

SOUTH AUSTRALIA

**BROKEN HILL PROPRIETARY COMPANY'S INDENTURE ACT, 1937**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 July 1991.*

*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.*

## SUMMARY OF PROVISIONS

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### SCHEDULE

**BROKEN HILL PROPRIETARY COMPANY'S INDENTURE ACT, 1937**

being

Broken Hill Proprietary Company's Indenture Act, 1937,  
No. 2362 of 1937 [Assented to 1 December 1937]

as amended by

Northern Areas and Whyalla Water Supply Act, 1940, No. 13 of 1940 [Assented to 3 October 1940]<sup>1</sup>  
Harbors Act Amendment Act (No. 2), 1981, No. 95 of 1981 [Assented to 23 December 1981]

*Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix 2.*

<sup>1</sup> Came into operation 3 October 1940: *Gaz.* 3 October, 1940, p. 675.

**An Act to authorize and ratify an Indenture made between His Majesty King George the Sixth of the first part, the Lieutenant-Governor of the State of South Australia of the second part, and the Broken Hill Proprietary Company Limited of the third part, and to secure to the Company the rights provided for in the Indenture and to provide for carrying the provisions of the Indenture into effect, and for purposes incidental thereto.**

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

**Short title**

1. This Act may be cited as the *Broken Hill Proprietary Company's Indenture Act, 1937*.

**Validation of Indenture**

2. The Indenture set out in the schedule to this Act is hereby authorized and ratified, and, subject to the other sections of this Act, shall, notwithstanding any other enactment, be carried out by the parties thereto and take effect as though the obligations, duties, liabilities, rights, powers, exemptions and privileges therein provided for had been expressly imposed and granted by an Act of the Parliament of the State.

**Inquiry into water supply**

3. (1) The Parliamentary Standing Committee on Public Works shall, as soon after the passing of this Act as is convenient, inquire into and report to the Governor upon the possible methods of improving the water supply of the Northern Water District, and of the lands extending north of that District as far as Port Augusta; and in framing its recommendations the said Committee shall have regard to the possibility that a supply of water may be required at or near Whyalla for the purpose of enabling the Broken Hill Proprietary Company Limited to establish and operate coke oven plant and other works for the production of steel as mentioned in clause 13 of the Indenture set out in the Schedule to this Act.

(2) Sections 20, 21, 22, and 23 of the *Public Works Standing Committee Act, 1927*, shall apply in relation to the inquiry conducted under this section as if it were an inquiry conducted pursuant to the said Act.

\* \* \* \* \*

**Saving of certain rights**

5. The indenture set out in the schedule to this Act shall not—

- (a) entitle the Broken Hill Proprietary Company Limited to acquire the fee simple of any land comprised in any mineral leases:
- (b) prohibit the South Australian Harbors Board or any other Governmental authority for the time being controlling harbours of the State from imposing or collecting from the said Company any port dues or fees for pilotage, if such dues or fees would apart from this Act have been properly payable by the Company under any law for the time being in force. The term "port dues" means any charge generally applicable throughout the State for channels and lights or either of them, provided by the State.

**Further provisions as to the Indenture**

6. The Indenture set out in the Schedule to this Act shall be construed as if it contained the following covenants:—

- (a) The blast furnace to be established at Whyalla shall be capable of producing at least 200 000 tons of pig iron per annum:
- (b) The Broken Hill Proprietary Company Limited before commencing to erect or construct any jetties wharves works buildings approaches roads ways tramways or conveniences pursuant to clause 7 of the said Indenture shall lodge with the Minister of Marine of South Australia for the time being in office plans showing the actual sites selected by the said company for the erection or construction of such jetties wharves works buildings approaches roads ways tramways or conveniences.

\* \* \* \* \*

**Rights of South Australian Railways Commissioner**

7. If the South Australian Railways Commissioner should at any time (whether during or after the term of the Indenture set out in the schedule to this Act) be authorized by Statute to connect any Government railway with any tramway of the Broken Hill Proprietary Company Limited, the said Company will at the request of the said Commissioner from time to time—

- (a) grant and afford the said Commissioner all necessary and reasonable rights, facilities and opportunities for joining the said Government line of railway with the tramways of the Company and for maintaining the junction in proper repair; and
- (b) in consideration of the payment by the Commissioner of reasonable charges to be mutually agreed upon, and under such arrangements as are mutually agreed upon, haul over any tramways for the time being operated by the Company, such carriages and wagons (together with all passengers, livestock, goods and chattels thereon) as the Commissioner delivers to the said Company on its tramways, and reasonably requires to be so hauled for the purpose of carrying on his business; such haulage to be carried out with as great expedition as is reasonable, having regard to the Company's own requirements, and with locomotives to be supplied and operated by the Company.

