

South Australia

**BROKEN HILL PROPRIETARY COMPANY'S STEEL WORKS
INDENTURE ACT 1958**

An Act to approve and ratify an Indenture made between the State of South Australia of the one part and The Broken Hill Proprietary Company Limited of the other part relating to the establishment of a steel works in South Australia, to ratify a Deed amending the Indenture and to provide for carrying the provisions of the Indenture into effect and for other purposes.

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **11 May 2000**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

**BROKEN HILL PROPRIETARY COMPANY'S STEEL WORKS
INDENTURE ACT 1958**

being

Broken Hill Proprietary Company's Steel Works Indenture Act 1958
No. 28 of 1958 [Assented to 13 November 1958]¹

as amended by

Statutes Amendment (BHP Indentures) Act 2000 No. 15 of 2000 [Assented to 11 May 2000]²

¹ Came into operation 12 December 1958: *Gaz.* 18 December 1958, p. 1635.

² Part 3 (ss. 16-18, 20-23) came into operation on assent (11 May 2000): s. 2(1); s. 19 had not come into operation at the date of, and the amendment effected by that provision has not been included in, this reprint.

NOTE:

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix 2.

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LEGISLATIVE HISTORY

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Broken Hill Proprietary Company's Steel Works Indenture Act 1958*.

Commencement

2. The Act shall come into operation on a date to be fixed by the Governor by proclamation.

Interpretation

3. In this Act unless the context otherwise requires:

"**BHP**" means The Broken Hill Proprietary Company Limited;

"**the Company**" means BHP and includes its successors and assigns;

"**the 2000 Deed of Amendment**" means the deed set out in Schedule 2;

"**the Indenture**" means the Indenture set out in Schedule 1, as amended from time to time;

"**the prescribed day**" means the day on which the rights and obligations of the Company under the Indenture and the Indenture under the *Broken Hill Proprietary Company's Indenture Act 1937* first become rights and obligations of a person that is not a related body corporate (within the meaning of the *Corporations Law*) of BHP.

Validation of Indenture and 2000 Deed of Amendment

4. (1) The Indenture set out in Schedule 1 and the provisions of the 2000 Deed of Amendment that amend or relate to that Indenture are ratified and approved and shall notwithstanding any other Act or law be carried out and take effect as though they had been expressly enacted in this Act.

(2) Notwithstanding any other Act or law and without in any way limiting the generality of the effect of subsection (1) of this section—

- (a) the Minister of Works,
- (b) the Electricity Trust of South Australia,
- (c) the South Australian Housing Trust, and
- (d) the Commissioner of Highways—

are hereby empowered and required to perform the functions and carry out the obligations which are under this Act or the Indenture to be performed or carried out by such body.

Performance of Indenture

5. The Governor and Ministers for the time being in office shall take all necessary measures to ensure the full performance of the duties and obligations imposed on the State by the Indenture.

Variation of Indenture

6. (1) The parties to the Indenture may by agreement in writing vary the terms of the Indenture so far as may be necessary for the purpose of more effectively carrying out the intention of this Act and of the Indenture but for no other purpose.

(2) The Minister of Works shall cause a copy of every such agreement to be laid before each House of Parliament.

(3) Every such agreement—

- (a) shall come into operation on the day after the day on which it has lain before both Houses of Parliament for seven sitting days or such later day as is specified in the agreement; and
- (b) upon coming into operation shall have effect as if the terms thereof had been enacted in an Act of Parliament.

Effluent, smoke and gas

7. The Company and any subsidiary company as defined in the Indenture shall not be liable for discharging, from its works at or near Whyalla, effluent into the sea or smoke dust or gas into the atmosphere or for creating noise, smoke, dust or gas at such works, if such discharge or creation is necessary for the efficient operation of the works of the Company or subsidiary company and is not due to negligence on the part of the Company or subsidiary company as the case may be.

Environmental authorisations

7A. Despite any provision of the *Environment Protection Act 1993*, or of regulations under that Act, to the contrary, any exemption granted under section 37 of that Act to the Company by the Environment Protection Authority in respect of pollution resulting from the Company's undertaking at or near Whyalla on or after the prescribed day may be granted or renewed by the Authority for such period as the Authority thinks fit.

Special provisions relating to certain land (cl. 26A of the Indenture)

7B. (1) The Registrar-General must—

- (a) on application by the Minister and on being furnished with such certificates of title as the Registrar-General may require, register the Minister, or some other agency or instrumentality of the Crown nominated by the Minister, as the proprietor of an estate in fee simple of land vested in the State by virtue of clause 26A(8) of the Indenture; and
- (b) on application by the Company, note the statutory easement arising under clause 26A(10) of the Indenture on each certificate of title affected by the easement.

(2) An application under subsection (1)(b)—

- (a) need not include a plan of the easement; but
- (b) must include a schedule of all certificates of title affected by the easement.

(3) The owner of land affected by the statutory easement arising under clause 26A(10) may, by agreement with the Company, execute an instrument—

- (a) conferring an easement that operates to the exclusion of the statutory easement so far as it affects that land; or
- (b) discharging the land from the statutory easement,

and, on registration of the instrument by the Registrar-General, the instrument has effect according to its terms.

Legal proceedings

8. (1) Notwithstanding anything to the contrary in any other Act or law the State of South Australia may—

- (a) sue and be sued and be a party to any legal proceedings to enforce any of the provisions of or obligations created by this Act or the Indenture or any agreed variation thereof, or in any way arising out of this Act or the Indenture or any agreed variation thereof or out of any of the rights duties and obligations thereby created;
- (b) agree with the Company to submit any dispute or difference between the State and the Company arising out of or in connection with the Indenture or any agreed variation thereof or as to the construction of the Indenture or any such variation or as to any rights duties or liabilities thereunder or as to any matter to be agreed between the State and the Company thereunder to the award order and final determination of an arbitrator or arbitrators under the provisions of the laws relating to arbitration for the time being in force in the State; and
- (c) agree to abide and be bound by such award order and final determination.

(2) In any action or arbitration to which the State of South Australia is a party pursuant to subsection (1) of this section the rights of the parties shall as nearly as possible be the same and judgment may be given or an award may be made and costs awarded on either side as in an action or arbitration between subject and subject and the Treasurer shall satisfy any award or judgment for the payment of money made or given against the State in any such proceedings or arbitration.

Repeal of Private Act, ss. 10, 12, 15, 26, 11 (part)

9. (1) Sections 10, 12, 15, 26 and the second paragraph of section 11 of *The Broken Hill Proprietary Company Limited's Hummock Hill to Iron Knob Tramways and Jetties Act 1900* are hereby repealed.

(2) In section 8 of the *Hummock Hill to Iron Knob Tramway Extension Act 1927* the figures 10, 12, 15 and 26 shall be deleted and notwithstanding anything therein contained the provisions of the second paragraph of section 11 of the Principal Act therein referred to shall not apply to the tramways extension therein defined.

Application of Act No. 309, ss. 6, 23, 26, 32, 34, 44-58, 65 and 20

10. (1) Sections 6, 23, 26, 32, 34, 44 to 58 (inclusive) and 65 of the *General Tramways Act 1884-1935* shall not apply to the Company.

(2) In section 20 of the *General Tramways Act 1884-1935* the words "with the consent of the Governor" shall not apply to the Company.

Charges on Company's Tramways and jetties

11. Notwithstanding anything in any other Act or law the Company may charge for the carriage of passengers and goods on any of its tramways charges at rates not exceeding those charged from time to time by the South Australian Railways Commissioner for the same distances and, in the case of goods, for goods of a similar class, and may charge for the use of any of its jetties charges not exceeding those charged from time to time by The South Australian Harbors Board.

Vesting of Company's statutory rights and obligations in assignee

12. (1) If at any time the rights and obligations of the Company under the Indenture are duly assigned to and assumed by an assignee in accordance with the Indenture—

- (a) all other rights and obligations of the Company under this Act vest at the same time in the assignee; and

(b) subject to subsection (2), the assignor and the State are released from any future obligations to each other under this Act.

(2) If the assignee is a subsidiary (within the meaning of the *Corporations Law*) of BHP, subsection (1)(b) does not operate to release BHP from its obligations to the State under this Act unless and until the assignee ceases to be a subsidiary of BHP.

(3) The Minister must, within 14 days of an assignment of the Company's rights and obligations under the Indenture taking effect, cause notice of the name and registered address of the assignee to be published in the *Gazette* (but failure to comply with this subsection has no prejudicial effect on that assignment and assumption).

SCHEDULE 1

The Original Indenture

THIS INDENTURE made the fourth day of September 1958 BETWEEN the State of South Australia (hereinafter referred to as "the State") of the one part and THE BROKEN HILL PROPRIETARY COMPANY LIMITED a company incorporated in the State of Victoria and having its registered office in South Australia at Number 28 Franklin Street Adelaide (hereinafter referred to as "the Company" which expression shall include the successors and assigns of The Broken Hill Proprietary Company Limited) of the other part:

WHEREAS the establishment of steel works in South Australia would greatly increase the economic strength of the State and provide opportunities for the employment and advancement of its citizens and be instrumental in influencing other industries which substantially depend on the products of the Company in their processes of manufacture to establish operations at Whyalla:

AND WHEREAS the State has requested the Company to extend its undertaking at Whyalla by the establishment of steel-making plant, rolling mills and other works associated therewith or ancillary or incidental thereto, and the Company is willing to do so upon satisfactory arrangements for that purpose being made:

AND WHEREAS for the proper conduct of its operations it is necessary that the Company should be assured of supplies of raw materials, and security of tenure of certain lands and mineral and other leases, and be granted certain powers and rights:

NOW THIS INDENTURE WITNESSETH that the parties hereto covenant and agree with each other as follows:—

Ratification and operation
of Indenture.

1. (1) The clauses of this Indenture other than this clause shall not come into operation unless the Parliament of the State passes a Bill to ratify this Indenture and unless the Act resulting from the passage of such a Bill comes into operation before the 1st day of January 1959.

(2) If such a Bill is so passed this Indenture shall upon the day when the Bill becomes operative as an Act come into operation and be binding on the parties hereto.

(3) Without in any way derogating from any right or remedy of the Company in respect of a breach of this Indenture if the Parliament of the State should at any time alter or amend the Act passed to ratify this Indenture or should enact legislation which modifies the rights of the Company under such Act or under this Indenture the Company shall have the right to terminate this Indenture.

Interpretation.

2. In this Indenture, unless the context otherwise requires—

"the Indenture of 1937" means the Indenture set out in the schedule to the *Broken Hill Proprietary Company's Indenture Act, 1937*:

"the Middleback Range area" means the area shown on the plan set out in the Appendix A hereto being an area of 242 square miles or thereabouts in the Counties of Hore-Ruthven, Manchester and York, bounded as follows:—

Commencing at a point latitude 32 degrees, 41 minutes south and longitude 137 degrees, 5 minutes east near White Dam in the county of Hore-Ruthven, thence 5 miles, 60 chains east, thence 42 miles south, thence 5 miles, 60 chains west, thence north to the point of commencement; all bearings true:

"steel works" means steel-making plant, rolling mills and other works associated therewith or ancillary or incidental thereto at Whyalla:

"reserved area" means an area which by or pursuant to a proclamation made under the *Mining Act, 1930-1955*, or any subsequent amendment or re-enactment thereof is reserved from the operation of all or any of the provisions of that Act:

"subsidiary company" or "subsidiary" means a company in which the Company holds directly or indirectly at least one half of the issued share capital:

"associated company" means any company carrying on operations at or near Whyalla which substantially depends on the products of the Company for its trading or manufacturing processes:

"the ratification of this Indenture" means the day upon which this Indenture comes into operation.

Construction of works by the Company.

3. (1) At a date not later than the 1st day of January 1960 the Company will commence the construction of steel works at Whyalla and subject to sub-clause (5) of this clause will by the 31st day of December 1970 expend on such construction the sum of £30 million in the aggregate.

(2) In computing such expenditure there shall be taken into account all moneys expended by the Company after the 18th day of February 1958 in connection with such construction.

(3) Notwithstanding anything contained in subclause (2) of this clause expenditure by the Company on the construction of a beneficiation and treatment plant for jaspilite and other iron bearing substances shall not be taken into account in computing the expenditure of the Company on steel works.

(4) The Company will, if required by the State, as early as practicable after the end of each financial year until the sum of £30 million has been expended by the Company on the construction of steel works supply to the State a summary audited by the Company's auditors of its expenditure on steel works during such financial year.

(5) If the Company should at any time suffer any delay in the construction of steel works by reason of or arising from any cause beyond the reasonable control of the Company, the date for the completion of the expenditure of £30 million on such construction will be postponed after the said 31st day of December 1970 by a period equal to the period of such delay and any further delay consequential thereon.

(6) Whenever any such delay or further delay consequential thereon occurs the Company will within a reasonable time report it in writing to the State.

Prospecting rights of
Company.

4. (1) Notwithstanding the Proclamations made on the 15th day of March 1951 and the 17th day of February 1955 under paragraph (c) of section 6 of the *Mining Act 1930-1951*, the Company shall for a period of ten years after the ratification of this Indenture and during any period of extension as provided in subclause (2) of this clause, have within the Middleback Range area—

- (a) the sole and exclusive right to prospect for iron ore and iron bearing substances; and
- (b) a non-exclusive right to prospect for metal, minerals and natural substances other than iron ore or iron bearing substances.

(2) The Company's rights under this clause will continue for a further period of ten years beyond the period referred to in subclause (1) of this clause unless they cease as provided by subclause (5) of this clause.

(3) For the purpose of any such prospecting the Company may without payment enter and occupy any land within the Middleback Range area and may on any such land erect buildings and structures, drill and dig holes, and carry out such other work as the Company deems necessary but the Company shall not have any such rights over any land—

- (a) which for the time being is lawfully used as the site of a house, outhouse, shed, building, structure, dam or reservoir, or as a yard, garden, cultivated field, orchard, stockyard or other like enclosure; or
- (b) which at the date of the ratification of this Indenture is comprised in any claim or lease held under the laws relating to mining by a person other than the Company.

(4) If any such claim or lease as is referred to in paragraph (b) of subclause (3) of this clause is terminated on or before the expiration of ten years after the ratification of this Indenture or during any extension under subclause (2) hereof the restriction on the Company's rights under this clause which is contained in the said paragraph (b) shall cease to have any operation in respect of the land comprised in such claim or lease.

(5) If the Company at any time before the expiration of twenty years after the ratification of this Indenture ceases to require all or any of the rights conferred upon it by subclause (1) of this clause, it shall notify the State of that fact and thereupon the Company's rights under subclause (1) of this clause shall cease to the extent indicated in the notice but not otherwise.

(6) During the period of ten years after the ratification of this Indenture and during any extension under subclause (2) of this clause the State will not register any claim or grant any lease by which any person other than the Company will obtain under the laws relating to mining or otherwise any rights to mine or take natural substances within the Middleback Range area unless the Company's rights under this clause in relation to the area concerned have ceased as provided by subclause (5) of this clause, or unless the Company reports to the State that the area concerned does not contain iron ore or iron bearing substances required by the Company. The Company will, when requested by the State, furnish the State with such information as the Company is then able to furnish, on the question whether any area specified by the State contains iron ore or iron bearing substances required by the Company.

Right to leases in the Middleback Range area.

5. (1) Upon application by the Company during any period provided for under clause 4 of this Indenture the State will grant to the Company or will procure the grant to the Company of mineral leases upon the terms provided for in this Indenture conferring upon the Company rights to mine for and obtain iron ore and other iron bearing substances from any land within the Middleback Range area specified by the Company in such application.

(2) Every mineral lease granted pursuant to this clause shall be for a period of 50 years from the date of the grant thereof with rights of renewal from time to time as provided by clause 13 of this Indenture.

(3) Subject to the provisions of this Indenture any such mineral lease shall be in the form or to the effect set out in the Appendix B hereto.

(4) Nothing in this Indenture shall limit any rights of the Company under the Mining laws of the State and upon application by the Company for leases or other rights in respect of metals, minerals and other natural substances (other than iron ore and iron bearing substances) within the Middleback Range area the State will grant to the Company or will procure the grant to the Company of such leases or rights in terms no less favourable than those provided for by the Mining laws of the State.

Iron ore and iron bearing materials discovered in reserved areas.

6. (1) If prospecting by the State in a reserved area proves the existence of a worthwhile deposit of iron ore or iron bearing substances the State will as soon as practicable give the Company notice of the discovery of such deposit and any information in the possession of the State as to the deposit.

(2) Without in any way derogating from any other rights of the Company, after receipt of notice under subclause (1) of this clause the Company may apply to the State for such mineral or other leases as will enable the Company to prospect for mine or obtain iron ore or other iron bearing substances on or from such deposit or any part thereof.

(3) Upon any such application being made the State may in its discretion grant to the Company or procure the grant to the Company of mineral or other leases upon such terms as may be agreed upon between the State and the Company as being just and reasonable having regard to the matters set out in the recitals of this Indenture.

Iron ore and iron bearing materials outside reserved areas.

7. (1) Nothing in this Indenture shall in any way restrict any right of the Company under the Mining laws of the State or otherwise—

(a) to prospect for iron ore or other iron bearing substances in areas other than reserved areas; or

(b) to peg and register claims and be granted mineral and other leases over land in such areas.

(2) The Company may from time to time apply to the Minister of Mines to make a declaration that any specified area not exceeding 50 square miles in which the Company is prospecting or is about to prospect for iron ore or iron bearing substances shall be an approved prospecting area for the purposes of this clause.

(3) The Minister may, in his discretion, grant or refuse an application under subclause (2) but shall not capriciously refuse it.

(4) A declaration under this clause shall be made by written notice to the Company and shall remain in operation for a period fixed by the notice not exceeding four years. The period of operation may be extended by the Minister from time to time for not more than four years at any one extension. The Minister shall not capriciously refuse an application by the Company for an extension under this sub-clause.

