

# **COLLIE COAL (GRIFFIN) AMENDMENT BILL 2024**

## **EXPLANATORY MEMORANDUM**

### **Section 1**

Contains the short title of the *Collie Coal (Griffin) Agreement Amendment Act 2024* (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**

Amends section 2 of the *Collie Coal (Griffin) Agreement Act 1979* by deleting the definition of **Agreement**.

Inserts in section 2 (Terms used) the following terms:

**2024 variation agreement**, defined to mean the agreement a copy of which is set out in Schedule 3; 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 and the 2024 variation agreement.

### **Section 5**

Inserts new section 5 (Ratification of 2024 variation agreement) by which:

- (1) the 2024 variation agreement is ratified;
- (2) the implementation of the 2024 variation agreement is authorised; and
- (3) without limiting or otherwise affecting the *Government Agreements Act 1979*, the 2024 variation agreement operates and takes effect despite any enactment or other law.

### **Section 6**

Inserts Schedule 3 (2024 variation agreement) into the *Collie Coal (Griffin) Agreement Act 1979*, being a copy of the 2024 variation agreement.

## SCHEDULE 3 – 2024 VARIATION AGREEMENT

### PARTIES

The Honourable Roger Cook, 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 was subsequently varied by the agreement dated 4 May 2023 (which was ratified by the *Collie Coal (Griffin) Agreement Amendment Act 2023*) which is referred to in this 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 subclause (2).

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

States that the Variation Agreement 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 date, it terminates under subclauses (4) or (5).

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

Requires the State to introduce in Parliament a Bill on or before 15 August 2024 (or at a later date agreed by the parties), and 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 31 December 2024 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 new definitions for "Ewington Rail Infrastructure" and "second variation date".

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

Inserts new clause 11A(4) (Additional proposals for financial year ending 30 June 2026) and new clause 11A(5) (Variation of approved proposals during their implementation)) into the Principal Agreement which respectively:

- oblige the Company to submit additional proposals for approval by the Minister for the financial year ending 30 June 2026 for the exploration and development of the coal resource contained within the Company's Coal Mining Leases and for other matters (clause 11A(4)); and
- provide authority for the Minister to approve variations to previously approved proposals during their implementation (clause 11A(5)).

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

Inserts new clause 17(8) (Third Party Access to Ewington Rail Infrastructure) into the Principal Agreement which:

- subject to clauses 36 and 37, allows the Company, with prior consent from the Minister, to enter into an agreement with a third party to provide access to the Ewington Rail Infrastructure for transport of goods (including goods other than coal) and the connection of railway infrastructure owned or operated by a third party for the purpose of such access; and
- deems the coal mining leases underlying the Ewington Rail Infrastructure to authorise such access and connection.

#### **Clause 2(4)**

Amends clause 21(2a) of the Principal Agreement so that it is subject to new subclause (2b).

Inserts new clause 21(2b) into the Principal Agreement which:

- extends the term of each coal mining lease granted to the Company pursuant to clause 21(1) to 30 June 2026, subject to the sooner determination of the Principal Agreement.

**Clause 2(5)**

Inserts new clauses 49(4) into the Principal Agreement which:

- acknowledges that on 1 May 2024 the Minister extended the term of the Principal Agreement pursuant to clause 49(3) to 30 June 2025; and
- on and from the second variation date, deems the term of the Principal Agreement to be extended by 12 months to 30 June 2026, subject to clauses 36 and 37.