If the Commissioner and the Company are unable to agree as to any matter under this section that matter shall be settled by arbitration.

**Right to cross tramways, etc., of the Company**

8. No rights of the Broken Hill Proprietary Company Limited shall be deemed to be impaired, disturbed or prejudicially affected merely by virtue of the fact that any person by or pursuant to any Act is granted or exercises any of the following rights, namely:—

Any right to erect, construct, maintain and operate any railway, tramway or apparatus for transmitting electricity, which railway, tramway or apparatus—

- (a) passes above or below any railway or tramway of the Broken Hill Proprietary Company Limited or any of the Company's apparatus for transmitting electricity; and

4.

(b) is erected, constructed, maintained and operated in such a manner as not to interfere with a reasonable exercise by the said Company of any of its rights.

**Leases in paragraph B of the schedule**

9. The leases referred to in paragraph B. of the schedule contained in the Indenture set out in the schedule to this Act are the mineral leases held by the Broken Hill Proprietary Company Limited, numbered 2713 to 2730, inclusive.

## SCHEDULE.

This Indenture made on the fourth day of October, 1937 BETWEEN HIS MOST GRACIOUS MAJESTY KING GEORGE THE SIXTH by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India, of the first part, HIS EXCELLENCY THE LIEUTENANT-GOVERNOR of the State of South Australia and its Dependencies in the Commonwealth of Australia, contracting for and on behalf of the State of South Australia and the Governments thereof from time to time in office, of the second part, and THE BROKEN HILL PROPRIETARY COMPANY LIMITED (which with its successors and assigns is hereinafter called "the Company") of the third part:

WHEREAS the establishment of a blast furnace in South Australia for smelting iron ores would be of great economic advantage to South Australia and of considerable value for the purposes of national defence and the Honourable Richard Layton Butler Premier and Treasurer of the said State has on behalf of the Government of the said State requested the Company to establish within the said State a blast furnace and the works and plant ancillary thereto: AND WHEREAS the Company has agreed to comply with that request and to establish such a furnace and such works and plant upon the Government of South Australia entering into this Indenture and upon and subject to the covenants terms and conditions therein contained and subject to the authorization and ratification thereof by the Parliament of the said State AND WHEREAS in consideration of the great expenditure to be incurred by the Company in complying with the request and establishing the furnace works and plant it is agreed that the tenure and other rights of the Company should be effectively extended preserved and protected and that adequate rights of winning transporting treating and shipping ironstone and its products and other materials and stores used by the Company should be secured to the Company, and that arrangements should be made for providing the Company with additional sites for the erection of wharves and jetties and with other shipping facilities:

NOW THIS INDENTURE WITNESSETH AS FOLLOWS:—

**This Indenture to be subject to ratification**

1. (a) The Government of the State will as early as practicable after the execution of this Indenture and during the session of Parliament current at the time of the execution of this Indenture introduce a Bill into the Parliament of the State for authorizing and ratifying this Indenture and securing to the Company the rights provided for in this Indenture and enabling this Indenture to be fully carried into operation. If such a Bill is not passed during the said session the clauses of this Indenture, other than this clause, shall not come into operation but if such a Bill is so passed and the Act founded thereon comes into operation before the 1st March, 1938 those clauses shall become binding on the day on which the said Act comes into operation.

**Interpretation**

(b) In this Indenture, except where the context otherwise requires, the following terms have the following meanings:—

"The commencement of this Indenture" means the day on which the Act for authorizing and ratifying this Indenture and securing to the Company the rights provided for in this Indenture and enabling this Indenture to be fully carried into operation, comes into operation:

"The Government" means the Government of the State of South Australia for the time being in office during the term of this Indenture:

6.

"The State" means the State of South Australia:

"The term of this Indenture" (without affecting any obligation of any party to do any act after the expiration of the term of this Indenture) means the period of fifty years from the commencement of this Indenture and, if the period of operation of this Indenture is extended by mutual agreement, includes the period for which the operation of this Indenture is so extended:

"The Treasurer" means the Treasurer of the State of South Australia for the time being in office:

"Blast furnace" means a blast furnace and all ancillary works plant tramways jetties wharves roads and other works necessary for the production of pig iron.

### **Construction of works by the Company**

2. The Company will at its own expense establish at or in the vicinity of Whyalla a blast furnace for the production of pig iron.

The Company shall commence the work of constructing the blast furnace as early as practicable after the commencement of this Indenture and shall so carry on the said work of construction that the blast furnace will be capable of producing pig iron within three years from the commencement of this Indenture, or within such extended period as the Treasurer approves.