(5) No proclamation reserving any land from the operation of all or any provisions of the *Mining Act, 1930-1954*, or of any Act amending or substituted for that Act, shall take away or restrict any right of the Company—

(a) to prospect within an approved prospecting area for iron ore and other iron bearing substances; or

(b) to peg out and register claims over land situated within an approved prospecting area and containing such ore and substances; or

(c) to be granted mineral leases over such land.

(6) Subclauses (2) to (5) of this clause shall not be deemed to derogate from any other rights of the Company under the Mining laws of the State or this Indenture.

(7) Subject to the provisions of this Indenture relating to royalties and labour conditions any mineral lease granted to the Company pursuant to this clause shall be in the form or to the effect set out in the Appendix B hereto.

Rent for mineral leases.

8. (1) Notwithstanding the provisions of any mineral lease held by the Company at the time of the ratification of this Indenture or granted to the Company pursuant to this Indenture the Company shall during the period of twenty years after the ratification of this Indenture pay to the State as and by way of rent for all of such leases so held or granted the annual sum of £12,000 in addition to the rent fixed by any such lease.

(2) Upon the expiration of such period of twenty years the Company shall pay to the State the rental fixed by any such lease and no more.

Royalties.

9. (1) Subject to subclauses (3) and (4) of this clause the Company shall pay to the Treasurer royalties in accordance with this Indenture on all iron ore and other iron bearing substances obtained by the Company from land comprised in mineral leases held by the Company at the time of the ratification of this Indenture or granted to the Company pursuant to this Indenture.

(2) The rates of royalty shall be—

(a) eighteen pence a ton on—

- (i) each ton of high grade iron ore fed directly to furnaces in South Australia or shipped from South Australia without beneficiation; and
- (ii) each ton of the dry weight of beneficiated iron bearing substances or iron concentrates fed to furnaces in South Australia or shipped from South Australia;

(b) sixpence a ton on the dry weight of all jaspilite and of all other iron bearing substances of similar grade which without beneficiation are fed directly to furnaces in South Australia or shipped from South Australia.

(3) The said rates shall be substituted for the rates of sixpence per ton payable on iron ore and other iron bearing substances under any of the leases of the Company in existence at the time of the ratification of this Indenture.

(4) The rate of royalty fixed by subclause (2) of this clause is related to a basis selling price by the Company of foundry pig iron of £21 7s. 6d. per ton, c.i.f. Port Adelaide. If such basis selling price on the 30th day of June in any year exceeds or is less than £21 7s. 6d. per ton, c.i.f. Port Adelaide the royalty payable under this clause shall be increased or decreased as the case may be by one penny per ton on high grade iron ore and by one-third of one penny per ton on jaspilite and other iron bearing substances of similar grade for each complete £1 of the increase or decrease of such basis selling price above or below £21 7s. 6d.

(5) In the event of the Company ceasing at any time to sell foundry pig iron at a price calculated with reference to the price per ton c.i.f. Port Adelaide nevertheless there shall be calculated by the Company a notional basis selling price per ton c.i.f. Port Adelaide as if the Company were selling foundry pig iron c.i.f. Port Adelaide and this shall be the basis selling price for the purposes of subclause (4) hereof.

Payment and computation of royalties.

10. (1) The royalties payable under clause 9 of this Indenture shall be paid within two months after the end of each half-year ending on the 31st May or 30th November as the case may be.

(2) (a) For the purpose of computing the tonnage upon which royalty is payable the Company's weighbridge and weightometer records with any adjustments necessary to compensate for known errors in weighing shall be prima facie evidence of the matters contained therein.

(b) For the purpose of determining the moisture content of any beneficiated iron bearing substances or iron concentrates on the dry weight of which royalty is payable under this Indenture, the returns furnished by the Company shall be prima facie evidence of the matters contained therein.

(c) The State may at any time check and verify the calculations of the Company.

(3) In the months of December and June of each year the Company will furnish to the Minister of Mines of the State—

- (a) a return of all substances chargeable with royalty, fed directly to furnaces or shipped as aforesaid during the period of six calendar months ending on the preceding 30th November or 31st May as the case may be;
- (b) any other information reasonably required by the Minister of Mines for the purpose of enabling him to compute the amount of royalty payable by the Company.

(4) The Minister of Mines and his officers, servants and agents for the purpose of checking and verifying any such return shall during normal office hours have access to and the right of inspection of all books, papers and documents of the Company insofar as they relate to substances chargeable with royalty, and the right to enter and examine the lands comprised in the said leases.

Labour conditions of leases.

11. Notwithstanding anything contained in the Indenture of 1937 or in the mining laws of the State the Company shall be deemed to have complied with the labour conditions of all the mineral or other leases held by the Company at the date of the ratification of this Indenture or which may be granted to the Company pursuant to this Indenture if the number of men horsepower and horses employed on any one or more of those leases is not less than the total number of men horsepower and horses required by the Mining laws of the State at the date of the ratification of this Indenture to be employed on all the said leases.

Raw materials other than iron.

12. (1) As and when requested by the Company the State will in collaboration with the Company or otherwise carry out or procure the carrying out of prospecting and exploratory work in areas specified by the Company to locate suitable deposits of metals and minerals (other than iron ore and iron bearing substances) required by the Company for its operations generally.

(2) The Company will pay to the State the reasonable costs of any work under subclause (1) of this clause.

(3) On the application of the Company the State will grant to the Company or procure the grant to the Company of mineral or other leases or rights under the Mining laws of the State to enable the Company to mine for and obtain any such metals or minerals.

Renewals of mineral leases.

13. (1) Notwithstanding any enactment, the Company shall be entitled to the renewal from time to time of any mineral lease granted to the Company (whether before or after the ratification of this Indenture) and under which the Company obtains materials which it deems essential for any operations of the Company at Whyalla or its steel-making operations generally.

(2) Each renewal shall be for a term of twenty-one years or any shorter term applied for by the Company.

(3) The State upon the application of the Company shall grant to the Company or procure the grant to the Company of any such renewal.

(4) Except as provided in subclause (5) of this clause, the terms, covenants, conditions and other provisions of a lease granted under this clause by way of renewal shall be the same as those of the renewed lease.

(5) By way of the renewal of a mineral lease granted to the Company before the ratification of this Indenture and under which the Company mines for iron ore or other iron bearing substances, a lease for twenty-one years in the form set out in the Appendix B hereto or as near thereto as practicable shall be granted to the Company.

(6) This clause shall not restrict the operation of any provision of any lease relating to the forfeiture thereof for breach or non-performance of any term, covenant or condition thereof.

Land for construction and operation of steel works.

14. (1) If for the purpose of or in connection with the construction or operation of steel works the Company should require the fee simple of or any lease easement or other rights over any land comprised in any pastoral or other lease granted by the State, and the State or any authority under the State has power to resume such land the State shall at the request of the Company exercise or procure the exercise of such power to the extent necessary and transfer convey or assign to the Company or procure the transfer conveyance or assignment to the Company of the land, lease, easement or rights which the Company requires for the purposes aforesaid; but the Company shall pay to the State or other authority a reasonable price for such land, lease, easement or rights sufficient to cover the expenditure incurred by the State or other authority for or in connection with the resumption.

(2) If for any of the purposes mentioned in subclause (1) of this clause the Company requires the fee simple of or any rights over any Crown lands not subject to any lease or agreement the State will sell to the Company at such reasonable price as may be agreed the fee simple of that land or the other rights required by the Company over that land.

Purchase of Whyalla town water supply.

15. The State will, not later than two months after the ratification of this Indenture in accordance with such arrangements as are agreed upon between the parties take over from the Company and operate the mains, pipes, meters, fittings and other works, plant and equipment owned by the Company and used for the reticulation of water within the area of the Whyalla Water District proclaimed under the *Northern Areas and Whyalla Water Supply Act 1940*.

Water for the company's operations.

16. (1) The State will supply to the Company or to any subsidiary or associated company or procure the supply to such company of such amounts of water as such company requires from time to time—

- (a) for the operations of any such company at Whyalla or within the Middleback Range area; and
- (b) for local reticulation to the public at Iron Knob or elsewhere within the Middleback Range area if such reticulation is undertaken by any such company.

Provided that the State will not be obliged to supply more than 1,000 million gallons per annum unless the Company notifies the State in writing that it requires a supply from the Morgan-Whyalla pipeline in excess of 1,000 million gallons per annum, in which case the State will procure that within a period of three years from the date of such notice being given to it there will be available to the Company the whole of its requirements in excess of 1,000 million gallons per annum.

(2) Delivery of water to the Company for consumption or use at Iron Knob or elsewhere in the Middleback Range area may at the option of the Company be taken either at a point on the said Morgan-Whyalla pipeline or elsewhere.

(3) The price to be paid for water delivered to the Company or to a subsidiary or associated company at any point on the Morgan-Whyalla pipeline or at Whyalla shall be the basic price set out in subclause (5) of this clause or such lower price as is charged by the Minister of Works pursuant to any law for the time being in force.

(4) The price to be paid for any water delivered to the Company or to a subsidiary or associated company elsewhere than at a point on the Morgan-Whyalla pipeline shall be the basic price plus the following amounts:—

- (a) Such proportion of the interest and sinking fund on capital expenditure incurred by the State in constructing a branch pipeline and incidental works to convey water from the Morgan-Whyalla pipeline to the point of delivery, as is attributable to water delivered to the Company or to the subsidiary or associated company as the case may be:
- (b) Such proportion of the cost of maintenance and repairs of the branch pipeline and incidental works, and of overhead expenses incurred in connection therewith as is attributable to water delivered to the Company or to the subsidiary or associated company as the case may be; and
- (c) The cost of pumping the water delivered to the Company or to the subsidiary or associated company as the case may be from the Morgan-Whyalla pipeline to the point of delivery.

(5) For the purpose of this clause the basic price of water shall be:—

	Per Thousand Gallons.	
	<i>s.</i>	<i>d.</i>
For all water up to the first 300 million gallons per year of supply	2	4
For all water above 300 million gallons and up to 420 million gallons per year of supply	2	3
For all water above 420 million gallons and up to 540 million gallons per year of supply	2	2
For all water above 540 million gallons and up to 600 million gallons per year of supply	2	1
For all water above 600 million gallons per year of supply	2	0

Option of company to construct a main.

17. (1) Without in any way derogating from the obligations of the State under this Indenture the Company may—

- (a) construct a water main from a point on the Morgan-Whyalla pipeline to a point or points in the Middleback Range area; or
- (b) request the State to construct such a water main on behalf of and at the expense of the Company.

The junction of such water main with the Morgan-Whyalla pipeline shall be at a place convenient to the Company and approved by the Minister of Works, which approval shall not be unreasonably withheld.

(2) At the request of the Company the State will grant to the Company or procure the grant to the Company of such easements or other rights as the Company may reasonably require for the purpose of constructing repairing or maintaining such a water main or doing anything necessary for such purpose.

(3) The Company will if the State so desires sell water to the State from the said water main for reticulation to retail consumers at a price to be agreed between the Company and the State.

Quality of water.

18. The water to be delivered to the Company under this Indenture shall be potable water in the condition in which it is drawn from the River Murray and without filtering, treatment or change except such change (if any) as necessarily occurs during the transmission of the water from the River Murray to the point of delivery to the Company.

Minimum payment for water.

19. (1) Subject to subclause (2) of this clause, the Company shall pay the Minister of Works on the first day of each quarter in each year of supply the sum of £6,000 for water supplied or to be supplied during that quarter.

(2) If during any year of supply the sum payable by the Company pursuant to this Indenture for water delivered to the Company exceeds £24,000, the Company shall within one month after the end of that year of supply pay to the Minister of Works the amount by which such sum exceeds £24,000. Provided that if in any year of supply during a triennial period the sum payable by the Company pursuant to this Indenture for water delivered to the Company is less than £24,000, and in any subsequent year of supply during the same triennial period the sum payable by the Company pursuant to this Indenture for water so delivered is more than £24,000, then the amount by which the sum payable by the Company in the earlier year of supply was less than £24,000 shall be carried forward to the credit of the Company and set off against any sum or sums in excess of £24,000 payable by the Company in any such subsequent year of supply. Provided also that in respect of each triennial period the Company shall not be obliged to pay more than £72,000, or the price of the water delivered to it during that period whichever is the greater.

(3) In this clause—

"year of supply" means the period of twelve months commencing on the 1st day of May in any year;

"triennial period" means a period of three years commencing on the 1st day of May 1959, or on the corresponding day in any third year thereafter;

"quarter" means the period of three months commencing on the 1st day of May August November and February in any year.

Measurement of water.

20. (1) The Minister of Works shall measure all water delivered to the Company under this Indenture by a suitable meter or meters.

(2) The Minister of Works shall, during each month, give the Company a written notice of the amount of water shown by the meter or meters as having been delivered to the Company during the previous month. The notice shall be conclusive evidence of the amount of water delivered in the month to which it relates unless it is disputed as provided in this clause.

(3) The Company may within one month after receipt of any such notice, give the Minister of Works a written notice that it disputes the correctness of the amount of water shown in the notice given by the Minister of Works, and that it requires the meter or meters to be tested.

(4) The Minister of Works shall on the receipt of such notice, test the meter or meters by passing through it or them, into a receptacle of known capacity, sufficient water to fill that receptacle or any part thereof of known capacity. The Company shall if so required by the Minister of Works permit him to use without payment, for the purpose of a test under this subclause, any dam or reservoir of the Company which is suitable for that purpose, and can conveniently be so used.

(5) If on such test it appears that any meter is not measuring correctly the water actually delivered, the amount of water shown in the disputed notice and in any subsequent notice given by the Minister of Works prior to the test shall be altered by the Minister of Works so as to show the true amount of water delivered, and the liability of the Company shall be adjusted accordingly. Thereafter, if the meter is not corrected or replaced, due allowance for the error shall be made in each monthly notice showing the amount of water delivered to the Company.

(6) The Company may, at its own expense, install a meter or meters at any convenient point in the pipe from which water is delivered to the Company. The readings of any such meter shall be for the information of the Company, but shall not be binding on the Minister of Works unless he agrees to accept them, with or without adjustments, as correct.

(7) The Minister of Works may, without any request from the Company, at any time test any meter installed by him for the purpose of measuring the water delivered to the Company, and the Company shall if so required by the Minister of Works permit the Minister of Works to use for the purpose of the test any dam or reservoir of the Company which is suitable for that purpose and can conveniently be so used.

Electricity.

21. The State will facilitate the making of a just agreement between the Company and the Electricity Trust of South Australia providing for the following matters:—

- (a) The erection of a high-tension electricity transmission line from the Trust's power stations at Port Augusta to Whyalla;
- (b) The taking over from the Company by the Trust in accordance with such arrangements as are agreed between the Company and the Trust of the assets of the Company used for the reticulation of electricity at Whyalla;
- (c) The supply to the Trust at the request of the Trust of electricity generated by the Company and the supply by the Trust to the Company at the request of the Company of the electricity required by the Company; and
- (d) Securing to the Company the right to generate electricity for its own requirements or for supply to any subsidiary or associated company and to charge for any such supply.

Housing.

22. (1) The Company will from time to time during the construction of steel works or of any extensions of the Company's undertaking at Whyalla inform the State of the number of houses which in the Company's opinion will be required for employees (other than the senior staff) of the Company and of any subsidiary or associated company at Whyalla.

(2) The State will build or procure the building of the number of houses required for such employees, and give such employees the opportunity to purchase or become tenants of such houses on reasonable terms and conditions; Provided however that the State will not be obliged to build or procure the building of more than 400 houses in any one year.

(3) The State will arrange consultations between the Company and the South Australian Housing Trust for the purpose of securing the provision of houses under this clause.

Labour.

23. The State will, so far as its powers and administrative arrangements permit, assist the Company to obtain adequate and suitable labour as required for the construction and operation of steel works.

Use of sea water.

24. The Company or any subsidiary or associated company may without payment—

- (a) draw from the sea in the vicinity of Whyalla all sea water which is required for its operations at Whyalla; and
- (b) construct on any land which such company has the right to use or occupy or on the sea bed, any works which it requires for the purpose of obtaining, pumping and delivering such water.

Use and reclamation of foreshore and sea bed.

25. (1) The Company shall have the right to use and occupy the foreshore and sea bed within the area described in subclause (3) of this clause and to deposit substances thereon so as to reclaim the foreshore, sea bed, or any part thereof from the sea.

(2) On the application of the Company, the State will without payment grant or cause to be granted to the Company the fee simple of any land which, whether as a result of reclamation or otherwise, is above high water mark and is within the area described in subclause (3) of this clause.

(3) The area referred to in this clause is the land shown on the plan set out in the Appendix C hereto being the land bounded as follows:—

Commencing at the south-eastern corner of section 27, Hundred of Cultana; thence generally north-easterly along high water mark to its intersection with a straight line drawn from the northernmost corner of section 2 of the said Hundred at a southern angle of 135 degrees with the north-western boundary of said section 2; thence south-easterly along the production of latter line to low water mark; generally south-westerly along said low water mark to its intersection with the north-eastern boundary of the land contained in perpetual licence No. 319A, Register Book Volume 1013 Folio 20; thence southerly by a straight line to the north-eastern corner of the land contained in perpetual licence No. 319, Register Book Volume 512 Folio 105; north-westerly along the north-eastern boundary of latter licence to high water mark aforesaid; thence generally northerly along said high water mark to the point of commencement, together with the coast reserves adjoining part section 19, Hundred of Randell, and section 2, Hundred of Cultana.

Works area to remain outside town.

