

Western Australia

Cement Works (Cockburn Cement Limited) Agreement Amendment Bill 2015

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	Sixth Schedule — Fourth Variation Agreement	

Western Australia

LEGISLATIVE ASSEMBLY

**Cement Works (Cockburn Cement Limited)
Agreement Amendment Bill 2015**

A Bill for

**An Act to amend the *Cement Works (Cockburn Cement Limited)
Agreement Act 1971*.**

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Cement Works (Cockburn Cement Limited)*
3 *Agreement Amendment Act 2015*.

4 **2. Commencement**

5 This Act comes into operation as follows —

6 (a) sections 1 and 2 — on the day on which this Act
7 receives the Royal Assent;

8 (b) the rest of the Act — on the day after that day.

9 **3. Act amended**

10 This Act amends the *Cement Works (Cockburn Cement Limited)*
11 *Agreement Act 1971*.

12 **4. Section 2 amended**

13 In section 2 insert in alphabetical order:

14

15 *Fourth Variation Agreement* means the agreement a
16 copy of which is set forth in the Sixth Schedule;

17

18 **5. Section 7 inserted**

19 After section 6 insert:

20

21 **7. Ratification of Fourth Variation Agreement**

22 (1) The Fourth Variation Agreement is ratified.

23 (2) The implementation of the Fourth Variation Agreement
24 is authorised.

25 (3) Without limiting or otherwise affecting the
26 *Government Agreements Act 1979*, the Fourth

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1 [Solicitor's details]

2

3 **THIS AGREEMENT** is made this 20th day of April 2015

4

5 **BETWEEN**

6

7 **THE HONOURABLE COLIN JAMES BARNETT**, M.Ec., M.L.A., Premier
8 of the State of Western Australia, acting for and on behalf of the Government of
9 the said State and its instrumentalities (**State**) of the one part,

10 **AND**

11 **THE HONOURABLE DEAN CAMBELL NALDER** M.L.A., Minister for
12 Transport, being the Minister in the Government of the State of Western
13 Australia for the time being responsible for the administration of the *Port*
14 *Authorities Act 1999* (**Port Authorities Minister**)

15 **AND**

16 **FREMANTLE PORT AUTHORITY**, a body corporate established pursuant
17 to the *Port Authorities Act 1999* (WA) (**Authority**)

18 **AND**

19 **COCKBURN CEMENT LIMITED** ACN 008 673 470 of Level 1,
20 157 Grenfell Street, Adelaide, South Australia (**Company**).

21

22 **RECITALS**

23 **A.** The parties to this Agreement are now the parties to the agreement
24 dated 18 February 1971 (as amended by an agreement dated
25 25 August 1971), the execution of which by the State was ratified by
26 the *Cement Works (Cockburn Cement Limited) Agreement Act 1971*,
27 as varied by:

28 (a) an agreement dated 24 October 1986, ratified by the Cement
29 Works (Cockburn Cement Limited) Agreement Amendment
30 Act 1986;

- 1 (b) an agreement dated 14 May 1997, ratified by the Cement
2 Works (Cockburn Cement Limited) Agreement Amendment
3 Act 1997; and
- 4 (c) an agreement dated 14 June 2010, ratified by the Cement
5 Works (Cockburn Cement Limited) Agreement Amendment
6 Act 2010.

7 The first mentioned agreement as so amended and varied is referred to
8 in this Agreement as the **Principal Agreement**.

9 **B.** The parties wish to add to and vary the provisions of the Principal
10 Agreement on the terms and conditions set out in this Agreement.

11

12 **NOW THIS AGREEMENT WITNESSES:**

13 **1. Ratification and operation**

14 (1) This Agreement, other than this clause, does not come into operation
15 except in accordance with subclause (2).

16 (2) This Agreement, other than this clause, comes into operation on the
17 day on which it is ratified by an Act of the Parliament of Western
18 Australia (**Operative Date**) unless, before that day, it terminates
19 under subclauses (4) or (5).

20 (3) The State must introduce in the Parliament of Western Australia
21 before 30 June 2015 or a later date agreed between the parties to this
22 Agreement, a Bill to ratify this Agreement and must endeavour to
23 secure its passage as an Act.

24 (4) If by 31 December 2015 this Agreement has not been ratified by an
25 Act of the Parliament of Western Australia then, unless the parties to
26 this Agreement otherwise agree, this Agreement terminates on that
27 day and no party hereto will have any claim against any other party
28 hereto with respect to any matter or thing arising out of, done,
29 performed, or omitted to be done or performed under this Agreement.

30 (5) The parties agree that if the Principal Agreement is otherwise
31 determined in accordance with its provisions on a day prior to the
32 Operative Date, then this Agreement shall also terminate on and from
33 that day and no party hereto will have any claim against any other

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1 party hereto with respect to any matter or thing arising out of, done,
2 performed, or omitted to be done or performed under this Agreement.