The Treasurer shall not capriciously withhold his approval to any extension of period reasonably asked for by the Company, and shall not withhold his approval to any extension of period rendered necessary by labour troubles or causes beyond the Company's control.

### **Extension of mineral leases**

3. The term of all the leases described in the schedule to this Indenture shall be extended so that every such lease shall expire upon the expiration of fifty years from the commencement of this Indenture: and the Government will cause to be executed such endorsements or instruments as are necessary to give effect to this covenant.

During the said period and, unless otherwise agreed, during any further period for which the operation of this Indenture is extended, the covenants terms conditions and provisoes of the said leases shall remain as at the commencement of this Indenture, subject only to the modifications provided for in this Indenture.

### **Renewal of leases**

4. Upon the expiration of the term of this Indenture the Company shall have a right to the renewal of the said leases from time to time for periods of twenty-one years and the renewal shall be on the terms and conditions prescribed in that behalf by the laws of the State in force at the commencement of this Indenture, subject to payment of the same royalty as is provided for in subclause (2) of clause 6 of this Indenture.

### **Compliance with labour conditions**

5. It shall be a sufficient compliance with the labour conditions of any of the said leases if the horsepower and labour employed on any one or more of the said leases satisfy the total labour conditions of the whole of the said leases.



**Royalty on leases**

6. (1) As from the commencement of this Indenture until the 31st December, 1939, or the date on which the Company commences the production of pig iron in South Australia, whichever is earlier, the Company shall pay to the Treasurer a royalty at the rate of three pence per ton on all ironstone won by it in the State, which during the period aforesaid is shipped from Whyalla or sold in the State.

(2) From the 31st December, 1939, or the earlier date aforesaid and throughout the remainder of the term of this Indenture, the Company shall pay to the Treasurer a royalty at the rate of sixpence per ton on all ironstone won by the Company in the State, which during the period aforesaid is shipped in the State, or used by the Company in its smelting operations in the State, or delivered in the State on sale.

(3) The said royalties shall be—

(a) computed upon the total quantity of ironstone shipped or used or delivered as aforesaid during every period of six calendar months ending respectively on the 30th day of June and the 31st day of December, and also during any portion of any such period occurring at the beginning or end of the term of this Indenture; and

(b) paid not later than two months after the end of the period for which they are computed.

(4) For the purpose of computing the tonnage upon which the said royalty is payable the Company's weighbridge and weightometer records with such corrections and adjustments thereof as it is necessary to make to achieve reasonable exactitude shall be accepted as correct.

(5) The said royalties shall be substituted for any other royalties or payments in the nature of royalties reserved under any of the leases mentioned in the schedule to this Indenture.

(6) The Company shall in every month of July and every month of January during the term of this Indenture and within one month after the expiration of the term of this Indenture furnish to the Minister of Mines of the State a full and complete return of all ironstone shipped used or delivered as aforesaid during the period of six calendar months ending on the preceding 30th day of June or 31st day of December or during any portion of any such period for which the return is furnished and any other information reasonably required by the said Minister for the purpose of enabling him to compute the amount of royalty payable by the Company. The said Minister his officers servants and agents shall for the purpose of checking and verifying any such return have free access to and right of inspection of all books papers and documents of the Company in so far as they shew the quantities of ironstone shipped or used or delivered and the right to enter and examine the lands comprised in the said leases.

**Rights to construct jetties**

7. (a) The Company may erect construct occupy maintain and use at or near False Bay on any part of the area hereinafter described in this subclause (being land of the Crown, foreshore and sea-bed) a jetty or jetties extending to seaward for such distance within the said area as the Company thinks proper, with any wharves channels works buildings approaches roads ways tramways and conveniences which are reasonably required in connection with the operations of the Company, and may, within the said area, extend any jetty or wharf existing at the time when this Indenture comes into operation.

8.

The area previously referred to in this subclause consists of land of the Crown, foreshore and sea-bed defined as follows:—

Commencing at the eastern corner of Section 2, Hundred of Randell; thence southeasterly by a line being the production of the northeastern boundary of said section; thence northeasterly at right angles by a line 30 chains southeast of the southeastern edge of the Ore Berth at Whyalla Jetty for 160 chains; thence northwesterly at right angles to high water mark on the sea coast; thence generally southerly along said high water mark to the point of commencement, together with the 150 links Coast Reserve abutting the above defined area on its coastal boundary and extending throughout the length of that boundary.