26. The following areas, namely:—

- (a) the land comprised in Certificates of Title Register Book Volume 1804 Folio 179, Volume 2035 Folio 189, Volume 1093 Folio 115, and Volume 2035 Folio 190;

- (b) the land comprised in perpetual lease 12974, Register Book Volume 916 Folio 16;
- (c) any land north or east of the Company's tramway which the Company or any subsidiary or associated company acquires for use or uses as the site of any works; and
- (d) any land in the Middleback Range area the freehold of which the Company or any subsidiary or associated company acquires for use as the site of any works and which at the time of acquisition is outside the area of any municipality or district council district

shall be outside the area of the Whyalla Town Commission and shall not be constituted as or included in a municipality or district council district as defined in the *Local Government Act 1934-1954* or any re-enactment or amendment thereof and shall not be declared or included in any water district under the *Waterworks Act 1932-1936* or any re-enactment or amendment thereof. Provided that nothing in this clause shall prevent the Company or any subsidiary or associated company from being liable to pay for water supplied by measure: Provided further that if any of the said land is disposed of by the Company or by the subsidiary or associated company and used for residential purposes this clause shall cease to apply to the land so disposed of and used.

Construction of bridges and crossings.

27. (1) The Company may construct bridges, level crossings, tunnels or cuttings by which the Whyalla to Iron Knob tramway may cross the Port Augusta-Whyalla road at a place or places in the vicinity of the Company's works or for other purposes in connection with the operation of steel works or the operations of any subsidiary or associated companies.

(2) The places and nature of such bridges, crossings, tunnels or cuttings and the details of construction thereof shall be approved by the Commissioner of Highways which approval shall not be unreasonably withheld.

Railway to Whyalla.

28. If it is decided that the Commonwealth of Australia or any instrumentality thereof or the State should construct a railway line connecting Whyalla with either the South Australian or the Commonwealth railway systems the State will—

- (a) use its best endeavours to facilitate such construction and will grant all necessary rights and powers for that purpose; and
- (b) consult with the Company or arrange consultations between the Commonwealth and the Company as to the route of any such railway in the neighbourhood of the Company's land at Whyalla and as to the location of the terminal of any such railway at Whyalla.

Charges in respect of wharves and jetties.

29. No charges or imposts other than those payable by the Company at the date of the ratification of this Indenture shall be imposed on the Company or on any subsidiary or associated company in respect of the use or occupation of any wharves or jetties constructed by the Company or by any subsidiary or associated company at or near Whyalla or on the shipment or carriage of goods to over or from the said wharves and jetties or on the ships engaged in the shipment thereof.

Prices.

30. The State will not at any time by legislation, regulation, order or administrative action under any legislation of the State as to prices, prevent products produced in South Australia by the Company or by any subsidiary or associated company from being sold at prices which will allow the Company or subsidiary or associated company to provide for such reasonable depreciation, reserves and return on the capital employed in the production of those products as are determined by such company.

Assignment.

31. (1) With the consent of the State, the Company may assign—

- (a) any right, power, benefit, or privilege conferred on the Company by this Indenture;
- (b) any mineral or other lease held by the Company at the date of the ratification of this Indenture or acquired by the Company pursuant to this Indenture.

(2) A person to whom any such right, power, benefit, privilege or lease is assigned may, with the consent of the State, further assign it.

(3) The Company may, with the consent of the State, cause any of its obligations or duties under this Indenture to be performed by any other company, but notwithstanding such consent the Company shall remain liable for any failure to perform such obligations or duties.

(4) The State shall have a discretion to grant or refuse its consent to any assignment of rights, powers, benefits, privileges or leases under this clause or to the performance of any of the Company's obligations or duties by another company but shall not unreasonably withhold such consent.

Subsidiary and associated companies.

32. The Company will, whenever requested by the State so to do, furnish the State with a list of subsidiary and associated companies as defined in clause 2 of this Indenture showing the interest of the Company in such subsidiary and associated companies and the State may, for the purposes of this Indenture, rely and act upon any list so furnished by the Company.

Extension of the Indenture of 1937.

33. (1) The Indenture of 1937 shall by mutual agreement between the parties hereto be read and construed as if—

- (a) the expression "the term of this Indenture" and the definition thereof contained in paragraph (b) of clause 1 of the Indenture of 1937 were omitted; and
- (b) the words "upon the expiration of the term of this Indenture" in clause 4 thereof were omitted; and
- (c) the words "during the term of this Indenture" were omitted from clauses 14, 15 and 16 thereof; and
- (d) no limitation of time were contained in clause 17 thereof.

(2) No limitation of time shall be implied in clauses 7, 8, 9, 10, 11, 12 and 13 of the Indenture of 1937.

Notices.

34. (1) Any notice consent or application authorized or required by this Indenture to be given or made shall be given or made in writing.

(2) Any notice consent application or other writing authorized or required by this Indenture to be given or made by the State shall be deemed to have been duly given or made if signed by a Minister and forwarded by prepaid post to the registered office of the Company in South Australia or its office at Whyalla.

(3) Any notice consent or application or other writing authorized or required by this Indenture to be given or made by the Minister of Mines, the Minister of Works, the Commissioner of Highways, the South Australian Housing Trust or the Electricity Trust of South Australia shall be deemed to have been duly given or made if signed by such Minister or Commissioner, or by the Chairman of the South Australian Housing Trust or of the Electricity Trust of South Australia, as the case may be, and forwarded by prepaid post to the registered office of the Company in South Australia or its office at Whyalla.

(4) Any notice consent application or other writing authorized or required by this Indenture to be given or made by the Company shall be deemed to have been duly given or made if signed on behalf of the Company by the Managing Director General Manager Secretary or Attorney of the Company and forwarded by prepaid post—

- (a) in the case of any notice consent application or other writing concerning the prospecting or mineral rights of the Company under this Indenture to the Minister of Mines of the State;
- (b) in the case of any notice consent application or other writing concerning the supply of water under this Indenture to the Minister of Works;
- (c) in the case of any notice consent application or other writing under this Indenture not otherwise provided for in this Indenture or in this clause to the Treasurer of the State.

(5) Any notice consent application or other writing forwarded by prepaid post as provided for in this clause shall be deemed to have been duly given on the day on which it would be delivered in the ordinary course of post.

Preservation of rights.

35. (1) Subject to the due observance by the Company of its obligations under this Indenture the State shall at all times take all necessary steps to secure to the Company and to each subsidiary and associated company the rights powers and privileges provided for in this Indenture or the Indenture of 1937 and to prevent them from being impaired disturbed or prejudicially affected in any way whatsoever. Provided that no tax payable by the Company or by any subsidiary or associated company or in respect of the property of any such company under any public general Act of the Parliament of the State at rates not exceeding those applicable generally throughout the State shall be deemed to impair disturb or prejudicially affect any right of the Company or of the subsidiary or associated company.

(2) No person other than the Company or a subsidiary or associated company shall acquire any right under the Mining laws of the State over any land occupied by the Company or by any subsidiary or associated company for the operations of such company, save with the consent of such company.

Broken Hill Proprietary Company's Steel Works Indenture Act 1958

Labour at Whyalla.

36. (1) This Indenture is made on the assumption that subject to the provision of adequate housing at Whyalla sufficient labour will be obtainable by the Company under conditions prescribed by the relevant industrial orders or awards to enable the Company both to carry on effectively the activities which it carries on at Whyalla at the time of the execution of this Indenture and to construct and operate steel works.

(2) Without in any way altering the effect of the foregoing provisions of this Indenture if at any time sufficient labour is not available for the purpose and under the conditions mentioned in subclause (1) of this clause the State will, at the request of the Company confer with the Company as to the obligations of the parties under this Indenture with a view to agreeing upon such variations thereof as are necessary or appropriate under the circumstances.

IN WITNESS whereof this Indenture has been executed by His Excellency the Lieutenant-Governor of the State and by the Company.

H i s E x c e l l e n c y t h e
Lieutenant-Governor of South
Australia caused the public seal of
the State to be hereto affixed, and
signed this Indenture on the fourth
day of September, 1958, in the
presence of:

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}

J.M. NAPIER
Lieutenant-Governor

M.A.F. PEARCE

THE COMMON SEAL OF THE
BROKEN HILL PROPRIETARY
COMPANY LIMITED was hereunto
affixed on the twenty-second day of
August, 1958, in the presence of:

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|
|
|
}

C.Y. SYME
Director.

E. LEWIS
Director.

R.G. NEWTON
General Manager
Commercial.

(Reprint No. 1)

SCHEDULE 1

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BROKEN HILL PROPRIETARY COMPANY'S STEEL WORKS INDENTURE ACT 1958

APPENDIX B TO THE INDENTURE

South Australia

Crown Lease

(Mineral No.)

HIS EXCELLENCY THE GOVERNOR in and over the State of South Australia in the Commonwealth of Australia in conformity with and in exercise of the powers and authorities conferred upon him by the *Mining Act 1930-1955* and the *Broken Hill Proprietary Company's Steel Works Indenture Act 1958* (hereinafter referred to as "the Indenture Act") and of all other powers enabling him in that behalf doth hereby lease to THE BROKEN HILL PROPRIETARY COMPANY LIMITED of Melbourne in the State of Victoria (hereinafter referred to as "the lessee" which expression shall include its successors and assigns) all that piece of land containing _____ acres or thereabouts and situate and being _____ in the said State as the same is delineated in the public maps deposited in the office of the Department of Mines in the City of Adelaide and in the plan in the margin hereof and therein coloured _____ together with all ways waters water courses privileges and appurtenances to the same now belonging or therewith occupied or enjoyed.

Including in such lease during its continuance the following rights and liberties for the lessee and the lessee's agents servants and workmen in and upon the said land:—

(1) To search work mine for win obtain and treat for the lessee's own use and benefit all metals and minerals except gold in or upon the said land; and

(2) For or incidental to the purposes aforesaid in or upon the said land:—

(a) To cut and construct races drains dams reservoirs roads and tramways; and

(b) To erect offices buildings works and machinery; and

(c) To erect dwellings for use by the lessee and the lessee's agents servants and workmen for the purpose of residence,

and all other necessary or convenient powers authorities privileges and advantages for all or any of the purposes aforesaid

subject to the provisions of the *Mining Acts 1930-1955* and regulations made thereunder and of the *Mines and Works Inspection Act 1920-1957* and all regulations made thereunder save insofar as any such provisions are modified or affected by the Indenture Act and subject to such rights interests and authorities as may be lawfully subsisting in the said land at the date of this lease: *Except and always Reserved* out of this lease all gold and other substances not being metals or minerals in or upon the said land and all persons authorized by the said Acts and regulations shall have full and free liberty of access ingress egress and regress with or without horses cattle carts drays carriages motor cars engines and machinery and all other necessary implements and things into upon and from the said land or any part or parts thereof for all reasonable purposes and to search work mine for win and obtain gold and other substances not being metals or minerals in or upon the said land and for or incidental to those purposes the rights and liberties mentioned in the preceding paragraph (2): *And also Excepting and Reserving* to all pastoral lessees (if any) of the said land a right of access and user for domestic purposes and for the purposes of watering stock to and of any surface water on the said land which shall not have been provided or stored by artificial means by the lessee.

To hold the said land with the appurtenances (except and reserved and subject as aforesaid) unto the lessee from the day of 19 for and during the term of fifty (50) years from thence next ensuing for the purpose of mining therein and thereon for all Metals and minerals except gold together with the rights and liberties hereinbefore granted but for no other purpose and with the right to the lessee to the renewal from time to time for periods of 21 years on the same terms and conditions as those contained in this lease including this right of renewal.

Yielding and paying therefor unto the Governor the following rent and other sums:—

- (1) A rent of £ payable yearly and every year in advance on the first day of in each year during the said term and any renewal thereof.
- (2) A further sum amounting to—
 - (a) eighteen pence a ton on—
 - (i) each ton of high grade iron ore fed directly to furnaces in South Australia or shipped from South Australia without beneficiation; and
 - (ii) each ton of the dry weight of beneficiated iron bearing substances or iron concentrates fed to furnaces in South Australia or shipped from South Australia;
 - (b) sixpence a ton of the dry weight of all jaspilite and of all other iron bearing substances of similar grade which without beneficiation are fed directly to furnaces in South Australia or shipped from South Australia.

The sums payable under this paragraph (2) are related to a basis selling price by the lessee of foundry pig iron of £21 7s. 6d. per ton c.i.f. Port Adelaide. If such basis selling price on the thirtieth day of June in any year exceeds or is less than £21 7s. 6d. per ton c.i.f. Port Adelaide the payments under this paragraph (2) shall be increased or decreased as the case may be by one penny per ton on high grade iron ore and by one third of one penny per ton on jaspilite and other iron bearing substances of similar grade for each complete one pound of the increase or decrease of such basis selling price above or below £21 7s. 6d. In the event of the lessee ceasing at any time to sell foundry pig iron at a price calculated with reference to the price per ton c.i.f. Port Adelaide nevertheless there shall be calculated by the lessee a notional basis selling price per ton c.i.f. Port Adelaide as if the lessee were selling foundry pig iron c.i.f. Port Adelaide and this shall be the basis selling price for the purposes of this paragraph (2).

For the purpose of computing the tonnage upon which such further sums are payable the weighbridge and weightometer records of the lessee with any adjustments necessary to compensate for known errors in weighing shall be prima facie evidence of the matters contained therein.

For the purpose of determining the moisture content of any beneficiated iron bearing substances or iron concentrates on the dry weight of which such further sums or part thereof are payable the returns furnished by the lessee shall be prima facie evidence of the matters contained therein.

- (3) A further sum amounting to two and one half per centum of the gross amounts realised from the sale of all metals and minerals other than iron ore or iron bearing substances which shall be obtained from the said land, or such other sum as may be agreed upon between the Minister of Mines (hereinafter referred to as “the Minister”) and the lessee.

The further sums mentioned above in paragraphs (2) and (3) shall be paid within two months after the end of each half year ending on the 31st day of May or the 30th day of November as the case may be.

And the lessee doth hereby covenant with the Governor in manner following that is to say:—

1. That the lessee will during the said term pay or cause to be paid to the Minister at the office of the Department of Mines in the City of Adelaide on behalf of the Governor the rent and further sums hereby reserved at the times and in the manner hereinbefore appointed for payment thereof free and clear of all rates, taxes impositions outgoings and deductions whatsoever:

2. That the lessee will pay and discharge all rates taxes assessments impositions and outgoings which during the said term shall become payable in respect of the said land:

3. That the lessee will maintain in position during the said term the posts and trenches or piles of stone required by the said regulations to be erected or cut on the said land when the same was pegged out as a claim and in addition thereto will paint legibly on such posts the number of this lease:

4. That the lessee will during the said term make construct and work all mines and do and perform all things authorized by this lease in a fair orderly skilful and workmanlike manner:

5. That the lessee will during the said term employ and keep constantly employed not less than one man for every 10 acres in mining or prospecting for all metals and minerals except gold in or upon the said land and will whenever thereunto required by the Minister furnish him with satisfactory evidence that such number of men have been and are so employed due allowance being made by the Minister for machinery or horses employed at the rate of two men for each horse or horsepower of machinery and provided that if the number of men horsepower and horses employed by the lessee on any one or more of the mineral leases held by the lessee is not less than the total number of men horsepower and horses required to be employed by the lessee on all the mineral leases held by the lessee the lessee shall be deemed to have complied with this covenant:

6. That the lessee will make such provision for the disposal of the silt sludge dirt waste or refuse which may be brought out of the said mines and premises so that the same will not flow or find its way into any stream brook river or water channel or so as to injure or interfere with any land set apart for water supply purposes:

7. That the lessee will build and keep in proper repair a sufficient and substantial stone wall or other fence around all the pits and shafts which may at any time during the said term be open in any part of the said land for the purpose of this lease so as effectually to prevent all access thereto by all kinds of stock:

8. That the lessee will whenever lawfully required so to do at the lessee's own cost and in manner required by any regulations for the time being in force in that behalf cause to be made a survey of the said land and cause to be forwarded to the said Department of Mines a map or plan of such survey:

9. That the lessee will at all times during the said term keep and preserve the said mines in good order repair and condition and in such good order repair and condition at the end or other sooner determination of the said term deliver peaceable possession thereof and of the land hereby leased unto the Governor or the Minister or to some officer authorized by him or them to receive possession thereof:

10. That the lessee will permit the pastoral lessee (if any) of the said land at all times to have free access and user for domestic purposes and for the purposes of watering stock to and of any surface water on the said land which shall not have been provided or stored by artificial means by the lessee:

11. That the lessee will report to a warden when gold precious stones coal shale oil salt gypsum or other minerals other than iron ore or iron bearing substances are found in payable quantities in or upon the said land:

12. That the lessee will not during the continuance of the said term without the written consent of the Minister first had and obtained use or occupy or permit to be used or occupied the said land except for the purpose of exercising the rights and liberties hereinbefore granted:

13. That the lessee will not prevent any person who holds a right privilege or authority under the said Acts and regulations or any amendment thereof from exercising the same:

Provided always and it is hereby agreed and declared in manner following:—

14. That it shall be lawful for the Governor or the Minister or any person authorized by him or them at all proper and reasonable times during the said term without any interruption from the lessee or the lessee's agents servants or workmen to enter into and upon the said land and into and upon any mines or works that may be found therein to view and examine the condition thereof and whether the same be worked in a proper skilful and workmanlike manner and for such purpose to make use of any of the railroads or other roads or ways machinery and works belonging to the said mines and to examine and take extracts from all books accounts vouchers and documents relating thereto:

15. That if the said rent be not paid on or before the day hereinbefore appointed for payment thereof a penalty of five pounds per centum shall be added to the said rent and if the said rent and penalty be not paid within one calendar month after the said day a further penalty of ten pounds per centum shall be added and if the said rent and penalties be not paid within one calendar month after the said first month the same shall be recoverable by the Minister by action in any court of competent jurisdiction:

16. That if the lessee shall during the said term commit any breach of or shall fail to comply with any covenant condition or proviso herein contained this lease shall be liable to forfeiture in manner hereinafter provided:

17. That if the Minister has reason to believe that there has been a breach of or non-compliance with any of the covenants conditions or provisos herein contained the Minister shall give written notice to the lessee specifying the covenants conditions or provisos which he has reason to believe are not being complied with and notifying the lessee that this lease will be liable to forfeiture at the expiration of one month from the date of such notice unless in the meantime such covenants conditions or provisos are duly complied with and if at the expiration of such notice such covenants conditions or provisos are still not being complied with by the lessee the Governor may cancel this lease notwithstanding that the rent payable under this lease for the period during which such breach is committed may have been paid and notwithstanding any implied waiver of such breach by the Governor and the Minister shall thereupon insert a notice in the *Government Gazette* declaring this lease to be forfeited:

18. That a notice of forfeiture so published in the *Government Gazette* shall be taken to be conclusive evidence that this lease has been legally cancelled and forfeited:

19. That in case this lease shall become liable to forfeiture the Minister may extend the period during which the lessee may perform the covenants conditions and provisos of this lease for such time and subject during such period of extension to such terms and conditions as the Minister may think fit:

20. That the lessee shall be at liberty to surrender this lease by giving to the Minister three calendar months' notice in writing of the lessee's desire or intention so to do and upon payment of all arrears of rent up to the date of surrender:

21. And lastly that the lessee shall be at liberty to remove from the said land at any time within—

- (a) three months after the date of forfeiture or surrender of this lease any improvements plant machinery engines or tools;
- (b) six months after the date of forfeiture or surrender of this lease any metals and minerals except gold won by the lessee stacked upon the said land but shall not remove or interfere with any timber in any mine upon the said land.

