

Queensland



ANNO TRICESIMO SEPTIMO

ELIZABETHAE SECUNDAE REGINAE



**No. 38 of 1988**

**An Act to amend the Central Queensland Coal Associates  
Agreement and Queensland Coal Trust Act 1984 in  
certain particulars**

[ASSENTED TO 3RD MAY, 1988]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

**1. Short title.** This Act may be cited as the *Central Queensland Coal Associates Agreement and Queensland Coal Trust Act Amendment Act 1988*.

**2. Citation.** (1) In this Act the *Central Queensland Coal Associates Agreement and Queensland Coal Trust Act 1984* is referred to as the Principal Act.

(2) The Principal Act as amended by this Act may be cited as the *Central Queensland Coal Associates Agreement and Queensland Coal Trust Act 1984-1988*.

**3. Commencement.** (1) This section and section 1 shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), this Act shall commence on a day appointed by Proclamation.

**4. Amendment of s. 2. Arrangement.** Section 2 of the Principal Act is amended by inserting after the words "SECOND SCHEDULE" the words

“  
THIRD SCHEDULE”.

**5. Amendment of s. 7. Interpretation.** Section 7 of the Principal Act is amended by—

(a) inserting before the definition “local authority” the following definition:—

““Court” means the Supreme Court or a Judge thereof;”;

(b) inserting after the definition “local authority” the following definition:—

““manager” means the manager for the time being appointed pursuant to the trust deed;”;

(c) inserting after the definition “Queensland Coal Trust” the following definition:—

““reconstruction provisions” means the provisions of the trust deed as amended by amendments to the trust deed taken to have been validly made by the operation of section 10A;”.

**6. Amendment of s. 8. Dealing in units exempt in certain cases from requirement for consent or approval.** Section 8 of the Principal Act is amended by inserting after the words “other dealing” where they first occur the words “(including dealing for the purposes of any arrangement under the reconstruction provisions)”.

7. **New ss. 10A and 10B.** The Principal Act is amended by inserting after section 10 the following sections:—

**“10A. Amendment of trust deed to provide for certain reconstruction.** (1) Notwithstanding any other law, upon amendments to the trust deed substantially in accordance with the form of amendments set out in the Third Schedule being approved by special resolution of unit holders as amendments to the trust deed and the execution by the trustee and the manager of a deed supplemental to the trust deed to make the amendments so approved, the trust deed shall be taken to have been validly amended accordingly.

(2) The reconstruction provisions and the date of approval thereof as amendments to the trust deed shall be published by notification in the Gazette.

(3) For the purposes of subsection (1) the expression “special resolution” has the same meaning as it has in the trust deed.

**10B. Section 9 not to apply to reconstruction.** Any arrangement proposed by the manager, and approved in accordance with the terms of the reconstruction provisions, shall be binding and shall have and be given full force and effect on and by the trustee, the manager and all persons registered or entitled to be registered as holders of units notwithstanding the provisions of sections 9 and 10 or any provision of the trust deed.”.

8. **New ss. 10C and 10D.** The Principal Act is amended by inserting after section 10B the following sections:—

**“10C. Court’s powers.** (1) After publication of the reconstruction provisions and the date of approval thereof pursuant to the provisions of section 10A, the Court may, upon application made to it for that purpose, make orders for—

(a) the convening of a meeting or meetings to consider a proposed arrangement;

(b) the approval by it of a proposed arrangement, as provided for by, and in accordance with, the reconstruction provisions and such further or other orders ancillary thereto as it thinks fit.

(2) Upon the approval of a proposed arrangement in accordance with the terms of the reconstruction provisions, the court may, upon application made to it for that purpose, make such orders as are necessary to ensure that the arrangement is fully and effectively carried out which may include orders for—

(a) the issue and allotment of shares in a company in substitution for units issued pursuant to the trust deed;

(b) the cancellation of units in substitution for which shares are so issued and allotted;

(c) the issue and allotment of units pursuant to the trust deed to a company in which shares are or are to be so issued and allotted in substitution for units;

(d) the provision to be made for persons who within such time and in such manner as the Court directs, dissent from the arrangement.