(b) The Company may also erect construct occupy maintain and use at Rapid Bay on any part of the foreshore or sea-bed within one mile from the following point namely:—the point in or near Rapid Bay where the jetty opposite section 1507 Hundred of Yankalilla and shewn on the Surveyor General's maps as existing at the commencement of this Indenture, intersects high water mark, a jetty or jetties and any wharves channels works buildings approaches roads ways tramways and conveniences which are reasonably required in connection with the operations of the Company: Provided that the right conferred by this clause shall lapse on the expiration of five years from the commencement of this Indenture if the actual work of erecting a jetty or other works for working a limestone or other deposit has not commenced before such expiration.

(c) The Company shall be entitled to occupy maintain and use all jetties wharves works buildings approaches roads ways tramways and conveniences which are erected or constructed by it pursuant to this Indenture; and such rights shall be as full and extensive as the rights granted to the Company by or under the Broken Hill Proprietary Company Limited's Hummock Hill to Iron Knob Tramways and Jetties Act, 1900, in respect of the jetties wharves works buildings approaches roads ways tramways and conveniences mentioned in sections 22 and 23 of that Act.

**Right of Company to construct tramways**

8. The Company may, on any land which is vested in it or over which it holds or acquires the necessary rights, make form lay down construct maintain and work such new tramways or extensions of existing tramways as are necessary for the purpose of transporting ironstone and other material from and to any mineral leases for the time being held by the Company; but before commencing to make any such tramway or extension the Company shall deposit the usual and proper plans thereof in the office of the Surveyor General.

**Right of Company as to vermin fences**

9. For the purpose of making forming laying down constructing and working any such new tramway or extension of any tramway, the Company may cut sufficient spaces or openings through any vermin fence, dog-proof fence or rabbit proof fence within the meaning of the Vermin Act, 1931, through which the tramway or extension passes; but the Company shall erect and at all times maintain across every opening or space so cut good and sufficient gates or other effective apparatus or devices for preventing the ingress or egress of vermin. Such gates or other apparatus or devices shall be constructed in such a manner that such gates when closed or such other apparatus or devices will be at least as effective for the exclusion of rabbits dogs and other vermin as the fence through which the openings or spaces are cut. The Company (unless other apparatus or devices are employed) shall keep such gates constantly closed and securely fastened, but may open any of them so long as is necessary to enable any engines, waggons, carriages or other conveyances or traffic of the Company to pass through them.

**Application of Statute to tramway built by the Company**

10. In and for the purpose of making, forming, laying down, constructing, maintaining and working any tramways or extensions of tramways under this Indenture the Company shall conform to and have the benefit of those provisions of the Broken Hill Proprietary Company Limited's Hummock Hill to Iron Knob Tramways and Jetties Act, 1900, including the provisions of any Acts incorporated with that Act, which relate to the tramways authorized by that Act, as if those provisions applied also to the tramways and extensions provided for in this Indenture; but no provision of that Act or any Act incorporated therewith inconsistent with this indenture or fixing the period for the completion of any tramway, or empowering the Government to license any person to use the tramways, or binding the Company to file accounts relating to tramways shall apply to or in relation to the tramways or extensions provided for in this Indenture.

**Land for tramways and electric transmission**

11. (a) If for the purpose of or in connection with the construction extension or working of any tramways mines or quarries, or the installation of any posts, wires, conduits or other apparatus or equipment for or in connection with the transmission of electricity, the Company should require the fee simple of, or any lease easement or other rights over, any land comprised in any pastoral lease or other lease from the Crown, and any Minister of the Crown or any authority under the Crown has power to resume such land, the Minister or other authority shall at the request of the Company exercise such power to the extent necessary, and transfer convey or assign to the Company the land or the lease easement or rights which the Company requires for the purposes aforesaid; but the Company shall pay to the Minister or other authority a reasonable price for such land lease easement or other rights, sufficient to cover the expenditure incurred by such Minister or other authority for and in connection with the resumption.

(b) If for any of the purposes mentioned in paragraph (a) 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 Government 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.

**Deviation of Port Augusta-Whyalla Road**

12. If any part of the Port Augusta-Whyalla Road passes through the site selected by the Company for its blast furnace or other plant and works the Government shall procure the closing of that part of the said road, and shall procure the opening of a new piece of road in substitution for the part of the road so closed, along a route convenient as far as possible both to the Company and the public; and the new piece of road shall be constructed, in a manner similar to the previously existing road, at the cost of the Company.

**Water supply**

13. In order to assist the Company to further extend its works by the establishment in the vicinity of Whyalla of Coke Oven Plant and/or works for the production of Steel, Rolling Mills, and other plant, the Government on being notified by the Company that it is prepared to establish any such works will use every endeavour to provide the Company with a supply of fresh water at the site of such works sufficient for the full requirements of the Company at such fair and reasonable price as may be mutually agreed upon.