IN WITNESS WHEREOF this lease has been executed by His Excellency the Governor of the State and by the Company.

His Excellency the Governor of South Australia caused the public seal of the State to be hereto affixed on the day of 19 .

.....
Governor.

THE COMMON SEAL OF THE BROKEN HILL PROPRIETARY COMPANY LIMITED was hereunto affixed on the day of 19 in the presence of:

.....
Director.
.....
Director.
.....
Secretary.

SCHEDULE 2

The 2000 Deed of Amendment

DEED OF AMENDMENT

THIS DEED is made 30 March 2000 between:

- 1 JOHN WAYNE OLSEN** in his capacity as Premier, for and on behalf of the Crown in right of the State of South Australia (the "**State**"); and
- 2 THE BROKEN HILL PROPRIETARY COMPANY LIMITED** ACN 004 028 077, of 600 Bourke Street, Melbourne, Victoria ("**BHP**").

RECITALS

- A** The State and BHP are parties to an Indenture dated 4 October 1937 which Indenture is set out (in consolidated form) in Appendix 1 to the Broken Hill Proprietary Company's Indenture Act 1937 (the "**1937 Indenture**") and to an Indenture dated 4 September 1958 which Indenture is set out in the Schedule to the Broken Hill Proprietary Company's Steel Works Indenture Act 1958 (the "**1958 Indenture**").
- B** By this Deed of Amendment the parties have agreed to amend each of the 1937 Indenture and the 1958 Indenture to allow BHP to assign its rights and be released of its obligations under the 1937 Indenture and the 1958 Indenture.

THE PARTIES AGREE as follows:

1 AMENDMENT OF 1937 INDENTURE

The 1937 Indenture is amended by:

- (a) inserting the following clauses after clause 17 of the 1937 Indenture:

"Transfer of rights and obligations

- 18(a) The Company may, with the consent of the State, transfer its rights and obligations under this Indenture and under one or more mineral or other leases or other proprietary rights referred to in, or granted pursuant to, this Indenture (the "**Leases**") to a person or body corporate (the "**Assignee**") by the Company, the State and the Assignee executing a deed of assignment and assumption substantially in the form of the deed set out in Schedule C to this Indenture. If such a deed of assignment and assumption is executed by the Company, the State and the Assignee, the Company and the State will, in accordance with the provisions of the deed of assignment and assumption, be released from their obligations and liabilities to each other under this Indenture and the Leases.
- (b) The State will not withhold or delay the giving of its consent to a proposed transfer of rights and obligations under this Indenture, or its execution of a deed of assignment and assumption, if the proposed Assignee is:
 - (i) a related body corporate (as defined in the Corporations Law) of the assignor; or

- (ii) a company which is within a group of companies to which the steel works and related operations in and around Whyalla have been, or are to be, transferred as part of an integrated group of steel businesses which have processing plant and equipment which (including any processing plant and equipment at Whyalla) has design capacity which is capable of processing most of the raw steel output from the steel works.
- (c) In all other cases, the State will not unreasonably withhold or delay the giving of its consent to a proposed transfer of rights and obligations under this Indenture, or its execution of a deed of assignment and assumption, provided that the State is satisfied:
 - (i) that the proposed Assignee is responsible and solvent; and
 - (ii) with such proposed Assignee's plans to secure the continued viability of the steel works and related operations in and around Whyalla.
- (d) If, pursuant to paragraph 18(a), The Broken Hill Proprietary Company Limited transfers its obligations under this Indenture and any Leases to a company which is a subsidiary of The Broken Hill Proprietary Company Limited, then, if the company fails to perform such obligations whilst it is a subsidiary of The Broken Hill Proprietary Company Limited, and notwithstanding anything in paragraph 18(a) or in the relevant deed of assignment and assumption, The Broken Hill Proprietary Company Limited will be liable for such failure as if the transfer had not occurred.

Change of control

- 19(a) Any proposed change in the persons who beneficially own or control more than 50 percent of the voting shares of the Company (including, for the avoidance of doubt, any direct or indirect Assignee of The Broken Hill Proprietary Company Limited which is a body corporate), or more than 50 percent of the voting shares of a parent company of the Company (or relevant Assignee), will require the consent of the State.
- (b) The State will not withhold or delay the giving of its consent to a proposed change in control of the Company (or relevant Assignee) if:
 - (i) the ultimate holding company (as defined in the Corporations Law) of the Company (or relevant Assignee) is to remain the same; or
 - (ii) the Company (or relevant Assignee) will remain, or become, a company which is within a group of companies which holds the steel works and related operations in and around Whyalla as part of an integrated group of steel businesses which have processing plant and equipment which (including any processing plant and equipment at Whyalla) has design capacity which is capable of processing most of the raw steel output from the steel works.
- (c) In all other cases, the State will not unreasonably withhold or delay the giving of its consent to a proposed change in control of the Company (or relevant Assignee), provided that the State is satisfied:
 - (i) that any proposed new ultimate holding company (as defined in the Corporations Law) of the Company (or relevant Assignee) is responsible and solvent; and

- (ii) with the Company's (or relevant Assignee's) plans to secure the continued viability of the steel works and related operations in and around Whyalla.
- (d) Paragraph 19(a) will not apply if the voting shares of the Company (or relevant Assignee) are listed on a stock exchange, or to any proposed change in the persons who beneficially own or control voting shares in a parent company of the Company (or relevant Assignee) where the voting shares of such parent company are listed on a stock exchange, but paragraph 19(a) will apply to any proposed listing of the Company or any such parent company as if, but irrespective of whether, the proposed listing involves a change in the persons who beneficially own or control more than 50 percent of the relevant voting shares."; and
- (b) by inserting the form of deed of assignment and assumption set out in Annexure 2 to this Deed of Amendment as Schedule C to the 1937 Indenture.

2 AFFIRMATION OF REMAINING TERMS OF 1937 INDENTURE

Except for the variations provided for in clause 1 of this Deed of Amendment, the 1937 Indenture is in all respects affirmed.

3 AMENDMENT OF 1958 INDENTURE

The 1958 Indenture is amended by:

- (a) inserting the following clause after clause 26 of the 1958 Indenture:

"Disposal
of certain
land

26A(1) The Company has agreed with the State:

- (a) to dispose of such of the land comprised in Certificates of Title Register Book Volumes 5280 Folio 990, 5184 Folio 639, 4215 Folio 661 and 5523 Folio 190 which is shown on the plan set out in Appendix D to this Indenture and which is owned by the Company (being approximately 3,600 hectares of the area described in paragraph 26(a)) (the "**Subject Area**"), in accordance with the provisions of this clause; and
 - (b) save for the continuation and renewal of existing tenancies, sub-leases, licences and similar, not to allow third parties to use the remainder of the area described in paragraph 26(a), or any part of it, for any purposes which are not steelmaking, or related to or ancillary to or in support of steelmaking, without the consent of either one of the State or the City of Whyalla.
- (2) The Company and the State have identified that portions of the Subject Area (as approximately depicted on the plan set out in Appendix D to this Indenture) may be suited to the following uses:
- (a) the portion marked A, to extend the Whyalla Conservation Park;
 - (b) the portion marked B, to extend the width of the adjoining road reserves;
 - (c) the portion marked C, as a site for the development of an industrial park;

-
- (d) the portion marked D, to continue as the site for the existing golf course;
 - (e) the portion marked E, as a site for the development of a recreation and leisure park; and
 - (f) the portion marked F, for such use as the City of Whyalla chooses.
- (3) During the period from when this clause takes effect until 31 December 2000, the Company will use its reasonable endeavours to negotiate with appropriate potential transferees for the transfer of the above portions of the Subject Area (or of portions approximating such portions) on terms and conditions consistent with the provisions of this clause and otherwise acceptable to the Company.
- (4) The Company and the State have identified the following potential transferees as likely to be appropriate:
- (a) in relation to the portion marked A, the Minister for Environment and Heritage;
 - (b) in relation to the portion marked B, the Minister for Transport and Urban Planning; and
 - (c) in relation to the portions marked C, D, E and F, the City of Whyalla.
- (5) The size and location of the identified portions of the Subject Area, the potential uses for such portions and the potential appropriate transferees of such portions may be altered by the Company in consultation with the State.
- (6) Any transfer or vesting of land pursuant to this clause will be:
- (a) for no monetary consideration, except that the Company may require the transferee to be responsible for all or some of any applicable costs of subdivision or transfer including registration fees and stamp duty; and
 - (b) made subject to all third party rights of access, occupation and use which are in existence, or otherwise required to access occupied or used portions of the land, as at the time of such transfer or vesting.
- (7) Any land transferred or vested pursuant to this clause (other than the portion of the Subject Area marked F) will, for so long as the steel works continue to operate, carry with it the following restrictive covenants (which covenants will run with the land):
- (a) subject to any agreement between the Company and an owner, occupier or user of the land from time to time, the land must not be used for residential purposes, or for any other use that (in the Company's opinion, acting reasonably) adversely affects or compromises the operation of the steel works (including the steel works, or its operation, as it is changed from time to time, provided that no change to the steel works or its operation shall prevent the continuation of any then existing use which did not adversely affect the operation of the steel works when the use commenced); and

- (b) subject to any agreement between the Company and an owner, occupier or user of the land from time to time, the land must not be used in any way which:
 - (i) changes or interferes with any infrastructure which is presently on, under or above such land and which is owned or operated by the Company in connection with the steel works; or
 - (ii) compromises the availability of, or the Company's access to, sufficient quantities of gas, electricity and water for use in connection with the steel works (including the steel works, or its operation, as it is changed from time to time, provided that no change to the steel works or its operation shall prevent the continuation of any then existing use which did not adversely affect the steel works in this manner when the use commenced).
- (8) If, as at 31 December 2000, the Company has not disposed of, or entered into agreements to dispose of, all of the Subject Area, substantially in the manner contemplated by this clause (or as otherwise agreed by the State) then, effective from 1 January 2001, legal and beneficial title to all such portions of the Subject Area not so disposed of will immediately, and without further action, vest in the State. Any costs or fees (including costs of subdivision, registration fees and stamp duty) which are incurred consequent upon such vesting will be borne by the State.
- (9) Clause 26 will cease to apply to any land transferred or vested pursuant to this clause, as and from the date of transfer or vesting.
- (10)
 - (a) This sub-clause (10) applies to infrastructure that is presently owned or operated by the Company in connection with the steel works and is situated on, under or above land transferred or vested pursuant to this clause.
 - (b) Subject to any agreement in writing to the contrary, any infrastructure to which this clause applies and which is owned by the Company will continue to be owned by the Company after the land is transferred or vested, notwithstanding any affixation or annexation to the land.
 - (c) The Company will have an easement over land transferred or vested pursuant to this clause which entitles the Company to:
 - (i) operate, examine, maintain, repair, modify or replace the relevant infrastructure;
 - (ii) enter the land, by its agents or employees, at any reasonable time, for any of the above purposes; and
 - (iii) bring on to the land any vehicles or equipment that may be reasonably necessary for any of the above purposes.

- (d) The powers conferred by the easement under this sub-clause (10) must be exercised so as to minimise, as far as reasonably practicable, interference with the enjoyment of the land by persons lawfully occupying the land.
- (e) If the Company has an easement over land relating to any relevant infrastructure otherwise than by virtue of this sub-clause (10), the application of the easement under this sub-clause (10) to the land is excluded to the extent necessary to avoid the same part of the land being subject to both easements.
- (f) The Company may, by instrument in writing, limit rights or impose conditions on the exercise of rights arising under the easement under this sub-clause (10) (and such an instrument has effect according to its terms).
- (g) An easement under this sub-clause (10) may, but need not, be registered."

(b) inserting the following sub-clauses after such clause 31(4) of the 1958 Indenture:

"Transfer
of rights
and
obligations

- 31(5) (a) Notwithstanding clauses 31(1) to (4) above, the Company may, with the consent of the State, transfer its rights and obligations under this Indenture and under one or more mineral or other leases or other proprietary rights referred to in, or granted pursuant to, this Indenture (the "**Leases**") to a person or body corporate (the "**Assignee**") by the Company, the State and the Assignee executing a deed of assignment and assumption substantially in the form of the deed set out in Appendix E to this Indenture. If such a deed of assignment and assumption is executed by the Company, the State and the Assignee, the Company and the State will, in accordance with the provisions of the deed of assignment and assumption, be released from its obligations and liabilities to each other under this Indenture and the Leases.
- (b) The State will not withhold or delay the giving of its consent to a proposed transfer of rights and obligations under this Indenture, or its execution of a deed of assignment and assumption, if the proposed Assignee is:
- (i) a related body corporate (as defined in the Corporations Law) of the assignor; or
 - (ii) a company which is within a group of companies to which the steel works and related operations in and around Whyalla have been, or are to be, transferred as part of an integrated group of steel businesses which have processing plant and equipment which (including any processing plant and equipment at Whyalla) has design capacity which is capable of processing most of the raw steel output from the steel works.
- (c) In all other cases, the State will not unreasonably withhold or delay the giving of its consent to a proposed transfer of rights and obligations under this Indenture, or its execution of a deed of assignment and assumption, provided that the State is satisfied:

- (i) that the proposed Assignee is responsible and solvent; and
 - (ii) with such proposed Assignee's plans to secure the continued viability of the steel works and related operations in and around Whyalla.
 - (d) If, pursuant to paragraph 31(5)(a), The Broken Hill Proprietary Company Limited transfers its obligations under this Indenture and any Leases to a company which is a subsidiary of The Broken Hill Proprietary Company Limited, then, if the company fails to perform such obligations whilst it is a subsidiary of The Broken Hill Proprietary Company Limited, and notwithstanding anything in paragraph 31(5)(a) or in the relevant deed of assignment and assumption, The Broken Hill Proprietary Company Limited will be liable for such failure as if the transfer had not occurred.
- 31(6) (a) Any proposed change in the persons who beneficially own or control more than 50 percent of the voting shares of the Company (including, for the avoidance of doubt, any direct or indirect Assignee of The Broken Hill Proprietary Company Limited which is a body corporate), or more than 50 percent of the voting shares of a parent company of the Company (or relevant Assignee), will require the consent of the State.
- (b) The State will not withhold or delay the giving of its consent to a proposed change in control of the Company (or relevant Assignee) if:
 - (i) the ultimate holding company (as defined in the Corporations Law) of the Company (or relevant Assignee) is to remain the same; or
 - (ii) the Company (or relevant Assignee) will remain, or become, a company which is within a group of companies which holds the steel works and related operations in and around Whyalla as part of an integrated group of steel businesses which have processing plant and equipment which (including any processing plant and equipment at Whyalla) has design capacity which is capable of processing most of the raw steel output from the steel works.
 - (c) In all other cases, the State will not unreasonably withhold or delay the giving of its consent to a proposed change in control of the Company (or relevant Assignee), provided that the State is satisfied:
 - (i) that any proposed new ultimate holding company (as defined in the Corporations Law) of the Company (or relevant Assignee) is responsible and solvent; and
 - (ii) with the Company's (or relevant Assignee's) plans to secure the continued viability of the steel works and related operations in and around Whyalla.

- (d) Paragraph 31(6)(a) will not apply if the voting shares of the Company (or relevant Assignee) are listed on a stock exchange, or to any proposed change in the persons who beneficially own or control voting shares in a parent company of the Company (or relevant Assignee) where the voting shares of such parent company are listed on a stock exchange, but paragraph 31(6)(a) will apply to any proposed listing of the Company or any such parent company as if, but irrespective of whether, the proposed listing involves a change in the persons who beneficially own or control more than 50 percent of the relevant voting shares"; and
- (c) by inserting the plan set out in Annexure 1 to this Deed as Appendix D to the 1958 Indenture; and
- (d) by inserting the form of deed of assignment and assumption set out in Annexure 2 to this Deed of Amendment as Appendix E to the 1958 Indenture.

4 AFFIRMATION OF REMAINING TERMS OF 1958 INDENTURE

Except for the variations provided for in clause 3 of this Deed of Amendment, the 1958 Indenture is in all respects affirmed.

