979 ratified and scheduled to the *Collie Coal (Griffin) Agreement Act 1979* and which is referred to in this Agreement (being the “**Variation Agreement**”) as the “**Principal Agreement**”.
- B. Advises that the Parties wish to vary the Principal Agreement (being the current 'State Agreement') in accordance with the terms and conditions of the Variation Agreement.

### THE PARTIES AGREE AS FOLLOWS

#### *Ratification and operation*

##### **Clause 1(1)**

Provides that the Variation Agreement (except clause 1) does not come into operation except in accordance with clause 1(2).

##### **Clause 1(2)**

States that the Variation Agreement comes into operation on the day in which it is ratified by an Act of the Parliament of Western Australia (“**Operative Date**”) unless, before that date, it terminates under clauses 1(4) or 1(5).

##### **Clause 1(3)**

Requires the State to introduce to Parliament a Bill prior on or before 22 June 2023 (or at a later date agreed by the parties), however the State is not obliged to endeavour to secure its passage as an Act.

##### **Clause 1(4)**

Provides, unless the parties otherwise agree, for the termination of the Variation Agreement (and without a party having claim against the other in relation to the Variation Agreement) if by 30 June 2023 the Variation Agreement has not been ratified.

##### **Clause 1(5)**

Specifies that if the Principal Agreement is determined on a day prior to the Operative Date, then the Variation Agreement will also terminate on and from that day, and without any party having a claim against any other in relation to the Variation Agreement.

##### **Clause 1(6)**

Provides that the State acknowledges and agrees that, notwithstanding any other provision of the Variation Agreement or the Principal Agreement:

- a) The Company's receivers and managers (“**Receivers**”) execute the Variation 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 the Variation 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 the Variation 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 the Variation Agreement will continue notwithstanding the Receivers ceasing to act as receivers and managers of the assets of the Company or the Variation Agreement being terminated or amended.

### ***Variations to the Principal Agreement***

#### **Clause 2(1)**

Amends clause 1 of the Principal Agreement (Definitions) by inserting a new definition for "variation date".

#### **Clause 2(2)**

Inserts new clauses 11A(1) – (3) (Proposals after variation date) into the Principal Agreement which:

- deems the extension of timeframes for activities authorised and obliged under the Principal Agreement and current approved proposals (including measures to be taken for the protection and management of the environment) to 30 June 2024 (clause 11A(1));
- obliges the Company to submit additional proposals for approval by the Minister for the financial year ending 30 June 2024 to supplement and refine the deemed extended timeframes for approved activities under new clause 11A(1) (clause 11A(2)); and
- if a further extension of the Principal Agreement is sought for the financial year ending 30 June 2025 by application of the Company and granted by the Minister in accordance with new clause 49 of the Principal Agreement, the draft additional proposals accompanying the application are deemed to be submitted under clause 10 of the Principal Agreement for the Minister's consideration under that clause (clause 11A(3)).

#### **Clause 2(3)**

Updates existing clause 21 of the Principal Agreement by inserting a new subclause (2a) to extend the term of 'Schedule B' and 'Schedule C' coal mining leases granted to the Company by 12 months to 30 June 2024, or if the Minister extends the term of the Principal Agreement under subclause (3) of new clause 49 of the Principal Agreement, to 30 June 2025.

Existing subclause (3) of clause 21 is also amended to clarify that the term of 'Schedule A' coal mining leases shall, subject to the Principal Agreement, also continue for the term of the Principal Agreement, including as extended by and in accordance with new clause 49.

**Clause 2(4)**

Inserts new clauses 49(1)-(3) (Term of Agreement) into the Principal Agreement which:

- subject to clauses 36 and 37 of the Principal Agreement, extend the term of the Principal Agreement for 12 months, with a new expiry date of 30 June 2024 (clause 49(1));
- provides that in March 2024, the Company may apply by giving notice of its desire to extend the Principal Agreement for a further 12 months to 30 June 2025 and the notice is to be accompanied by draft additional proposals detailing the Company's proposed activities for that 12 month period (clause 49(2)); and
- at their absolute discretion, the Minister may grant a further 12 month extension to the term of Principal Agreement to 30 June 2025 (clause 49(3)).