**Provision in event of removal of works to Backie Bay**

14. If at any time during the term of this Indenture the Company desires to erect new furnaces plant wharves jetties or other works at Backie Bay or to transfer all or any part of its furnace plant wharves jetties and other works from Whyalla to Backie Bay the Government will endeavour by all reasonable and lawful means to secure to the Company, as far as possible, rights at and in relation to Backie Bay its foreshore sea-bed and lands adjacent thereto for the purpose of enabling the Company to carry on its operations there, similar to the rights which the Company enjoys at the commencement of and by virtue of this Indenture in relation to and for the purpose of its operations at Whyalla.

**Tolls and dues in respect of use of jetties**

15. During the term of this Indenture no charges or imposts other than those which have heretofore been collected from the Company shall be imposed in respect of the use or occupation of the said wharves and jetties or on the shipment or carriage of goods to over or from the said wharves and jetties nor on the ships engaged in the shipment thereof.

**Works not to be resumed**

16. Neither the Governor of the State nor the South Australian Railways Commissioner nor any Governmental or other body shall during the term of this Indenture exercise any right conferred on any of them by The General Tramways Act, 1884, or The Broken Hill Proprietary Company Limited's Hummocks Hill to Iron Knob Tramways and Jetties Act, 1900, or any Act amending either of those Acts of purchasing any part of the Company's land tramways wharves jetties works plant or other property, or of granting any licence to any other person to use the wharves jetties or tramways of the Company.

**Security of tenure**

17. In further consideration of the Company entering into this Indenture it is hereby further covenanted that neither during the term of this Indenture nor during any extension of that term shall the rights of tenure and otherwise of the Company existing at the commencement or by virtue of this Indenture or lawfully acquired during the term of this Indenture, be in any wise impaired disturbed or prejudicially affected; and the Government shall take all necessary steps to secure those rights to the Company and prevent them from being impaired disturbed or prejudicially affected in any way whatsoever, and no other person shall have the right to acquire a mining claim or title over any land occupied by the Company for its works.

Provided that no tax payable by the Company or in respect of its property 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.

IN WITNESS WHEREOF the public seal of the State and the common seal of the Company were hereunto affixed on the days and years set out below.

The Common seal of the Broken Hill  
Proprietary Company Limited was  
affixed hereunto on the fourth day of  
October, 1937, in the presence of—

Seal of  
Company.

H.G. DARLING, Director.

C. SYME, Director.

Public  
Seal  
of the  
State.

F.M. MITCHELL, Secretary.

G.J.R. MURRAY, Lieutenant-Governor.

12.

THE SCHEDULE TO THE AGREEMENT.

A.

Mineral Leases over iron ore deposits held by or to be issued to The Broken Hill Proprietary Company Limited, the term of which is extended by this Indenture:

Numbers:—1659-1667, 2238-2242, 2383, 2384, 2386-2392, 2397-2403, 2560-2568, 2612-2614, 2631, 2632, 2647-2654, 2656-2663, 2668-2674, 2677-2712.

B.

Any leases which may be granted to the Company before or during the term of this Indenture in respect of areas pegged out and held by virtue of the following Miner's Rights:

Numbers:—1874, 1875, 1951, 1995, 1996, 1997, 1999, 2001, 2002, 2010, 2058, 2061, 2063, 2080, 2081, 2084, 2111, and 2059.

**APPENDIX 1****THE CONSOLIDATED INDENTURE****SCHEDULE.**

This Indenture made on the fourth day of October, 1937 BETWEEN HIS MOST GRACIOUS MAJESTY KING GEORGE THE SIXTH by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India, of the first part, HIS EXCELLENCY THE LIEUTENANT-GOVERNOR of the State of South Australia and its Dependencies in the Commonwealth of Australia, contracting for and on behalf of the State of South Australia and the Governments thereof from time to time in office, of the second part, and THE BROKEN HILL PROPRIETARY COMPANY LIMITED (which with its successors and assigns is hereinafter called "the Company") of the third part:

WHEREAS the establishment of a blast furnace in South Australia for smelting iron ores would be of great economic advantage to South Australia and of considerable value for the purposes of national defence and the Honourable Richard Layton Butler Premier and Treasurer of the said State has on behalf of the Government of the said State requested the Company to establish within the said State a blast furnace and the works and plant ancillary thereto: AND WHEREAS the Company has agreed to comply with that request and to establish such a furnace and such works and plant upon the Government of South Australia entering into this Indenture and upon and subject to the covenants terms and conditions therein contained and subject to the authorization and ratification thereof by the Parliament of the said State AND WHEREAS in consideration of the great expenditure to be incurred by the Company in complying with the request and establishing the furnace works and plant it is agreed that the tenure and other rights of the Company should be effectively extended preserved and protected and that adequate rights of winning transporting treating and shipping ironstone and its products and other materials and stores used by the Company should be secured to the Company, and that arrangements should be made for providing the Company with additional sites for the erection of wharves and jetties and with other shipping facilities:

NOW THIS INDENTURE WITNESSETH AS FOLLOWS:—

**This Indenture to be subject to ratification**

1. (a) The Government of the State will as early as practicable after the execution of this Indenture and during the session of Parliament current at the time of the execution of this Indenture introduce a Bill into the Parliament of the State for authorizing and ratifying this Indenture and securing to the Company the rights provided for in this Indenture and enabling this Indenture to be fully carried into operation. If such a Bill is not passed during the said session the clauses of this Indenture, other than this clause, shall not come into operation but if such a Bill is so passed and the Act founded thereon comes into operation before the 1st March, 1938 those clauses shall become binding on the day on which the said Act comes into operation.

**Interpretation**

(b) In this Indenture, except where the context otherwise requires, the following terms have the following meanings:—

"The commencement of this Indenture" means the day on which the Act for authorizing and ratifying this Indenture and securing to the Company the rights provided for in this Indenture and enabling this Indenture to be fully carried into operation, comes into operation:

"The Government" means the Government of the State of South Australia for the time being in office during the term of this Indenture:

"The State" means the State of South Australia:

"The term of this Indenture" (without affecting any obligation of any party to do any act after the expiration of the term of this Indenture) means the period of fifty years from the commencement of this Indenture and, if the period of operation of this Indenture is extended by mutual agreement, includes the period for which the operation of this Indenture is so extended:

"The Treasurer" means the Treasurer of the State of South Australia for the time being in office:

"Blast furnace" means a blast furnace and all ancillary works plant tramways jetties wharves roads and other works necessary for the production of pig iron.

### **Construction of works by the Company**

2. The Company will at its own expense establish at or in the vicinity of Whyalla a blast furnace for the production of pig iron.

The Company shall commence the work of constructing the blast furnace as early as practicable after the commencement of this Indenture and shall so carry on the said work of construction that the blast furnace will be capable of producing pig iron within three years from the commencement of this Indenture, or within such extended period as the Treasurer approves.

The Treasurer shall not capriciously withhold his approval to any extension of period reasonably asked for by the Company, and shall not withhold his approval to any extension of period rendered necessary by labour troubles or causes beyond the Company's control.

### **Extension of mineral leases**

3. The term of all the leases described in the schedule to this Indenture shall be extended so that every such lease shall expire upon the expiration of fifty years from the commencement of this Indenture: and the Government will cause to be executed such endorsements or instruments as are necessary to give effect to this covenant.

During the said period and, unless otherwise agreed, during any further period for which the operation of this Indenture is extended, the covenants terms conditions and provisoes of the said leases shall remain as at the commencement of this Indenture, subject only to the modifications provided for in this Indenture.

### **Renewal of leases**

4. Upon the expiration of the term of this Indenture the Company shall have a right to the renewal of the said leases from time to time for periods of twenty-one years and the renewal shall be on the terms and conditions prescribed in that behalf by the laws of the State in force at the commencement of this Indenture, subject to payment of the same royalty as is provided for in subclause (2) of clause 6 of this Indenture.

### **Compliance with labour conditions**

5. It shall be a sufficient compliance with the labour conditions of any of the said leases if the horsepower and labour employed on any one or more of the said leases satisfy the total labour conditions of the whole of the said leases.



**Royalty on leases**

6. (1) As from the commencement of this Indenture until the 31st December, 1939, or the date on which the Company commences the production of pig iron in South Australia, whichever is earlier, the Company shall pay to the Treasurer a royalty at the rate of three pence per ton on all ironstone won by it in the State, which during the period aforesaid is shipped from Whyalla or sold in the State.

(2) From the 31st December, 1939, or the earlier date aforesaid and throughout the remainder of the term of this Indenture, the Company shall pay to the Treasurer a royalty at the rate of sixpence per ton on all ironstone won by the Company in the State, which during the period aforesaid is shipped in the State, or used by the Company in its smelting operations in the State, or delivered in the State on sale.

(3) The said royalties shall be—

(a) computed upon the total quantity of ironstone shipped or used or delivered as aforesaid during every period of six calendar months ending respectively on the 30th day of June and the 31st day of December, and also during any portion of any such period occurring at the beginning or end of the term of this Indenture; and

(b) paid not later than two months after the end of the period for which they are computed.