5 RATIFICATION OF THIS DEED

- 5.1 The Government of the State will, as early as practicable after execution of this Deed, introduce a Bill into the Parliament of the State for ratification and approval of this Deed of Amendment and to secure to BHP (and its successors and assigns) the rights provided for in this Deed and enable this Deed to be fully carried into operation.
- 5.2 The provisions of this Deed, other than this clause 5, will not come into operation unless and until the Bill referred to in clause 5.1 has been passed by the Parliament of the State of South Australia and the Act founded on such Bill comes into operation.
- 5.3 BHP agrees that clause 1(3) of the 1958 Indenture will not apply to any Act passed by the Parliament of the State of South Australia the sole effect of which is to ratify and approve (or otherwise support the terms of) this Deed of Amendment, except that such Act may also provide for the repeal of section 7 of the Broken Hill Proprietary Company's Steel Works Indenture Act 1958 in accordance with the following principles:
 - (a) the repeal of such section takes effect from the date on which a transfer of The Broken Hill Proprietary Company Limited's rights and obligations under the 1937 Indenture and the 1958 Indenture (and certain leases) to an Assignee pursuant to new clause 18 of the 1937 Indenture and new clause 31(5) of the 1958 Indenture takes effect, unless the relevant Assignee is a related body corporate of The Broken Hill Proprietary Company Limited, in which case the repeal of such section takes effect on the date on which the Assignee ceases to be a related body corporate of The Broken Hill Proprietary Company Limited ("**Repeal Date**");
 - (b) section 16 of the Acts Interpretation Act 1915 applies to provide that such repeal does not affect the operation of the repealed enactment, or alter the doing, suffering or omission of anything, prior to the repeal or affect any right or privilege, or any status existing, prior to the repeal;

- (c) notwithstanding any other Act or law, an Assignee (as defined in new clause 18 of the 1937 Indenture and in new clause 31(5) of the 1958 Indenture (and including any assignee from an Assignee)) shall not be liable for the doing, suffering or omission of anything by The Broken Hill Proprietary Company Limited or its subsidiaries (including any Assignee, whilst a subsidiary of The Broken Hill Proprietary Company Limited) prior to the Repeal Date, where the Broken Hill Proprietary Company Limited and its subsidiaries (including any Assignee, whilst a subsidiary of The Broken Hill Proprietary Company Limited) are not so liable by reason of the prior application of the repealed section; and
- (d) an environmental authorisation under section 37 of the Environment Protection Act 1993, which exempts the Company from the application of a specified provision of the Environment Protection Act 1993 in respect of specified activities at its operations in or around Whyalla, may be granted or renewed so that it remains in force for more than two years under Regulation 5(b) of the Environment Protection (General) Regulations 1994 without the need for compliance with Regulation 5(b)(ii).

6 MISCELLANEOUS PROVISIONS

6.1 Law

The governing law of this Deed of Amendment is the law of the State of South Australia, and the parties submit to the non-exclusive jurisdiction of the Courts of South Australia and to the courts which hear appeals from those courts.

6.2 Costs

Each party will bear its own legal costs of preparation and review of this Deed of Amendment. BHP will pay all stamp duty levied on this Deed of Amendment.

6.3 Counterparts

This Deed of Amendment may be executed in counterparts, which when taken together are one instrument.

Broken Hill Proprietary Company's Steel Works Indenture Act 1958

EXECUTION

EXECUTED by the parties as a Deed.

SIGNED SEALED and DELIVERED for and)
 on behalf of the Crown in right of the State of)
 South Australia by **JOHN WAYNE OLSEN**,)
 Premier, in the presence of:)(J W Olsen).....
) Premier

.....(Peter Lockett).....
 Witness

.....PETER LOCKETT.....
 Print Name

SIGNED SEALED and DELIVERED by)
THE BROKEN HILL PROPRIETARY)(P Laity).....
COMPANY LIMITED by its attorney and in) Attorney
 the presence of:)
)Philip M Laity.....
) Print Name
)

.....(D J Goodwin).....
 Witness

.....DAVID GOODWIN.....
 Print Name

(Reprint No. 1)

SCHEDULE 2

40

Broken Hill Proprietary Company's Steel Works Indenture Act 1958

**ANNEXURE 1
LAND TO BE DISPOSED**

**ANNEXURE 2
FORM OF DEED OF ASSIGNMENT AND ASSUMPTION**

DEED OF ASSIGNMENT AND ASSUMPTION

THIS DEED is made

between:

- 1 THE MINISTER FOR PRIMARY INDUSTRIES AND RESOURCES**, the Minister administering the Broken Hill Proprietary Company's Indenture Act 1937 and the Broken Hill Proprietary Company's Steel Works Indenture Act 1958, a body corporate pursuant to the provisions of the Administrative Arrangements Act 1994, acting for and on behalf of the Crown in right of the State of South Australia (the "**State**");
- 2 THE BROKEN HILL PROPRIETARY COMPANY LIMITED** ACN 004 028 077 of 600 Bourke Street, Melbourne, Victoria ("**BHP**"); and
- 3 [Insert name, ACN and address of Assignee]** (the "**Assignee**").

RECITALS

- A** The State and BHP are parties to an Indenture dated 4 October 1937 which Indenture is set out (in consolidated form) in Appendix 1 to the Broken Hill Proprietary Company's Indenture Act 1937 (the "**1937 Indenture**") and to an Indenture dated 4 September 1958 which Indenture is set out in the Schedule to the Broken Hill Proprietary Company's Steel Works Indenture Act 1958 (the "**1958 Indenture**").
- B** By clause 18 of the 1937 Indenture BHP is permitted to assign its rights under the 1937 Indenture and the Leases by the execution of a deed of assignment and assumption substantially in the form of this Deed.
- C** By clause 31(5) of the 1958 Indenture BHP is permitted to assign its rights under the 1958 Indenture and the Leases by the execution of a deed of assignment and assumption substantially in the form of this Deed.
- D** By *[Insert details of sale or other agreement between BHP and the Assignee]*, BHP has agreed to assign with effect from the Effective Date, its right and interest under the 1937 Indenture, the 1958 Indenture and the Leases to the Assignee and the Assignee has agreed to accept that assignment and to assume BHP's obligations and liabilities under the 1937 Indenture, the 1958 Indenture and the Leases.
- E** The parties are entering into this Deed to effect the assignment and assumption referred to in Recital D.

THE PARTIES AGREE as follows:

1. ASSIGNMENT AND ASSUMPTION

1.1 Effective Date

The Effective Date is *[Insert date]* or such other date on or after the date of this Deed as is agreed in writing by BHP and the Assignee, and notified to the State.

1.2 Deed applies from Effective Date

All provisions of this Deed will have effect from and, if necessary, relate back to the Effective Date, so as to have full force and effect on and from that date.

1.3 Assignment and Assumption

From the Effective Date:

- (a) BHP assigns to the Assignee all of its rights and interests under the Assigned Instruments; and
- (b) the Assignee assumes all of BHP's obligations and liabilities under the Assigned Instruments and will be bound by and comply with those provisions of the Assigned Instruments which were, immediately prior to the Effective Date, binding upon BHP.

2. THE STATE'S COVENANTS

2.1 Covenant

The Assignee covenants with the State that it will, from the Effective Date, observe and perform the Assigned Instruments and be bound by all terms of the Assigned Instruments which, but for this Deed, were to be performed by BHP.

2.2 Consent of the State

In consideration of the promise contained in clause 2.1, the State consents to the assignment to the Assignee of BHP's rights under the Assigned Instruments, with effect from the Effective Date.

2.3 Release of BHP by the State

- (a) With effect on and from the Effective Date, the State releases BHP from all its obligations and liabilities under the Assigned Instruments and from all actions, claims or proceedings that it may have against BHP under or in respect of the Assigned Instruments.
- (b) Nothing in clause 2.3(a) relieves BHP of any obligations and liabilities accrued under the Assigned Instruments prior to the Effective Date except to the extent the Assignee discharges such obligations and liabilities.

2.4 Release of State by BHP

- (a) With effect on and from the Effective Date, BHP releases the State from all its obligations and liabilities under the Assigned Instruments and from all actions, claims or proceedings that it may have against the State under or in respect of the Assigned Instruments.
- (b) Nothing in clause 2.4(a):
 - (i) relieves the State of any obligations and liabilities accrued under the Assigned Instruments prior to the Effective Date except to the extent such obligations and liabilities are discharged in favour of the Assignee; or
 - (ii) shall be taken to constitute a release by the Assignee of any obligations and liabilities of the State.

3. MISCELLANEOUS PROVISIONS

3.1 Law and Jurisdiction

The governing law of this Deed is the law of the State of South Australia, and the parties submit to the non-exclusive jurisdiction of the Courts of South Australia and to the courts which hear appeals from those courts.

3.2 Costs

Each party will bear its own legal costs of preparation and review of this Deed. The Assignee will pay all stamp duty levied on this Deed.

3.3 Counterparts

This Deed may be executed in counterparts, which when taken together are one instrument.

3.4 Interpretation

In this Deed:

- (a) "**Assigned Instruments**" means the 1937 Indenture, the 1958 Indenture and the Leases.
- (b) "**Leases**" means all mineral and other leases and other proprietary rights held by BHP which are referred to in, or granted pursuant to, the 1937 Indenture or the 1958 Indenture.
- (c) A reference to the 1937 Indenture, the 1958 Indenture and the Leases is a reference to those instruments and proprietary rights as they have been, or are, amended from time to time.

EXECUTED by the parties as a Deed.

[Insert Execution clauses]

APPENDIX 1

THE CONSOLIDATED INDENTURE

being

The Original Indenture

as amended by

Statutes Amendment (BHP Indentures) Act 2000 No. 15 of 2000 [Assented to 11 May 2000]

THIS INDENTURE made the fourth day of September 1958 BETWEEN the State of South Australia (hereinafter referred to as "the State") of the one part and THE BROKEN HILL PROPRIETARY COMPANY LIMITED a company incorporated in the State of Victoria and having its registered office in South Australia at Number 28 Franklin Street Adelaide (hereinafter referred to as "the Company" which expression shall include the successors and assigns of The Broken Hill Proprietary Company Limited) of the other part:

WHEREAS the establishment of steel works in South Australia would greatly increase the economic strength of the State and provide opportunities for the employment and advancement of its citizens and be instrumental in influencing other industries which substantially depend on the products of the Company in their processes of manufacture to establish operations at Whyalla:

AND WHEREAS the State has requested the Company to extend its undertaking at Whyalla by the establishment of steel-making plant, rolling mills and other works associated therewith or ancillary or incidental thereto, and the Company is willing to do so upon satisfactory arrangements for that purpose being made:

AND WHEREAS for the proper conduct of its operations it is necessary that the Company should be assured of supplies of raw materials, and security of tenure of certain lands and mineral and other leases, and be granted certain powers and rights:

NOW THIS INDENTURE WITNESSETH that the parties hereto covenant and agree with each other as follows:—

Ratification and operation of Indenture.

1. (1) The clauses of this Indenture other than this clause shall not come into operation unless the Parliament of the State passes a Bill to ratify this Indenture and unless the Act resulting from the passage of such a Bill comes into operation before the 1st day of January 1959.

(2) If such a Bill is so passed this Indenture shall upon the day when the Bill becomes operative as an Act come into operation and be binding on the parties hereto.

(3) Without in any way derogating from any right or remedy of the Company in respect of a breach of this Indenture if the Parliament of the State should at any time alter or amend the Act passed to ratify this Indenture or should enact legislation which modifies the rights of the Company under such Act or under this Indenture the Company shall have the right to terminate this Indenture.

Interpretation.

2. In this Indenture, unless the context otherwise requires—

"the Indenture of 1937" means the Indenture set out in the schedule to the *Broken Hill Proprietary Company's Indenture Act, 1937*:

"the Middleback Range area" means the area shown on the plan set out in the Appendix A hereto being an area of 242 square miles or thereabouts in the Counties of Hore-Ruthven, Manchester and York, bounded as follows:—

Commencing at a point latitude 32 degrees, 41 minutes south and longitude 137 degrees, 5 minutes east near White Dam in the county of Hore-Ruthven, thence 5 miles, 60 chains east, thence 42 miles south, thence 5 miles, 60 chains west, thence north to the point of commencement; all bearings true:

"steel works" means steel-making plant, rolling mills and other works associated therewith or ancillary or incidental thereto at Whyalla:

"reserved area" means an area which by or pursuant to a proclamation made under the *Mining Act, 1930-1955*, or any subsequent amendment or re-enactment thereof is reserved from the operation of all or any of the provisions of that Act:

"subsidiary company" or "subsidiary" means a company in which the Company holds directly or indirectly at least one half of the issued share capital:

"associated company" means any company carrying on operations at or near Whyalla which substantially depends on the products of the Company for its trading or manufacturing processes:

"the ratification of this Indenture" means the day upon which this Indenture comes into operation.

Construction of works by the Company.

3. (1) At a date not later than the 1st day of January 1960 the Company will commence the construction of steel works at Whyalla and subject to sub-clause (5) of this clause will by the 31st day of December 1970 expend on such construction the sum of £30 million in the aggregate.

(2) In computing such expenditure there shall be taken into account all moneys expended by the Company after the 18th day of February 1958 in connection with such construction.

(3) Notwithstanding anything contained in subclause (2) of this clause expenditure by the Company on the construction of a beneficiation and treatment plant for jaspilite and other iron bearing substances shall not be taken into account in computing the expenditure of the Company on steel works.

(4) The Company will, if required by the State, as early as practicable after the end of each financial year until the sum of £30 million has been expended by the Company on the construction of steel works supply to the State a summary audited by the Company's auditors of its expenditure on steel works during such financial year.

(5) If the Company should at any time suffer any delay in the construction of steel works by reason of or arising from any cause beyond the reasonable control of the Company, the date for the completion of the expenditure of £30 million on such construction will be postponed after the said 31st day of December 1970 by a period equal to the period of such delay and any further delay consequential thereon.

(6) Whenever any such delay or further delay consequential thereon occurs the Company will within a reasonable time report it in writing to the State.

Prospecting rights of Company.

4. (1) Notwithstanding the Proclamations made on the 15th day of March 1951 and the 17th day of February 1955 under paragraph (c) of section 6 of the *Mining Act 1930-1951*, the Company shall for a period of ten years after the ratification of this Indenture and during any period of extension as provided in subclause (2) of this clause, have within the Middleback Range area—

(a) the sole and exclusive right to prospect for iron ore and iron bearing substances; and

(b) a non-exclusive right to prospect for metal, minerals and natural substances other than iron ore or iron bearing substances.

(2) The Company's rights under this clause will continue for a further period of ten years beyond the period referred to in subclause (1) of this clause unless they cease as provided by subclause (5) of this clause.

(3) For the purpose of any such prospecting the Company may without payment enter and occupy any land within the Middleback Range area and may on any such land erect buildings and structures, drill and dig holes, and carry out such other work as the Company deems necessary but the Company shall not have any such rights over any land—

(a) which for the time being is lawfully used as the site of a house, outhouse, shed, building, structure, dam or reservoir, or as a yard, garden, cultivated field, orchard, stockyard or other like enclosure; or

(b) which at the date of the ratification of this Indenture is comprised in any claim or lease held under the laws relating to mining by a person other than the Company.

(4) If any such claim or lease as is referred to in paragraph (b) of subclause (3) of this clause is terminated on or before the expiration of ten years after the ratification of this Indenture or during any extension under subclause (2) hereof the restriction on the Company's rights under this clause which is contained in the said paragraph (b) shall cease to have any operation in respect of the land comprised in such claim or lease.

(5) If the Company at any time before the expiration of twenty years after the ratification of this Indenture ceases to require all or any of the rights conferred upon it by subclause (1) of this clause, it shall notify the State of that fact and thereupon the Company's rights under subclause (1) of this clause shall cease to the extent indicated in the notice but not otherwise.

(6) During the period of ten years after the ratification of this Indenture and during any extension under subclause (2) of this clause the State will not register any claim or grant any lease by which any person other than the Company will obtain under the laws relating to mining or otherwise any rights to mine or take natural substances within the Middleback Range area unless the Company's rights under this clause in relation to the area concerned have ceased as provided by subclause (5) of this clause, or unless the Company reports to the State that the area concerned does not contain iron ore or iron bearing substances required by the Company. The Company will, when requested by the State, furnish the State with such information as the Company is then able to furnish, on the question whether any area specified by the State contains iron ore or iron bearing substances required by the Company.

Right to leases in the Middleback Range area.

5. (1) Upon application by the Company during any period provided for under clause 4 of this Indenture the State will grant to the Company or will procure the grant to the Company of mineral leases upon the terms provided for in this Indenture conferring upon the Company rights to mine for and obtain iron ore and other iron bearing substances from any land within the Middleback Range area specified by the Company in such application.

(2) Every mineral lease granted pursuant to this clause shall be for a period of 50 years from the date of the grant thereof with rights of renewal from time to time as provided by clause 13 of this Indenture.

(3) Subject to the provisions of this Indenture any such mineral lease shall be in the form or to the effect set out in the Appendix B hereto.

(4) Nothing in this Indenture shall limit any rights of the Company under the Mining laws of the State and upon application by the Company for leases or other rights in respect of metals, minerals and other natural substances (other than iron ore and iron bearing substances) within the Middleback Range area the State will grant to the Company or will procure the grant to the Company of such leases or rights in terms no less favourable than those provided for by the Mining laws of the State.

Iron ore and iron bearing materials discovered in reserved areas.

6. (1) If prospecting by the State in a reserved area proves the existence of a worthwhile deposit of iron ore or iron bearing substances the State will as soon as practicable give the Company notice of the discovery of such deposit and any information in the possession of the State as to the deposit.

(2) Without in any way derogating from any other rights of the Company, after receipt of notice under subclause (1) of this clause the Company may apply to the State for such mineral or other leases as will enable the Company to prospect for mine or obtain iron ore or other iron bearing substances on or from such deposit or any part thereof.

(3) Upon any such application being made the State may in its discretion grant to the Company or procure the grant to the Company of mineral or other leases upon such terms as may be agreed upon between the State and the Company as being just and reasonable having regard to the matters set out in the recitals of this Indenture.

Iron ore and iron bearing materials outside reserved areas.

7. (1) Nothing in this Indenture shall in any way restrict any right of the Company under the Mining laws of the State or otherwise—

(a) to prospect for iron ore or other iron bearing substances in areas other than reserved areas; or

(b) to peg and register claims and be granted mineral and other leases over land in such areas.

(2) The Company may from time to time apply to the Minister of Mines to make a declaration that any specified area not exceeding 50 square miles in which the Company is prospecting or is about to prospect for iron ore or iron bearing substances shall be an approved prospecting area for the purposes of this clause.