**10D. Stamp duty regarding reconstruction.** (1) Where an arrangement is given full force and effect pursuant to section 10B, the company which pursuant thereto is to have units in the Queensland Coal Trust issued to it shall, on the first issue or cancellation of a unit pursuant to that arrangement, pay to Consolidated Revenue an amount determined by the Governor in Council (on the recommendation of the Treasurer of the State) which amount shall be a debt due and owing to the Crown.

(2) The amount paid pursuant to subsection (1), shall be deemed to be a payment of duty for the purposes of section 56B of the *Stamp Act 1894-1988* and an offset of that amount of duty shall be allowed against duty chargeable under that Act in respect of the issue of units to the company or the cancellation of units by the unitholders pursuant to the arrangement referred to in subsection (1)."

**9. New Third Schedule.** The Principal Act is amended by adding at the end thereof the following schedule:—

### "THIRD SCHEDULE

[s.10A]

#### PROPOSED AMENDMENTS TO TRUST DEED

(1) By deleting Clause 3.6 of the Trust Deed and substituting the following:—

**3.6 Winding Up if Legislation Affects Income of Fund**

If at any time during the term of the Trust any legislation is enacted which in the opinion of the Manager or the Trustee may have the effect of materially diminishing the amount of income of the Trust Fund available for distribution to Unit Holders then the Manager and the Trustee may agree to determine and wind up the trust and the provisions of Clause 3.7 shall apply to such winding up or the Manager may propose an Arrangement to or with the Unit Holders or any class of them in accordance with the provisions of Clause 3.8."

(2) By inserting at the end of Clause 3.7 of the Trust Deed a new Clause 3.8 as follows:—

**3.8 Arrangements and Reconstructions**

3.8.1 In this clause 3.8 unless the context otherwise requires—

"Arrangement" includes a scheme for the reorganisation of the affairs of the Trust whereby some or all of the issued units in the Trust are cancelled, and issued units are immediately thereafter all held by a company not being a company in the capacity of a trustee of a trust estate, and newly issued non-redeemable shares in the company are allotted and issued to or vested

in the Unit Holders whose units are cancelled in the scheme and the total number of shares issued in the scheme is equal to or is a multiple of the total number of issued units in the Trust which are cancelled and are in the same proportion for each Unit Holder to the number of units held by that Unit Holder as have been cancelled, but does not include such a scheme as would reduce or remove the right of the Trustee to indemnity from the Trust assets or as would result in such an amendment to the Trust Deed as would adversely affect the capacity of the Trustee to perform its financial obligations as Trustee;

“Draft Explanatory Statement” in relation to a proposed Arrangement between the Manager, the Trustee and the Unit Holders or any class of them means a statement—

- (a) explaining the effect of the proposed Arrangement and, in particular, stating any material interests of the Trustee and the Manager or if the Trustee or the Manager is or includes a company the directors of the Trustee or the Manager, whether as directors, as Unit Holders or otherwise, and the effect on those interests of the proposed Arrangement insofar as that effect is different from the effect on the like interests of other persons; and
- (b) setting out such information as is material to the making of a decision by a Unit Holder whether or not to agree to the proposed Arrangement, being information that is within the knowledge of the Trustee or the Manager and has not previously been disclosed to the Unit Holders.

“Commission” means the Commissioner for Corporate Affairs of the State of Queensland.

“Court” means the Supreme Court of the State of Queensland.

“Explanatory Statement” means any Draft Explanatory Statement, including such amendments as may be required by the Court, approved by the Court for despatch with notices of meeting as provided by Clause 3.8.3.

“State” means the State of Queensland.

3.8.2 Subject to this Clause 3.8 the Trustee, the Manager and the Unit Holders or any class of them may make or enter into an Arrangement.

3.8.3 Where an Arrangement is proposed between the Trustee, the Manager and the Unit Holders or any class of them,

the Court may, on application in a summary way of the Trustee, the Manager or such Unit Holders as hold collectively not less than ten per cent of the issued units or any class thereof order a meeting or meetings of the Unit Holders or class of Unit Holders to be convened in such manner, and to be held in such place or places within or outside the State, as the Court directs and, where the Court makes such an order, the Court may approve an Explanatory Statement to accompany notices of the meeting or meetings.