(4) For the purpose of computing the tonnage upon which the said royalty is payable the Company's weighbridge and weightometer records with such corrections and adjustments thereof as it is necessary to make to achieve reasonable exactitude shall be accepted as correct.

(5) The said royalties shall be substituted for any other royalties or payments in the nature of royalties reserved under any of the leases mentioned in the schedule to this Indenture.

(6) The Company shall in every month of July and every month of January during the term of this Indenture and within one month after the expiration of the term of this Indenture furnish to the Minister of Mines of the State a full and complete return of all ironstone shipped used or delivered as aforesaid during the period of six calendar months ending on the preceding 30th day of June or 31st day of December or during any portion of any such period for which the return is furnished and any other information reasonably required by the said Minister for the purpose of enabling him to compute the amount of royalty payable by the Company. The said Minister his officers servants and agents shall for the purpose of checking and verifying any such return have free access to and right of inspection of all books papers and documents of the Company in so far as they shew the quantities of ironstone shipped or used or delivered and the right to enter and examine the lands comprised in the said leases.

**Rights to construct jetties**

7. (a) The Company may erect construct occupy maintain and use at or near False Bay on any part of the area hereinafter described in this subclause (being land of the Crown, foreshore and sea-bed) a jetty or jetties extending to seaward for such distance within the said area as the Company thinks proper, with any wharves channels works buildings approaches roads ways tramways and conveniences which are reasonably required in connection with the operations of the Company, and may, within the said area, extend any jetty or wharf existing at the time when this Indenture comes into operation.

The area previously referred to in this subclause consists of land of the Crown, foreshore and sea-bed defined as follows:—

Commencing at the eastern corner of Section 2, Hundred of Randell; thence southeasterly by a line being the production of the northeastern boundary of said section; thence northeasterly at right angles by a line 30 chains southeast of the southeastern edge of the Ore Berth at Whyalla Jetty for 160 chains; thence northwesterly at right angles to high water mark on the sea coast; thence generally southerly along said high water mark to the point of commencement, together with the 150 links Coast Reserve abutting the above defined area on its coastal boundary and extending throughout the length of that boundary.

\* \* \* \* \*

(c) The Company shall be entitled to occupy maintain and use all jetties wharves works buildings approaches roads ways tramways and conveniences which are erected or constructed by it pursuant to this Indenture; and such rights shall be as full and extensive as the rights granted to the Company by or under the Broken Hill Proprietary Company Limited's Hummock Hill to Iron Knob Tramways and Jetties Act, 1900, in respect of the jetties wharves works buildings approaches roads ways tramways and conveniences mentioned in sections 22 and 23 of that Act.

(d) Paragraph (c) does not apply in relation to the jetty constructed at Rapid Bay.

**Right of Company to construct tramways**

8. The Company may, on any land which is vested in it or over which it holds or acquires the necessary rights, make form lay down construct maintain and work such new tramways or extensions of existing tramways as are necessary for the purpose of transporting ironstone and other material from and to any mineral leases for the time being held by the Company; but before commencing to make any such tramway or extension the Company shall deposit the usual and proper plans thereof in the office of the Surveyor General.

**Right of Company as to vermin fences**

9. For the purpose of making forming laying down constructing and working any such new tramway or extension of any tramway, the Company may cut sufficient spaces or openings through any vermin fence, dog-proof fence or rabbit proof fence within the meaning of the Vermin Act, 1931, through which the tramway or extension passes; but the Company shall erect and at all times maintain across every opening or space so cut good and sufficient gates or other effective apparatus or devices for preventing the ingress or egress of vermin. Such gates or other apparatus or devices shall be constructed in such a manner that such gates when closed or such other apparatus or devices will be at least as effective for the exclusion of rabbits dogs and other vermin as the fence through which the openings or spaces are cut. The Company (unless other apparatus or devices are employed) shall keep such gates constantly closed and securely fastened, but may open any of them so long as is necessary to enable any engines, waggons, carriages or other conveyances or traffic of the Company to pass through them.

### **Application of Statute to tramway built by the Company**

10. In and for the purpose of making, forming, laying down, constructing, maintaining and working any tramways or extensions of tramways under this Indenture the Company shall conform to and have the benefit of those provisions of the Broken Hill Proprietary Company Limited's Hummock Hill to Iron Knob Tramways and Jetties Act, 1900, including the provisions of any Acts incorporated with that Act, which relate to the tramways authorized by that Act, as if those provisions applied also to the tramways and extensions provided for in this Indenture; but no provision of that Act or any Act incorporated therewith inconsistent with this indenture or fixing the period for the completion of any tramway, or empowering the Government to license any person to use the tramways, or binding the Company to file accounts relating to tramways shall apply to or in relation to the tramways or extensions provided for in this Indenture.