(3) The Minister may, in his discretion, grant or refuse an application under subclause (2) but shall not capriciously refuse it.

(4) A declaration under this clause shall be made by written notice to the Company and shall remain in operation for a period fixed by the notice not exceeding four years. The period of operation may be extended by the Minister from time to time for not more than four years at any one extension. The Minister shall not capriciously refuse an application by the Company for an extension under this sub-clause.

(5) No proclamation reserving any land from the operation of all or any provisions of the *Mining Act, 1930-1954*, or of any Act amending or substituted for that Act, shall take away or restrict any right of the Company—

(a) to prospect within an approved prospecting area for iron ore and other iron bearing substances; or

(b) to peg out and register claims over land situated within an approved prospecting area and containing such ore and substances; or

(c) to be granted mineral leases over such land.

(6) Subclauses (2) to (5) of this clause shall not be deemed to derogate from any other rights of the Company under the Mining laws of the State or this Indenture.

(7) Subject to the provisions of this Indenture relating to royalties and labour conditions any mineral lease granted to the Company pursuant to this clause shall be in the form or to the effect set out in the Appendix B hereto.

Rent for mineral leases.

8. (1) Notwithstanding the provisions of any mineral lease held by the Company at the time of the ratification of this Indenture or granted to the Company pursuant to this Indenture the Company shall during the period of twenty years after the ratification of this Indenture pay to the State as and by way of rent for all of such leases so held or granted the annual sum of £12,000 in addition to the rent fixed by any such lease.

(2) Upon the expiration of such period of twenty years the Company shall pay to the State the rental fixed by any such lease and no more.

Royalties.

9. (1) Subject to subclauses (3) and (4) of this clause the Company shall pay to the Treasurer royalties in accordance with this Indenture on all iron ore and other iron bearing substances obtained by the Company from land comprised in mineral leases held by the Company at the time of the ratification of this Indenture or granted to the Company pursuant to this Indenture.

(2) The rates of royalty shall be—

(a) eighteen pence a ton on—

(i) each ton of high grade iron ore fed directly to furnaces in South Australia or shipped from South Australia without beneficiation; and

(ii) each ton of the dry weight of beneficiated iron bearing substances or iron concentrates fed to furnaces in South Australia or shipped from South Australia;

(b) sixpence a ton on the dry weight of all jaspilite and of all other iron bearing substances of similar grade which without beneficiation are fed directly to furnaces in South Australia or shipped from South Australia.

(3) The said rates shall be substituted for the rates of sixpence per ton payable on iron ore and other iron bearing substances under any of the leases of the Company in existence at the time of the ratification of this Indenture.

(4) The rate of royalty fixed by subclause (2) of this clause is related to a basis selling price by the Company of foundry pig iron of £21 7s. 6d. per ton, c.i.f. Port Adelaide. If such basis selling price on the 30th day of June in any year exceeds or is less than £21 7s. 6d. per ton, c.i.f. Port Adelaide the royalty payable under this clause shall be increased or decreased as the case may be by one penny per ton on high grade iron ore and by one-third of one penny per ton on jaspilite and other iron bearing substances of similar grade for each complete £1 of the increase or decrease of such basis selling price above or below £21 7s. 6d.

(5) In the event of the Company ceasing at any time to sell foundry pig iron at a price calculated with reference to the price per ton c.i.f. Port Adelaide nevertheless there shall be calculated by the Company a notional basis selling price per ton c.i.f. Port Adelaide as if the Company were selling foundry pig iron c.i.f. Port Adelaide and this shall be the basis selling price for the purposes of subclause (4) hereof.

Payment and computation of royalties.

10. (1) The royalties payable under clause 9 of this Indenture shall be paid within two months after the end of each half-year ending on the 31st May or 30th November as the case may be.

(2) (a) For the purpose of computing the tonnage upon which royalty is payable the Company's weighbridge and weightometer records with any adjustments necessary to compensate for known errors in weighing shall be prima facie evidence of the matters contained therein.

(b) For the purpose of determining the moisture content of any beneficiated iron bearing substances or iron concentrates on the dry weight of which royalty is payable under this Indenture, the returns furnished by the Company shall be prima facie evidence of the matters contained therein.

(c) The State may at any time check and verify the calculations of the Company.

(3) In the months of December and June of each year the Company will furnish to the Minister of Mines of the State—

(a) a return of all substances chargeable with royalty, fed directly to furnaces or shipped as aforesaid during the period of six calendar months ending on the preceding 30th November or 31st May as the case may be;

(b) any other information reasonably required by the Minister of Mines for the purpose of enabling him to compute the amount of royalty payable by the Company.

(4) The Minister of Mines and his officers, servants and agents for the purpose of checking and verifying any such return shall during normal office hours have access to and the right of inspection of all books, papers and documents of the Company insofar as they relate to substances chargeable with royalty, and the right to enter and examine the lands comprised in the said leases.

Labour conditions of leases.

11. Notwithstanding anything contained in the Indenture of 1937 or in the mining laws of the State the Company shall be deemed to have complied with the labour conditions of all the mineral or other leases held by the Company at the date of the ratification of this Indenture or which may be granted to the Company pursuant to this Indenture if the number of men horsepower and horses employed on any one or more of those leases is not less than the total number of men horsepower and horses required by the Mining laws of the State at the date of the ratification of this Indenture to be employed on all the said leases.

Raw materials other than iron.

12. (1) As and when requested by the Company the State will in collaboration with the Company or otherwise carry out or procure the carrying out of prospecting and exploratory work in areas specified by the Company to locate suitable deposits of metals and minerals (other than iron ore and iron bearing substances) required by the Company for its operations generally.

(2) The Company will pay to the State the reasonable costs of any work under subclause (1) of this clause.

(3) On the application of the Company the State will grant to the Company or procure the grant to the Company of mineral or other leases or rights under the Mining laws of the State to enable the Company to mine for and obtain any such metals or minerals.

Renewals of mineral leases.

13. (1) Notwithstanding any enactment, the Company shall be entitled to the renewal from time to time of any mineral lease granted to the Company (whether before or after the ratification of this Indenture) and under which the Company obtains materials which it deems essential for any operations of the Company at Whyalla or its steel-making operations generally.

(2) Each renewal shall be for a term of twenty-one years or any shorter term applied for by the Company.

(3) The State upon the application of the Company shall grant to the Company or procure the grant to the Company of any such renewal.

(4) Except as provided in subclause (5) of this clause, the terms, covenants, conditions and other provisions of a lease granted under this clause by way of renewal shall be the same as those of the renewed lease.

(5) By way of the renewal of a mineral lease granted to the Company before the ratification of this Indenture and under which the Company mines for iron ore or other iron bearing substances, a lease for twenty-one years in the form set out in the Appendix B hereto or as near thereto as practicable shall be granted to the Company.

(6) This clause shall not restrict the operation of any provision of any lease relating to the forfeiture thereof for breach or non-performance of any term, covenant or condition thereof.

Land for construction and operation of steel works.

14. (1) If for the purpose of or in connection with the construction or operation of steel works the Company should require the fee simple of or any lease easement or other rights over any land comprised in any pastoral or other lease granted by the State, and the State or any authority under the State has power to resume such land the State shall at the request of the Company exercise or procure the exercise of such power to the extent necessary and transfer convey or assign to the Company or procure the transfer conveyance or assignment to the Company of the land, lease, easement or rights which the Company requires for the purposes aforesaid; but the Company shall pay to the State or other authority a reasonable price for such land, lease, easement or rights sufficient to cover the expenditure incurred by the State or other authority for or in connection with the resumption.

(2) If for any of the purposes mentioned in subclause (1) of this clause the Company requires the fee simple of or any rights over any Crown lands not subject to any lease or agreement the State will sell to the Company at such reasonable price as may be agreed the fee simple of that land or the other rights required by the Company over that land.

Purchase of Whyalla town water supply.

15. The State will, not later than two months after the ratification of this Indenture in accordance with such arrangements as are agreed upon between the parties take over from the Company and operate the mains, pipes, meters, fittings and other works, plant and equipment owned by the Company and used for the reticulation of water within the area of the Whyalla Water District proclaimed under the *Northern Areas and Whyalla Water Supply Act 1940*.

Water for the company's operations.

16. (1) The State will supply to the Company or to any subsidiary or associated company or procure the supply to such company of such amounts of water as such company requires from time to time—

- (a) for the operations of any such company at Whyalla or within the Middleback Range area; and
- (b) for local reticulation to the public at Iron Knob or elsewhere within the Middleback Range area if such reticulation is undertaken by any such company.

Provided that the State will not be obliged to supply more than 1,000 million gallons per annum unless the Company notifies the State in writing that it requires a supply from the Morgan-Whyalla pipeline in excess of 1,000 million gallons per annum, in which case the State will procure that within a period of three years from the date of such notice being given to it there will be available to the Company the whole of its requirements in excess of 1,000 million gallons per annum.

(2) Delivery of water to the Company for consumption or use at Iron Knob or elsewhere in the Middleback Range area may at the option of the Company be taken either at a point on the said Morgan-Whyalla pipeline or elsewhere.

(3) The price to be paid for water delivered to the Company or to a subsidiary or associated company at any point on the Morgan-Whyalla pipeline or at Whyalla shall be the basic price set out in subclause (5) of this clause or such lower price as is charged by the Minister of Works pursuant to any law for the time being in force.

(4) The price to be paid for any water delivered to the Company or to a subsidiary or associated company elsewhere than at a point on the Morgan-Whyalla pipeline shall be the basic price plus the following amounts:—

- (a) Such proportion of the interest and sinking fund on capital expenditure incurred by the State in constructing a branch pipeline and incidental works to convey water from the Morgan-Whyalla pipeline to the point of delivery, as is attributable to water delivered to the Company or to the subsidiary or associated company as the case may be;
- (b) Such proportion of the cost of maintenance and repairs of the branch pipeline and incidental works, and of overhead expenses incurred in connection therewith as is attributable to water delivered to the Company or to the subsidiary or associated company as the case may be; and

(c) The cost of pumping the water delivered to the Company or to the subsidiary or associated company as the case may be from the Morgan-Whyalla pipeline to the point of delivery.

(5) For the purpose of this clause the basic price of water shall be:—

	Per Thousand Gallons.	
	<i>s.</i>	<i>d.</i>
For all water up to the first 300 million gallons per year of supply . .	2	4
For all water above 300 million gallons and up to 420 million gallons per year of supply	2	3
For all water above 420 million gallons and up to 540 million gallons per year of supply	2	2
For all water above 540 million gallons and up to 600 million gallons per year of supply	2	1
For all water above 600 million gallons per year of supply	2	0

Option of company to construct a main.

17. (1) Without in any way derogating from the obligations of the State under this Indenture the Company may—

- (a) construct a water main from a point on the Morgan-Whyalla pipeline to a point or points in the Middleback Range area; or
- (b) request the State to construct such a water main on behalf of and at the expense of the Company.

The junction of such water main with the Morgan-Whyalla pipeline shall be at a place convenient to the Company and approved by the Minister of Works, which approval shall not be unreasonably withheld.

(2) At the request of the Company the State will grant to the Company or procure the grant to the Company of such easements or other rights as the Company may reasonably require for the purpose of constructing repairing or maintaining such a water main or doing anything necessary for such purpose.

(3) The Company will if the State so desires sell water to the State from the said water main for reticulation to retail consumers at a price to be agreed between the Company and the State.

Quality of water.

18. The water to be delivered to the Company under this Indenture shall be potable water in the condition in which it is drawn from the River Murray and without filtering, treatment or change except such change (if any) as necessarily occurs during the transmission of the water from the River Murray to the point of delivery to the Company.

Minimum payment for water.

19. (1) Subject to subclause (2) of this clause, the Company shall pay the Minister of Works on the first day of each quarter in each year of supply the sum of £6,000 for water supplied or to be supplied during that quarter.

(2) If during any year of supply the sum payable by the Company pursuant to this Indenture for water delivered to the Company exceeds £24,000, the Company shall within one month after the end of that year of supply pay to the Minister of Works the amount by which such sum exceeds £24,000. Provided that if in any year of supply during a triennial period the sum payable by the Company pursuant to this Indenture for water delivered to the Company is less than £24,000, and in any subsequent year of supply during the same triennial period the sum payable by the Company pursuant to this Indenture for water so delivered is more than £24,000, then the amount by which the sum payable by the Company in the earlier year of supply was less than £24,000 shall be carried forward to the credit of the Company and set off against any sum or sums in excess of £24,000 payable by the Company in any such subsequent year of supply. Provided also that in respect of each triennial period the Company shall not be obliged to pay more than £72,000, or the price of the water delivered to it during that period whichever is the greater.

(3) In this clause—

"year of supply" means the period of twelve months commencing on the 1st day of May in any year;

"triennial period" means a period of three years commencing on the 1st day of May 1959, or on the corresponding day in any third year thereafter;

"quarter" means the period of three months commencing on the 1st day of May August November and February in any year.

Measurement of water.

20. (1) The Minister of Works shall measure all water delivered to the Company under this Indenture by a suitable meter or meters.

(2) The Minister of Works shall, during each month, give the Company a written notice of the amount of water shown by the meter or meters as having been delivered to the Company during the previous month. The notice shall be conclusive evidence of the amount of water delivered in the month to which it relates unless it is disputed as provided in this clause.

(3) The Company may within one month after receipt of any such notice, give the Minister of Works a written notice that it disputes the correctness of the amount of water shown in the notice given by the Minister of Works, and that it requires the meter or meters to be tested.

(4) The Minister of Works shall on the receipt of such notice, test the meter or meters by passing through it or them, into a receptacle of known capacity, sufficient water to fill that receptacle or any part thereof of known capacity. The Company shall if so required by the Minister of Works permit him to use without payment, for the purpose of a test under this subclause, any dam or reservoir of the Company which is suitable for that purpose, and can conveniently be so used.

(5) If on such test it appears that any meter is not measuring correctly the water actually delivered, the amount of water shown in the disputed notice and in any subsequent notice given by the Minister of Works prior to the test shall be altered by the Minister of Works so as to show the true amount of water delivered, and the liability of the Company shall be adjusted accordingly. Thereafter, if the meter is not corrected or replaced, due allowance for the error shall be made in each monthly notice showing the amount of water delivered to the Company.

(6) The Company may, at its own expense, install a meter or meters at any convenient point in the pipe from which water is delivered to the Company. The readings of any such meter shall be for the information of the Company, but shall not be binding on the Minister of Works unless he agrees to accept them, with or without adjustments, as correct.

(7) The Minister of Works may, without any request from the Company, at any time test any meter installed by him for the purpose of measuring the water delivered to the Company, and the Company shall if so required by the Minister of Works permit the Minister of Works to use for the purpose of the test any dam or reservoir of the Company which is suitable for that purpose and can conveniently be so used.

Electricity.

21. The State will facilitate the making of a just agreement between the Company and the Electricity Trust of South Australia providing for the following matters:—

- (a) The erection of a high-tension electricity transmission line from the Trust's power stations at Port Augusta to Whyalla;
- (b) The taking over from the Company by the Trust in accordance with such arrangements as are agreed between the Company and the Trust of the assets of the Company used for the reticulation of electricity at Whyalla;
- (c) The supply to the Trust at the request of the Trust of electricity generated by the Company and the supply by the Trust to the Company at the request of the Company of the electricity required by the Company; and
- (d) Securing to the Company the right to generate electricity for its own requirements or for supply to any subsidiary or associated company and to charge for any such supply.

Housing.

22. (1) The Company will from time to time during the construction of steel works or of any extensions of the Company's undertaking at Whyalla inform the State of the number of houses which in the Company's opinion will be required for employees (other than the senior staff) of the Company and of any subsidiary or associated company at Whyalla.

(2) The State will build or procure the building of the number of houses required for such employees, and give such employees the opportunity to purchase or become tenants of such houses on reasonable terms and conditions; Provided however that the State will not be obliged to build or procure the building of more than 400 houses in any one year.

(3) The State will arrange consultations between the Company and the South Australian Housing Trust for the purpose of securing the provision of houses under this clause.

Labour.

23. The State will, so far as its powers and administrative arrangements permit, assist the Company to obtain adequate and suitable labour as required for the construction and operation of steel works.

Use of sea water.

24. The Company or any subsidiary or associated company may without payment—

- (a) draw from the sea in the vicinity of Whyalla all sea water which is required for its operations at Whyalla; and
- (b) construct on any land which such company has the right to use or occupy or on the sea bed, any works which it requires for the purpose of obtaining, pumping and delivering such water.

Use and reclamation of foreshore and sea bed.

25. (1) The Company shall have the right to use and occupy the foreshore and sea bed within the area described in subclause (3) of this clause and to deposit substances thereon so as to reclaim the foreshore, sea bed, or any part thereof from the sea.

(2) On the application of the Company, the State will without payment grant or cause to be granted to the Company the fee simple of any land which, whether as a result of reclamation or otherwise, is above high water mark and is within the area described in subclause (3) of this clause.

(3) The area referred to in this clause is the land shown on the plan set out in the Appendix C hereto being the land bounded as follows:—

Commencing at the south-eastern corner of section 27, Hundred of Cultana; thence generally north-easterly along high water mark to its intersection with a straight line drawn from the northernmost corner of section 2 of the said Hundred at a southern angle of 135 degrees with the north-western boundary of said section 2; thence south-easterly along the production of latter line to low water mark; generally south-westerly along said low water mark to its intersection with the north-eastern boundary of the land contained in perpetual licence No. 319A, Register Book Volume 1013 Folio 20; thence southerly by a straight line to the north-eastern corner of the land contained in perpetual licence No. 319, Register Book Volume 512 Folio 105; north-westerly along the north-eastern boundary of latter licence to high water mark aforesaid; thence generally northerly along said high water mark to the point of commencement, together with the coast reserves adjoining part section 19, Hundred of Randell, and section 2, Hundred of Cultana.

Works area to remain outside town.