- 3.8.4 The Court shall not make an order pursuant to an application under Clause 3.8.3 unless—
- (a) 14 days notice of the hearing of the applications or such lesser period of notice as the Court or the Commission permits, has been given to the Commission; and
  - (b) The Court is satisfied that the Commission has had a reasonable opportunity:—
    - (i) to examine the terms of the proposed Arrangement to which the application relates and a Draft Explanatory Statement relating to the proposed Arrangement; and
    - (ii) to make submissions to the Court in relation to the proposed Arrangement and the Draft Explanatory Statement.
- 3.8.5 The Court shall not make an order under Clause 3.8.3 that a meeting be held in another State or in a Territory unless it appears to the Court that some or all of the Unit Holders reside in that State or Territory and that it is desirable and expedient that such a meeting be so held.
- 3.8.6 An Arrangement is binding on the Unit Holders, or on a class of Unit Holders, if, and only if—
- (a) at a meeting convened in accordance with an order of the Court under Clause 3.8.3 the Arrangement is agreed to by a majority of Unit Holders, or of the Unit Holders included in that class of Unit Holders, present and voting, either in person or by proxy, being, a majority whose units have nominal values that amount, in the aggregate, to not less than 75% of the total of the nominal values of all the units of the Unit Holders present and voting in person or by proxy; and
  - (b) it is approved by order of the Court.
- 3.8.7 Where the Court orders two or more meetings of Unit Holders or of a class of Unit Holders to be held in relation to the proposed Arrangement the meetings shall, for the purposes of Clause 3.8.6, be deemed together to constitute a single meeting and the votes in favour of the proposed Arrangement cast at each of the meetings shall be aggregated,

and the votes against the proposed Arrangement cast at each of the meetings shall be aggregated, accordingly.

3.8.8 The Court may grant its approval to an Arrangement subject to such alterations or conditions as it thinks just.

3.8.9 An order of the Court that is made for the purposes of Clause 3.8.6. (b) shall take effect on the date that the Court determines and specifies in the order.

3.8.10 If an Arrangement as approved provides for amendment of the terms of this Deed in a manner set forth therein, upon an order for approval taking effect under Clause 3.8.8 then, notwithstanding the provisions of Clause 26.1 this Deed shall be amended accordingly.

3.8.11 The provisions of this Clause 3.8 shall take effect from the date upon which the Parliament of the State of Queensland enacts legislation to give the provisions of this Clause 3.8 the force of law or otherwise ratifies or confirms same.”

3) By inserting at the end of Part 15 of the Trust Deed new Clauses 15.14 and 15.15 as follows:—

**15.14 Enabling Legislation**

Without limiting the generality of the foregoing provisions of this Part 15 the Manager is hereby expressly empowered and directed to seek from the Government or the Parliament of the State of Queensland legislation to give the provisions of Clause 3.8 or any Arrangement thereunder the force of law or otherwise to ratify or confirm same.

**15.15 Reimbursement for costs of procuring legislation**

Without limiting the generality of Clause 23.4 the Manager shall be entitled to be reimbursed out of the Trust Fund for the costs and expenses reasonably incurred in the course of seeking the said legislation in preparing and making an application for an Arrangement under Clause 3.8 and all necessary and incidental expenses.”

(4) By inserting at the end of Part 12 of the Trust Deed a new Clause 12.19 as follows:—

**12.19 Provision of moneys to company**

Notwithstanding any provisions of the Trust Deed to the contrary, the Manager may purchase, or subscribe for shares in a company acquired or incorporated for the purpose of effecting an Arrangement (as defined in Clause 3.8 of this Deed) pursuant to Clause 3.8 of this Deed. The Manager may lend or pay moneys to a company acquired or incorporated pursuant to this Clause as the Manager shall consider appropriate in the interests of the Unit Holders to effect an arrangement pursuant to Clause 3.8 of this Deed.”