3 **2. Variations of the Principal Agreement**

4 The Principal Agreement is hereby varied as follows:

5 (a) in clause 1(2) by:

6 (i) in the definition of "alternative material" deleting
7 "cement and clinker " and substituting "cement or
8 clinker ";

9 (ii) in the definition of "specified mineral" deleting
10 "cement and clinker" and substituting "cement or
11 clinker"

12 (iii) in the definition of "works site":

13 (A) deleting "and clinker"; and

14 (B) inserting "and clinker manufacturing
15 operations may be carried out by the
16 Company in accordance with this
17 Agreement" after "are carried out"; and

18 (C) inserting ", excluding any part or parts of
19 such site disposed of by the Company
20 pursuant to clause 7A hereof" before the
21 semi colon at the end of that definition;

22 (iv) inserting in its appropriate alphabetical position the
23 following new definition:

24 "clinker" means clinker manufactured from limestone
25 and other raw materials for use in the manufacture
26 hereunder of cement;

27 (b) in clause 3(1) by:

28 (i) deleting "and clinker"; and

29 (ii) inserting after the current sentence the following
30 additional sentence:

- 1 "During the currency of this Agreement the Company
2 may also carry out clinker manufacturing operations
3 on the works site in accordance with this
4 Agreement.";
- 5 (c) in clause 6(1) by deleting "cement and clinker manufacturing
6 operations" and substituting "cement manufacturing
7 operations hereunder, clinker manufacturing operations
8 hereunder";
- 9 (d) in paragraph (b) of clause 6E by deleting "as a neutralising
10 agent" with such deletion to take effect from and including
11 the date those words were inserted in the Principal
12 Agreement;
- 13 (e) in clause 7(2) by:
14 (i) deleting "and clinker"; and
15 (ii) inserting "(other than clinker manufacturing
16 operations)" after "and any other operations";
- 17 (f) in clause 7(3) by deleting "cement and clinker manufacturing
18 operations" and substituting "cement manufacturing
19 operations hereunder, clinker manufacturing operations
20 hereunder";
- 21 (g) in clause 7(4) deleting "cement and clinker manufacturing
22 operations" and substituting "cement manufacturing
23 operations hereunder, clinker manufacturing operations
24 hereunder";
- 25 (h) in clause 10 by numbering the existing provision as
26 subclause (1) and inserting immediately after it the following
27 new subclause:
28 "(2) The Company shall from time to time when requested
29 by the Minister submit to the Minister a report
30 concerning the implementation of the provisions of
31 subclause (1) of this clause.";
- 32 (i) in clause 10B(1) by:
33 (i) deleting "cement and clinker" where it appears first
34 and substituting "cement"; and

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- 1 (ii) deleting "cement and clinker" where it appears
2 second and substituting "cement or clinker";
- 3 (j) in clause 10B by inserting after subclause (7) the following
4 new subclauses:
- 5 "(8) If the Company at any time during the currency
6 of this Agreement suspends or ceases (whether
7 or not after a period of suspension) to carry out
8 its clinker manufacturing operations on the
9 works site it shall promptly notify the Minister
10 of the date of such suspension or cessation and:
- 11 (a) in the case of a suspension of such
12 operations, its anticipated
13 commencement date if and when
14 known;
- 15 (b) in the case of a cessation of
16 operations, its plans to
17 decommission the facilities upon
18 the works site used in such
19 operations if and when formulated.
- 20 (9) The Company must, if required by the Minister,
21 consult from time to time with the Minister in
22 regard to such suspension or cessation of
23 operations including in relation to any
24 decommissioning plans notified to the Minister
25 under subclause (8).
- 26 (10) Subject to the EP Act, the Company may
27 recommence the carrying out on the works site
28 of clinker manufacturing operations in
29 accordance with this Agreement after
30 suspending or after ceasing such operations
31 provided that:
- 32 (a) it has not decommissioned the
33 facilities upon the works site used
34 in the carrying out of such
35 operations;

- 1 (b) such recommencement of
2 operations will be within the then
3 operational manufacturing capacity
4 of such facilities; and
- 5 (c) it has given notice to the Minister
6 that it intends to recommence its
7 clinker manufacturing operations
8 hereunder and of the date of its
9 anticipated recommencement date.
- 10 (11) If the Company desires:
- 11 (a) to recommence the carrying out
12 hereunder of clinker manufacturing
13 operations upon the works site
14 after decommissioning the
15 facilities upon the works site
16 previously used in such operations;
17 or
- 18 (b) to otherwise significantly modify,
19 expand or otherwise vary the
20 clinker manufacturing operations it
21 is carrying on upon the works site
22 beyond the then operational
23 manufacturing capacity of the
24 facilities upon the works site used
25 in such operations (including after
26 the recommencement of operations
27 as referred to in subclause (10)),
- 28 it shall give notice of such desire to the
29 Minister. If required by the Minister within
30 2 months of the giving of such notice the
31 Company shall then submit to the Minister
32 (within such period as the Minister may
33 reasonably allow) to the fullest extent
34 reasonably practicable detailed proposals in
35 respect of all matters covered by such
36 notice and other relevant information as the
37 Minister may reasonably require. The

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1 provisions of subclauses (2) – (7) above
2 shall mutatis mutandis apply in relation to
3 such proposals."
4

5 **EXECUTED** as a deed.

6

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8 **SIGNED** by **THE HONOURABLE COLIN**) [Signature]
9 **JAMES BARNETT** in the presence of:)

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12

13 [Signature]

14 Signature of witness

15

16 NICOLE JANE HENDERSON

17 Name of witness

18

19

20

21 **SIGNED** by **THE HONOURABLE DEAN**) [Signature]
22 **CAMBELL NALDER** in the presence of:)

23

24

25 [Signature]

26 Signature of witness

27

28 DARREN CLIFFORD MUDGE ASM

29 Name of witness

30

31

32 **THE COMMON SEAL** of **FREMANTLE**)

33 **PORT AUTHORITY** was hereunto affixed in) [C. S.]

34 the presence of:)

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36

37 [Signature]

38 Director

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[Signature]
Chief Executive Officer

THE COMMON SEAL of **COCKBURN**)
CEMENT LIMITED ACN 008 673 470 was) [C. S.]
hereunto affixed in accordance with its)
constitution in the presence of:)

[Signature]
Director BRADLEY DONALD LEMMON

[Signature]
Secretary MARCUS ROLAND DEAN CLAYTON

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