### **Land for tramways and electric transmission**

11. (a) If for the purpose of or in connection with the construction extension or working of any tramways mines or quarries, or the installation of any posts, wires, conduits or other apparatus or equipment for or in connection with the transmission of electricity, the Company should require the fee simple of, or any lease easement or other rights over, any land comprised in any pastoral lease or other lease from the Crown, and any Minister of the Crown or any authority under the Crown has power to resume such land, the Minister or other authority shall at the request of the Company exercise such power to the extent necessary, and transfer convey or assign to the Company the land or the lease easement or rights which the Company requires for the purposes aforesaid; but the Company shall pay to the Minister or other authority a reasonable price for such land lease easement or other rights, sufficient to cover the expenditure incurred by such Minister or other authority for and in connection with the resumption.

(b) If for any of the purposes mentioned in paragraph (a) 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 Government 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.

### **Deviation of Port Augusta-Whyalla Road**

12. If any part of the Port Augusta-Whyalla Road passes through the site selected by the Company for its blast furnace or other plant and works the Government shall procure the closing of that part of the said road, and shall procure the opening of a new piece of road in substitution for the part of the road so closed, along a route convenient as far as possible both to the Company and the public; and the new piece of road shall be constructed, in a manner similar to the previously existing road, at the cost of the Company.

### **Water supply**

13. In order to assist the Company to further extend its works by the establishment in the vicinity of Whyalla of Coke Oven Plant and/or works for the production of Steel, Rolling Mills, and other plant, the Government on being notified by the Company that it is prepared to establish any such works will use every endeavour to provide the Company with a supply of fresh water at the site of such works sufficient for the full requirements of the Company at such fair and reasonable price as may be mutually agreed upon.

**Provision in event of removal of works to Backie Bay**

14. If at any time during the term of this Indenture the Company desires to erect new furnaces plant wharves jetties or other works at Backie Bay or to transfer all or any part of its furnace plant wharves jetties and other works from Whyalla to Backie Bay the Government will endeavour by all reasonable and lawful means to secure to the Company, as far as possible, rights at and in relation to Backie Bay its foreshore sea-bed and lands adjacent thereto for the purpose of enabling the Company to carry on its operations there, similar to the rights which the Company enjoys at the commencement of and by virtue of this Indenture in relation to and for the purpose of its operations at Whyalla.

**Tolls and dues in respect of use of jetties**

15. During the term of this Indenture no charges or imposts other than those which have heretofore been collected from the Company shall be imposed in respect of the use or occupation of the said wharves and jetties or on the shipment or carriage of goods to over or from the said wharves and jetties nor on the ships engaged in the shipment thereof.

**Works not to be resumed**

16. Neither the Governor of the State nor the South Australian Railways Commissioner nor any Governmental or other body shall during the term of this Indenture exercise any right conferred on any of them by The General Tramways Act, 1884, or The Broken Hill Proprietary Company Limited's Hummocks Hill to Iron Knob Tramways and Jetties Act, 1900, or any Act amending either of those Acts of purchasing any part of the Company's land tramways wharves jetties works plant or other property, or of granting any licence to any other person to use the wharves jetties or tramways of the Company.

**Security of tenure**

17. In further consideration of the Company entering into this Indenture it is hereby further covenanted that neither during the term of this Indenture nor during any extension of that term shall the rights of tenure and otherwise of the Company existing at the commencement or by virtue of this Indenture or lawfully acquired during the term of this Indenture, be in any wise impaired disturbed or prejudicially affected; and the Government shall take all necessary steps to secure those rights to the Company and prevent them from being impaired disturbed or prejudicially affected in any way whatsoever, and no other person shall have the right to acquire a mining claim or title over any land occupied by the Company for its works.

Provided that no tax payable by the Company or in respect of its property 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.

IN WITNESS WHEREOF the public seal of the State and the common seal of the Company were hereunto affixed on the days and years set out below.

The Common seal of the Broken Hill  
Proprietary Company Limited was  
affixed hereunto on the fourth day of  
October, 1937, in the presence of—

Seal of  
Company.

H.G. DARLING, Director.

C. SYME, Director.

Public  
Seal  
of the  
State.

F.M. MITCHELL, Secretary.

G.J.R. MURRAY, Lieutenant-Governor.

**APPENDIX 2**

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 1 of The Public General Acts of South Australia 1837-1975 at page 652.

Section 6(b)

second sentence:

repealed by 95, 1981, s. 3(1)(a)

Indenture

Clause 7:

amended by 95, 1981, s. 3(1)(c)

Clause 7(b):

repealed by 95, 1981, s. 3(1)(b)