26. The following areas, namely:—

- (a) the land comprised in Certificates of Title Register Book Volume 1804 Folio 179, Volume 2035 Folio 189, Volume 1093 Folio 115, and Volume 2035 Folio 190;
- (b) the land comprised in perpetual lease 12974, Register Book Volume 916 Folio 16;
- (c) any land north or east of the Company's tramway which the Company or any subsidiary or associated company acquires for use or uses as the site of any works; and
- (d) any land in the Middleback Range area the freehold of which the Company or any subsidiary or associated company acquires for use as the site of any works and which at the time of acquisition is outside the area of any municipality or district council district

shall be outside the area of the Whyalla Town Commission and shall not be constituted as or included in a municipality or district council district as defined in the *Local Government Act 1934-1954* or any re-enactment or amendment thereof and shall not be declared or included in any water district under the *Waterworks Act 1932-1936* or any re-enactment or amendment thereof. Provided that nothing in this clause shall prevent the Company or any subsidiary or associated company from being liable to pay for water supplied by measure: Provided further that if any of the said land is disposed of by the Company or by the subsidiary or associated company and used for residential purposes this clause shall cease to apply to the land so disposed of and used.

Disposal of certain land.

26A. (1) The Company has agreed with the State:

- (a) to dispose of such of the land comprised in Certificates of Title Register Book Volumes 5280 Folio 990, 5184 Folio 639, 4215 Folio 661 and 5523 Folio 190 which is shown on the plan set out in Appendix D to this Indenture and which is owned by the Company (being approximately 3,600 hectares of the area described in paragraph 26(a)) (the "**Subject Area**"), in accordance with the provisions of this clause; and
- (b) save for the continuation and renewal of existing tenancies, sub-leases, licences and similar, not to allow third parties to use the remainder of the area described in paragraph 26(a), or any part of it, for any purposes which are not steelmaking, or related to or ancillary to or in support of steelmaking, without the consent of either one of the State or the City of Whyalla.

(2) The Company and the State have identified that portions of the Subject Area (as approximately depicted on the plan set out in Appendix D to this Indenture) may be suited to the following uses:

- (a) the portion marked A, to extend the Whyalla Conservation Park;
- (b) the portion marked B, to extend the width of the adjoining road reserves;
- (c) the portion marked C, as a site for the development of an industrial park;
- (d) the portion marked D, to continue as the site for the existing golf course;
- (e) the portion marked E, as a site for the development of a recreation and leisure park; and
- (f) the portion marked F, for such use as the City of Whyalla chooses.

(3) During the period from when this clause takes effect until 31 December 2000, the Company will use its reasonable endeavours to negotiate with appropriate potential transferees for the transfer of the above portions of the Subject Area (or of portions approximating such portions) on terms and conditions consistent with the provisions of this clause and otherwise acceptable to the Company.

(4) The Company and the State have identified the following potential transferees as likely to be appropriate:

- (a) in relation to the portion marked A, the Minister for Environment and Heritage;
- (b) in relation to the portion marked B, the Minister for Transport and Urban Planning; and
- (c) in relation to the portions marked C, D, E and F, the City of Whyalla.

(5) The size and location of the identified portions of the Subject Area, the potential uses for such portions and the potential appropriate transferees of such portions may be altered by the Company in consultation with the State.

(6) Any transfer or vesting of land pursuant to this clause will be:

- (a) for no monetary consideration, except that the Company may require the transferee to be responsible for all or some of any applicable costs of subdivision or transfer including registration fees and stamp duty; and
- (b) made subject to all third party rights of access, occupation and use which are in existence, or otherwise required to access occupied or used portions of the land, as at the time of such transfer or vesting.

(7) Any land transferred or vested pursuant to this clause (other than the portion of the Subject Area marked F) will, for so long as the steel works continue to operate, carry with it the following restrictive covenants (which covenants will run with the land):

- (a) subject to any agreement between the Company and an owner, occupier or user of the land from time to time, the land must not be used for residential purposes, or for any other use that (in the Company's opinion, acting reasonably) adversely affects or compromises the operation of the steel works (including the steel works, or its operation, as it is changed from time to time, provided that no change to the steel works or its operation shall prevent the continuation of any then existing use which did not adversely affect the operation of the steel works when the use commenced); and
- (b) subject to any agreement between the Company and an owner, occupier or user of the land from time to time, the land must not be used in any way which:
 - (i) changes or interferes with any infrastructure which is presently on, under or above such land and which is owned or operated by the Company in connection with the steel works; or

- (ii) compromises the availability of, or the Company's access to, sufficient quantities of gas, electricity and water for use in connection with the steel works (including the steel works, or its operation, as it is changed from time to time, provided that no change to the steel works or its operation shall prevent the continuation of any then existing use which did not adversely affect the steel works in this manner when the use commenced).

(8) If, as at 31 December 2000, the Company has not disposed of, or entered into agreements to dispose of, all of the Subject Area, substantially in the manner contemplated by this clause (or as otherwise agreed by the State) then, effective from 1 January 2001, legal and beneficial title to all such portions of the Subject Area not so disposed of will immediately, and without further action, vest in the State. Any costs or fees (including costs of subdivision, registration fees and stamp duty) which are incurred consequent upon such vesting will be borne by the State.

(9) Clause 26 will cease to apply to any land transferred or vested pursuant to this clause, as and from the date of transfer or vesting.

(10)(a) This sub-clause (10) applies to infrastructure that is presently owned or operated by the Company in connection with the steel works and is situated on, under or above land transferred or vested pursuant to this clause.

(b) Subject to any agreement in writing to the contrary, any infrastructure to which this clause applies and which is owned by the Company will continue to be owned by the Company after the land is transferred or vested, notwithstanding any affixation or annexation to the land.

(c) The Company will have an easement over land transferred or vested pursuant to this clause which entitles the Company to:

- (i) operate, examine, maintain, repair, modify or replace the relevant infrastructure;
- (ii) enter the land, by its agents or employees, at any reasonable time, for any of the above purposes; and
- (iii) bring on to the land any vehicles or equipment that may be reasonably necessary for any of the above purposes.

(d) The powers conferred by the easement under this sub-clause (10) must be exercised so as to minimise, as far as reasonably practicable, interference with the enjoyment of the land by persons lawfully occupying the land.

(e) If the Company has an easement over land relating to any relevant infrastructure otherwise than by virtue of this sub-clause (10), the application of the easement under this sub-clause (10) to the land is excluded to the extent necessary to avoid the same part of the land being subject to both easements.

(f) The Company may, by instrument in writing, limit rights or impose conditions on the exercise of rights arising under the easement under this sub-clause (10) (and such an instrument has effect according to its terms).

(g) An easement under this sub-clause (10) may, but need not, be registered.

Construction of bridges and crossings.

27. (1) The Company may construct bridges, level crossings, tunnels or cuttings by which the Whyalla to Iron Knob tramway may cross the Port Augusta-Whyalla road at a place or places in the vicinity of the Company's works or for other purposes in connection with the operation of steel works or the operations of any subsidiary or associated companies.

(2) The places and nature of such bridges, crossings, tunnels or cuttings and the details of construction thereof shall be approved by the Commissioner of Highways which approval shall not be unreasonably withheld.

Railway to Whyalla.

28. If it is decided that the Commonwealth of Australia or any instrumentality thereof or the State should construct a railway line connecting Whyalla with either the South Australian or the Commonwealth railway systems the State will—

- (a) use its best endeavours to facilitate such construction and will grant all necessary rights and powers for that purpose; and
- (b) consult with the Company or arrange consultations between the Commonwealth and the Company as to the route of any such railway in the neighbourhood of the Company's land at Whyalla and as to the location of the terminal of any such railway at Whyalla.

Charges in respect of wharves and jetties.

29. No charges or imposts other than those payable by the Company at the date of the ratification of this Indenture shall be imposed on the Company or on any subsidiary or associated company in respect of the use or occupation of any wharves or jetties constructed by the Company or by any subsidiary or associated company at or near Whyalla or on the shipment or carriage of goods to over or from the said wharves and jetties or on the ships engaged in the shipment thereof.

Prices.

30. The State will not at any time by legislation, regulation, order or administrative action under any legislation of the State as to prices, prevent products produced in South Australia by the Company or by any subsidiary or associated company from being sold at prices which will allow the Company or subsidiary or associated company to provide for such reasonable depreciation, reserves and return on the capital employed in the production of those products as are determined by such company.

Assignment.

31. (1) With the consent of the State, the Company may assign—

- (a) any right, power, benefit, or privilege conferred on the Company by this Indenture;
- (b) any mineral or other lease held by the Company at the date of the ratification of this Indenture or acquired by the Company pursuant to this Indenture.

(2) A person to whom any such right, power, benefit, privilege or lease is assigned may, with the consent of the State, further assign it.

(3) The Company may, with the consent of the State, cause any of its obligations or duties under this Indenture to be performed by any other company, but notwithstanding such consent the Company shall remain liable for any failure to perform such obligations or duties.

(4) The State shall have a discretion to grant or refuse its consent to any assignment of rights, powers, benefits, privileges or leases under this clause or to the performance of any of the Company's obligations or duties by another company but shall not unreasonably withhold such consent.

Transfer of rights and obligations.

(5)(a) Notwithstanding clauses 31(1) to (4) above, the Company may, with the consent of the State, transfer its rights and obligations under this Indenture and under one or more mineral or other leases or other proprietary rights referred to in, or granted pursuant to, this Indenture (the "**Leases**") to a person or body corporate (the "**Assignee**") by the Company, the State and the Assignee executing a deed of assignment and assumption substantially in the form of the deed set out in Appendix E to this Indenture. If such a deed of assignment and assumption is executed by the Company, the State and the Assignee, the Company and the State will, in accordance with the provisions of the deed of assignment and assumption, be released from its obligations and liabilities to each other under this Indenture and the Leases.

(b) The State will not withhold or delay the giving of its consent to a proposed transfer of rights and obligations under this Indenture, or its execution of a deed of assignment and assumption, if the proposed Assignee is:

- (i) a related body corporate (as defined in the Corporations Law) of the assignor; or

- (ii) a company which is within a group of companies to which the steel works and related operations in and around Whyalla have been, or are to be, transferred as part of an integrated group of steel businesses which have processing plant and equipment which (including any processing plant and equipment at Whyalla) has design capacity which is capable of processing most of the raw steel output from the steel works.

(c) In all other cases, the State will not unreasonably withhold or delay the giving of its consent to a proposed transfer of rights and obligations under this Indenture, or its execution of a deed of assignment and assumption, provided that the State is satisfied:

- (i) that the proposed Assignee is responsible and solvent; and
- (ii) with such proposed Assignee's plans to secure the continued viability of the steel works and related operations in and around Whyalla.

(d) If, pursuant to paragraph 31(5)(a), The Broken Hill Proprietary Company Limited transfers its obligations under this Indenture and any Leases to a company which is a subsidiary of The Broken Hill Proprietary Company Limited, then, if the company fails to perform such obligations whilst it is a subsidiary of The Broken Hill Proprietary Company Limited, and notwithstanding anything in paragraph 31(5)(a) or in the relevant deed of assignment and assumption, The Broken Hill Proprietary Company Limited will be liable for such failure as if the transfer had not occurred.

(6)(a) Any proposed change in the persons who beneficially own or control more than 50 percent of the voting shares of the Company (including, for the avoidance of doubt, any direct or indirect Assignee of The Broken Hill Proprietary Company Limited which is a body corporate), or more than 50 percent of the voting shares of a parent company of the Company (or relevant Assignee), will require the consent of the State.

(b) The State will not withhold or delay the giving of its consent to a proposed change in control of the Company (or relevant Assignee) if:

- (i) the ultimate holding company (as defined in the Corporations Law) of the Company (or relevant Assignee) is to remain the same; or
- (ii) the Company (or relevant Assignee) will remain, or become, a company which is within a group of companies which holds the steel works and related operations in and around Whyalla as part of an integrated group of steel businesses which have processing plant and equipment which (including any processing plant and equipment at Whyalla) has design capacity which is capable of processing most of the raw steel output from the steel works.

(c) In all other cases, the State will not unreasonably withhold or delay the giving of its consent to a proposed change in control of the Company (or relevant Assignee), provided that the State is satisfied:

- (i) that any proposed new ultimate holding company (as defined in the Corporations Law) of the Company (or relevant Assignee) is responsible and solvent; and
- (ii) with the Company's (or relevant Assignee's) plans to secure the continued viability of the steel works and related operations in and around Whyalla.

(d) Paragraph 31(6)(a) will not apply if the voting shares of the Company (or relevant Assignee) are listed on a stock exchange, or to any proposed change in the persons who beneficially own or control voting shares in a parent company of the Company (or relevant Assignee) where the voting shares of such parent company are listed on a stock exchange, but paragraph 31(6)(a) will apply to any proposed listing of the Company or any such parent company as if, but irrespective of whether, the proposed listing involves a change in the persons who beneficially own or control more than 50 percent of the relevant voting shares.

Subsidiary and associated companies.

32. The Company will, whenever requested by the State so to do, furnish the State with a list of subsidiary and associated companies as defined in clause 2 of this Indenture showing the interest of the Company in such subsidiary and associated companies and the State may, for the purposes of this Indenture, rely and act upon any list so furnished by the Company.

Extension of the Indenture of 1937.

33. (1) The Indenture of 1937 shall by mutual agreement between the parties hereto be read and construed as if—

- (a) the expression "the term of this Indenture" and the definition thereof contained in paragraph (b) of clause 1 of the Indenture of 1937 were omitted; and
- (b) the words "upon the expiration of the term of this Indenture" in clause 4 thereof were omitted; and
- (c) the words "during the term of this Indenture" were omitted from clauses 14, 15 and 16 thereof; and
- (d) no limitation of time were contained in clause 17 thereof.

(2) No limitation of time shall be implied in clauses 7, 8, 9, 10, 11, 12 and 13 of the Indenture of 1937.

Notices.

34. (1) Any notice consent or application authorized or required by this Indenture to be given or made shall be given or made in writing.

(2) Any notice consent application or other writing authorized or required by this Indenture to be given or made by the State shall be deemed to have been duly given or made if signed by a Minister and forwarded by prepaid post to the registered office of the Company in South Australia or its office at Whyalla.

(3) Any notice consent or application or other writing authorized or required by this Indenture to be given or made by the Minister of Mines, the Minister of Works, the Commissioner of Highways, the South Australian Housing Trust or the Electricity Trust of South Australia shall be deemed to have been duly given or made if signed by such Minister or Commissioner, or by the Chairman of the South Australian Housing Trust or of the Electricity Trust of South Australia, as the case may be, and forwarded by prepaid post to the registered office of the Company in South Australia or its office at Whyalla.

(4) Any notice consent application or other writing authorized or required by this Indenture to be given or made by the Company shall be deemed to have been duly given or made if signed on behalf of the Company by the Managing Director General Manager Secretary or Attorney of the Company and forwarded by prepaid post—

- (a) in the case of any notice consent application or other writing concerning the prospecting or mineral rights of the Company under this Indenture to the Minister of Mines of the State;
- (b) in the case of any notice consent application or other writing concerning the supply of water under this Indenture to the Minister of Works;
- (c) in the case of any notice consent application or other writing under this Indenture not otherwise provided for in this Indenture or in this clause to the Treasurer of the State.

(5) Any notice consent application or other writing forwarded by prepaid post as provided for in this clause shall be deemed to have been duly given on the day on which it would be delivered in the ordinary course of post.

Preservation of rights.

35. (1) Subject to the due observance by the Company of its obligations under this Indenture the State shall at all times take all necessary steps to secure to the Company and to each subsidiary and associated company the rights powers and privileges provided for in this Indenture or the Indenture of 1937 and to prevent them from being impaired disturbed or prejudicially affected in any way whatsoever. Provided that no tax payable by the Company or by any subsidiary or associated company or in respect of the property of any such company under any public general Act of the Parliament of the State at rates not exceeding those applicable generally throughout the State shall be deemed to impair disturb or prejudicially affect any right of the Company or of the subsidiary or associated company.

(2) No person other than the Company or a subsidiary or associated company shall acquire any right under the Mining laws of the State over any land occupied by the Company or by any subsidiary or associated company for the operations of such company, save with the consent of such company.

Labour at Whyalla.

36. (1) This Indenture is made on the assumption that subject to the provision of adequate housing at Whyalla sufficient labour will be obtainable by the Company under conditions prescribed by the relevant industrial orders or awards to enable the Company both to carry on effectively the activities which it carries on at Whyalla at the time of the execution of this Indenture and to construct and operate steel works.

(2) Without in any way altering the effect of the foregoing provisions of this Indenture if at any time sufficient labour is not available for the purpose and under the conditions mentioned in subclause (1) of this clause the State will, at the request of the Company confer with the Company as to the obligations of the parties under this Indenture with a view to agreeing upon such variations thereof as are necessary or appropriate under the circumstances.

IN WITNESS whereof this Indenture has been executed by His Excellency the Lieutenant-Governor of the State and by the Company.

His Excellency the Lieutenant-Governor of South Australia caused the public seal of the State to be hereto affixed, and signed this Indenture on the fourth day of September, 1958, in the presence of:

M.A.F. PEARCE

J.M. NAPIER
Lieutenant-Governor

THE COMMON SEAL OF THE BROKEN HILL PROPRIETARY COMPANY LIMITED was hereunto affixed on the twenty-second day of August, 1958, in the presence of:

C.Y. SYME
Director.

E. LEWIS
Director.

R.G. NEWTON
General Manager
Commercial.

BROKEN HILL PROPRIETARY COMPANY'S STEEL WORKS INDENTURE ACT 1958

APPENDIX B TO THE INDENTURE

South Australia

Crown Lease

(Mineral No.)

HIS EXCELLENCY THE GOVERNOR in and over the State of South Australia in the Commonwealth of Australia in conformity with and in exercise of the powers and authorities conferred upon him by the *Mining Act 1930-1955* and the *Broken Hill Proprietary Company's Steel Works Indenture Act 1958* (hereinafter referred to as "the Indenture Act") and of all other powers enabling him in that behalf doth hereby lease to THE BROKEN HILL PROPRIETARY COMPANY LIMITED of Melbourne in the State of Victoria (hereinafter referred to as "the lessee" which expression shall include its successors and assigns) all that piece of land containing acres or thereabouts and situate and being in the said State as the same is delineated in the public maps deposited in the office of the Department of Mines in the City of Adelaide and in the plan in the margin hereof and therein coloured together with all ways waters water courses privileges and appurtenances to the same now belonging or therewith occupied or enjoyed.

Including in such lease during its continuance the following rights and liberties for the lessee and the lessee's agents servants and workmen in and upon the said land:—

(1) To search work mine for win obtain and treat for the lessee's own use and benefit all metals and minerals except gold in or upon the said land; and

(2) For or incidental to the purposes aforesaid in or upon the said land:—

(a) To cut and construct races drains dams reservoirs roads and tramways; and

(b) To erect offices buildings works and machinery; and

(c) To erect dwellings for use by the lessee and the lessee's agents servants and workmen for the purpose of residence,

and all other necessary or convenient powers authorities privileges and advantages for all or any of the purposes aforesaid

subject to the provisions of the *Mining Acts 1930-1955* and regulations made thereunder and of the *Mines and Works Inspection Act 1920-1957* and all regulations made thereunder save insofar as any such provisions are modified or affected by the Indenture Act and subject to such rights interests and authorities as may be lawfully subsisting in the said land at the date of this lease: *Except and always Reserved* out of this lease all gold and other substances not being metals or minerals in or upon the said land and all persons authorized by the said Acts and regulations shall have full and free liberty of access ingress egress and regress with or without horses cattle carts drays carriages motor cars engines and machinery and all other necessary implements and things into upon and from the said land or any part or parts thereof for all reasonable purposes and to search work mine for win and obtain gold and other substances not being metals or minerals in or upon the said land and for or incidental to those purposes the rights and liberties mentioned in the preceding paragraph (2): *And also Excepting and Reserving* to all pastoral lessees (if any) of the said land a right of access and user for domestic purposes and for the purposes of watering stock to and of any surface water on the said land which shall not have been provided or stored by artificial means by the lessee.

To hold the said land with the appurtenances (except and reserved and subject as aforesaid) unto the lessee from the day of 19 for and during the term of fifty (50) years from thence next ensuing for the purpose of mining therein and thereon for all Metals and minerals except gold together with the rights and liberties hereinbefore granted but for no other purpose and with the right to the lessee to the renewal from time to time for periods of 21 years on the same terms and conditions as those contained in this lease including this right of renewal.

Yielding and paying therefor unto the Governor the following rent and other sums:—

(1) A rent of £ payable yearly and every year in advance on the first day of in each year during the said term and any renewal thereof.

(2) A further sum amounting to—

(a) eighteen pence a ton on—

(i) each ton of high grade iron ore fed directly to furnaces in South Australia or shipped from South Australia without beneficiation; and

(ii) each ton of the dry weight of beneficiated iron bearing substances or iron concentrates fed to furnaces in South Australia or shipped from South Australia;

(b) sixpence a ton of the dry weight of all jaspilite and of all other iron bearing substances of similar grade which without beneficiation are fed directly to furnaces in South Australia or shipped from South Australia.

The sums payable under this paragraph (2) are related to a basis selling price by the lessee of foundry pig iron of £21 7s. 6d. per ton c.i.f. Port Adelaide. If such basis selling price on the thirtieth day of June in any year exceeds or is less than £21 7s. 6d. per ton c.i.f. Port Adelaide the payments under this paragraph (2) shall be increased or decreased as the case may be by one penny per ton on high grade iron ore and by one third of one penny per ton on jaspilite and other iron bearing substances of similar grade for each complete one pound of the increase or decrease of such basis selling price above or below £21 7s. 6d. In the event of the lessee ceasing at any time to sell foundry pig iron at a price calculated with reference to the price per ton c.i.f. Port Adelaide nevertheless there shall be calculated by the lessee a notional basis selling price per ton c.i.f. Port Adelaide as if the lessee were selling foundry pig iron c.i.f. Port Adelaide and this shall be the basis selling price for the purposes of this paragraph (2).

For the purpose of computing the tonnage upon which such further sums are payable the weighbridge and weightometer records of the lessee with any adjustments necessary to compensate for known errors in weighing shall be prima facie evidence of the matters contained therein.

For the purpose of determining the moisture content of any beneficiated iron bearing substances or iron concentrates on the dry weight of which such further sums or part thereof are payable the returns furnished by the lessee shall be prima facie evidence of the matters contained therein.

(3) A further sum amounting to two and one half per centum of the gross amounts realised from the sale of all metals and minerals other than iron ore or iron bearing substances which shall be obtained from the said land, or such other sum as may be agreed upon between the Minister of Mines (hereinafter referred to as "the Minister") and the lessee.

The further sums mentioned above in paragraphs (2) and (3) shall be paid within two months after the end of each half year ending on the 31st day of May or the 30th day of November as the case may be.

And the lessee doth hereby covenant with the Governor in manner following that is to say:—

1. That the lessee will during the said term pay or cause to be paid to the Minister at the office of the Department of Mines in the City of Adelaide on behalf of the Governor the rent and further sums hereby reserved at the times and in the manner hereinbefore appointed for payment thereof free and clear of all rates, taxes impositions outgoings and deductions whatsoever:

2. That the lessee will pay and discharge all rates taxes assessments impositions and outgoings which during the said term shall become payable in respect of the said land:

3. That the lessee will maintain in position during the said term the posts and trenches or piles of stone required by the said regulations to be erected or cut on the said land when the same was pegged out as a claim and in addition thereto will paint legibly on such posts the number of this lease:

4. That the lessee will during the said term make construct and work all mines and do and perform all things authorized by this lease in a fair orderly skilful and workmanlike manner:

5. That the lessee will during the said term employ and keep constantly employed not less than one man for every 10 acres in mining or prospecting for all metals and minerals except gold in or upon the said land and will whenever thereunto required by the Minister furnish him with satisfactory evidence that such number of men have been and are so employed due allowance being made by the Minister for machinery or horses employed at the rate of two men for each horse or horsepower of machinery and provided that if the number of men horsepower and horses employed by the lessee on any one or more of the mineral leases held by the lessee is not less than the total number of men horsepower and horses required to be employed by the lessee on all the mineral leases held by the lessee the lessee shall be deemed to have complied with this covenant:

6. That the lessee will make such provision for the disposal of the silt sludge dirt waste or refuse which may be brought out of the said mines and premises so that the same will not flow or find its way into any stream brook river or water channel or so as to injure or interfere with any land set apart for water supply purposes:

7. That the lessee will build and keep in proper repair a sufficient and substantial stone wall or other fence around all the pits and shafts which may at any time during the said term be open in any part of the said land for the purpose of this lease so as effectually to prevent all access thereto by all kinds of stock:

8. That the lessee will whenever lawfully required so to do at the lessee's own cost and in manner required by any regulations for the time being in force in that behalf cause to be made a survey of the said land and cause to be forwarded to the said Department of Mines a map or plan of such survey:

9. That the lessee will at all times during the said term keep and preserve the said mines in good order repair and condition and in such good order repair and condition at the end or other sooner determination of the said term deliver peaceable possession thereof and of the land hereby leased unto the Governor or the Minister or to some officer authorized by him or them to receive possession thereof:

10. That the lessee will permit the pastoral lessee (if any) of the said land at all times to have free access and user for domestic purposes and for the purposes of watering stock to and of any surface water on the said land which shall not have been provided or stored by artificial means by the lessee:

11. That the lessee will report to a warden when gold precious stones coal shale oil salt gypsum or other minerals other than iron ore or iron bearing substances are found in payable quantities in or upon the said land:

12. That the lessee will not during the continuance of the said term without the written consent of the Minister first had and obtained use or occupy or permit to be used or occupied the said land except for the purpose of exercising the rights and liberties hereinbefore granted:

13. That the lessee will not prevent any person who holds a right privilege or authority under the said Acts and regulations or any amendment thereof from exercising the same:

Provided always and it is hereby agreed and declared in manner following:—

14. That it shall be lawful for the Governor or the Minister or any person authorized by him or them at all proper and reasonable times during the said term without any interruption from the lessee or the lessee's agents servants or workmen to enter into and upon the said land and into and upon any mines or works that may be found therein to view and examine the condition thereof and whether the same be worked in a proper skilful and workmanlike manner and for such purpose to make use of any of the railroads or other roads or ways machinery and works belonging to the said mines and to examine and take extracts from all books accounts vouchers and documents relating thereto:

15. That if the said rent be not paid on or before the day hereinbefore appointed for payment thereof a penalty of five pounds per centum shall be added to the said rent and if the said rent and penalty be not paid within one calendar month after the said day a further penalty of ten pounds per centum shall be added and if the said rent and penalties be not paid within one calendar month after the said first month the same shall be recoverable by the Minister by action in any court of competent jurisdiction:

Broken Hill Proprietary Company's Steel Works Indenture Act 1958

16. That if the lessee shall during the said term commit any breach of or shall fail to comply with any covenant condition or proviso herein contained this lease shall be liable to forfeiture in manner hereinafter provided:

17. That if the Minister has reason to believe that there has been a breach of or non-compliance with any of the covenants conditions or provisos herein contained the Minister shall give written notice to the lessee specifying the covenants conditions or provisos which he has reason to believe are not being complied with and notifying the lessee that this lease will be liable to forfeiture at the expiration of one month from the date of such notice unless in the meantime such covenants conditions or provisos are duly complied with and if at the expiration of such notice such covenants conditions or provisos are still not being complied with by the lessee the Governor may cancel this lease notwithstanding that the rent payable under this lease for the period during which such breach is committed may have been paid and notwithstanding any implied waiver of such breach by the Governor and the Minister shall thereupon insert a notice in the *Government Gazette* declaring this lease to be forfeited:

18. That a notice of forfeiture so published in the *Government Gazette* shall be taken to be conclusive evidence that this lease has been legally cancelled and forfeited:

19. That in case this lease shall become liable to forfeiture the Minister may extend the period during which the lessee may perform the covenants conditions and provisos of this lease for such time and subject during such period of extension to such terms and conditions as the Minister may think fit:

20. That the lessee shall be at liberty to surrender this lease by giving to the Minister three calendar months' notice in writing of the lessee's desire or intention so to do and upon payment of all arrears of rent up to the date of surrender:

21. And lastly that the lessee shall be at liberty to remove from the said land at any time within—

- (a) three months after the date of forfeiture or surrender of this lease any improvements plant machinery engines or tools;
- (b) six months after the date of forfeiture or surrender of this lease any metals and minerals except gold won by the lessee stacked upon the said land but shall not remove or interfere with any timber in any mine upon the said land.

IN WITNESS WHEREOF this lease has been executed by His Excellency the Governor of the State and by the Company.

His Excellency the Governor of South Australia caused the public seal of the State to be hereto affixed on the day of 19 .

.....
Governor.

THE COMMON SEAL OF THE BROKEN HILL PROPRIETARY COMPANY LIMITED was hereunto affixed on the day of 19 in the presence of:

.....
Director.
.....
Director.
.....
Secretary.

(Reprint No. 1)

APPENDIX 1

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Broken Hill Proprietary Company's Steel Works Indenture Act 1958

APPENDIX D TO THE INDENTURE

LAND TO BE DISPOSED

APPENDIX E TO THE INDENTURE

FORM OF DEED OF ASSIGNMENT AND ASSUMPTION

DEED OF ASSIGNMENT AND ASSUMPTION

THIS DEED is made

between:

- 1 THE MINISTER FOR PRIMARY INDUSTRIES AND RESOURCES**, the Minister administering the Broken Hill Proprietary Company's Indenture Act 1937 and the Broken Hill Proprietary Company's Steel Works Indenture Act 1958, a body corporate pursuant to the provisions of the Administrative Arrangements Act 1994, acting for and on behalf of the Crown in right of the State of South Australia (the "**State**");
- 2 THE BROKEN HILL PROPRIETARY COMPANY LIMITED** ACN 004 028 077 of 600 Bourke Street, Melbourne, Victoria ("**BHP**"); and
- 3 [Insert name, ACN and address of Assignee]** (the "**Assignee**").

RECITALS

- A** The State and BHP are parties to an Indenture dated 4 October 1937 which Indenture is set out (in consolidated form) in Appendix 1 to the Broken Hill Proprietary Company's Indenture Act 1937 (the "**1937 Indenture**") and to an Indenture dated 4 September 1958 which Indenture is set out in the Schedule to the Broken Hill Proprietary Company's Steel Works Indenture Act 1958 (the "**1958 Indenture**").
- B** By clause 18 of the 1937 Indenture BHP is permitted to assign its rights under the 1937 Indenture and the Leases by the execution of a deed of assignment and assumption substantially in the form of this Deed.
- C** By clause 31(5) of the 1958 Indenture BHP is permitted to assign its rights under the 1958 Indenture and the Leases by the execution of a deed of assignment and assumption substantially in the form of this Deed.
- D** By [Insert details of sale or other agreement between BHP and the Assignee], BHP has agreed to assign with effect from the Effective Date, its right and interest under the 1937 Indenture, the 1958 Indenture and the Leases to the Assignee and the Assignee has agreed to accept that assignment and to assume BHP's obligations and liabilities under the 1937 Indenture, the 1958 Indenture and the Leases.
- E** The parties are entering into this Deed to effect the assignment and assumption referred to in Recital D.

THE PARTIES AGREE as follows:

1. ASSIGNMENT AND ASSUMPTION

1.1 Effective Date

The Effective Date is [Insert date] or such other date on or after the date of this Deed as is agreed in writing by BHP and the Assignee, and notified to the State.

1.2 Deed applies from Effective Date

All provisions of this Deed will have effect from and, if necessary, relate back to the Effective Date, so as to have full force and effect on and from that date.

1.3 Assignment and Assumption

From the Effective Date:

- (a) BHP assigns to the Assignee all of its rights and interests under the Assigned Instruments; and
- (b) the Assignee assumes all of BHP's obligations and liabilities under the Assigned Instruments and will be bound by and comply with those provisions of the Assigned Instruments which were, immediately prior to the Effective Date, binding upon BHP.

2. THE STATE'S COVENANTS

2.1 Covenant

The Assignee covenants with the State that it will, from the Effective Date, observe and perform the Assigned Instruments and be bound by all terms of the Assigned Instruments which, but for this Deed, were to be performed by BHP.

2.2 Consent of the State

In consideration of the promise contained in clause 2.1, the State consents to the assignment to the Assignee of BHP's rights under the Assigned Instruments, with effect from the Effective Date.

2.3 Release of BHP by the State

- (a) With effect on and from the Effective Date, the State releases BHP from all its obligations and liabilities under the Assigned Instruments and from all actions, claims or proceedings that it may have against BHP under or in respect of the Assigned Instruments.
- (b) Nothing in clause 2.3(a) relieves BHP of any obligations and liabilities accrued under the Assigned Instruments prior to the Effective Date except to the extent the Assignee discharges such obligations and liabilities.

2.4 Release of State by BHP

- (a) With effect on and from the Effective Date, BHP releases the State from all its obligations and liabilities under the Assigned Instruments and from all actions, claims or proceedings that it may have against the State under or in respect of the Assigned Instruments.
- (b) Nothing in clause 2.4(a):
 - (i) relieves the State of any obligations and liabilities accrued under the Assigned Instruments prior to the Effective Date except to the extent such obligations and liabilities are discharged in favour of the Assignee; or
 - (ii) shall be taken to constitute a release by the Assignee of any obligations and liabilities of the State.

3. MISCELLANEOUS PROVISIONS

3.1 Law and Jurisdiction

The governing law of this Deed is the law of the State of South Australia, and the parties submit to the non-exclusive jurisdiction of the Courts of South Australia and to the courts which hear appeals from those courts.

3.2 Costs

Each party will bear its own legal costs of preparation and review of this Deed. The Assignee will pay all stamp duty levied on this Deed.

3.3 Counterparts

This Deed may be executed in counterparts, which when taken together are one instrument.

3.4 Interpretation

In this Deed:

- (a) "**Assigned Instruments**" means the 1937 Indenture, the 1958 Indenture and the Leases.
- (b) "**Leases**" means all mineral and other leases and other proprietary rights held by BHP which are referred to in, or granted pursuant to, the 1937 Indenture or the 1958 Indenture.
- (c) A reference to the 1937 Indenture, the 1958 Indenture and the Leases is a reference to those instruments and proprietary rights as they have been, or are, amended from time to time.

EXECUTED by the parties as a Deed.

[Insert Execution clauses]

APPENDIX 2

LEGISLATIVE HISTORY

Repeals

The *Broken Hill Proprietary Company's Steel Works Indenture Act 1958* repealed the *Northern Areas and Whyalla Water Supply Act 1940*.

Legislative History

Long title:	amended by 15, 2000, s. 16
Section 3:	definition of "BHP" inserted by 15, 2000, s. 17 definition of "the Company" substituted by 15, 2000, s. 17 definition of "the 2000 Deed of Amendment" inserted by 15, 2000, s. 17 definition of "the Indenture" substituted by 15, 2000, s. 17 definition of "the prescribed day" inserted by 15, 2000, s. 17
Section 4(1):	amended by 15, 2000, s. 18
Sections 7A and 7B:	inserted by 15, 2000, s. 20
Section 12:	substituted by 15, 2000, s. 21
Schedule 1 heading:	inserted by 15, 2000, s. 22
Indenture	
Heading:	substituted by 15, 2000, s. 22
Clause 26A:	inserted by the 2000 Deed of Amendment (as inserted by 15, 2000, s. 23 (Sched.))
Clause 31(5) and (6):	inserted by the 2000 Deed of Amendment (as inserted by 15, 2000, s. 23 (Sched.))
Appendices D and E:	inserted by the 2000 Deed of Amendment (as inserted by 15, 2000, s. 23 (Sched.))
Schedule 2:	inserted by 15, 2000, s. 23