

South Australia

BROKEN HILL PROPRIETARY COMPANY'S INDENTURE ACT 1937

An Act to authorise 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, to ratify a Deed amending the Indenture, 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.

*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 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]¹
Harbors Act Amendment Act (No. 2) 1981 No. 95 of 1981 [Assented to 23 December 1981]
Statutes Amendment (BHP Indentures) Act 2000 No. 15 of 2000 [Assented to 11 May 2000]²

¹ Came into operation 3 October 1940: *Gaz.* 3 October 1940, p. 675.

² **Part 2 (ss. 4-15) came into operation on assent (11 May 2000): s. 2(1).**

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*
- *For the legislative history of the Act see Appendix 2.*

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THE CONSOLIDATED INDENTURE

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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 Indenture Act 1937*.

Interpretation

1A. In this Act, unless the contrary intention appears—

"**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.

Validation of Indenture and 2000 Deed of Amendment

2. The Indenture set out in Schedule 1 and the provisions of the 2000 Deed of Amendment that amend or relate to that Indenture are hereby authorised 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.

* * * * *

Saving of certain rights

5. The Indenture shall not—

- (a) entitle the Company 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 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 Company 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.

Construction of Government railways

7. If the South Australian Railways Commissioner should at any time (whether during or after the term of the Indenture) be authorised by Statute to connect any Government railway with any tramway of the Company, 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 Company 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 Company or any of the Company's apparatus for transmitting electricity; and
- (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 to the Indenture

9. The leases referred to in paragraph B. of the schedule contained in the Indenture are the mineral leases held by the Company, numbered 2713 to 2730, inclusive.

Vesting of Company's statutory rights and obligations in assignee

10. (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 and assumption 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).

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SCHEDULE 1*The Original Indenture*

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.

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(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.

(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—

H.G. DARLING, Director.

C. SYME, Director.

F.M. MITCHELL, Secretary.

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

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.

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 Indenture Act 1937

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. 2)

SCHEDULE 2

24

Broken Hill Proprietary Company's Indenture Act 1937

**ANNEXURE 1
LAND TO BE DISPOSED**

Broken Hill Proprietary Company's Indenture Act 1937

(Reprint No. 2)

SCHEDULE 2

26

Broken Hill Proprietary Company's Indenture Act 1937

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.

Broken Hill Proprietary Company's Indenture Act 1937

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

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

Harbors Act Amendment Act (No. 2) 1981 No. 95 of 1981 [Assented to 23 December 1981]

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

Note: This Indenture was also amended by clause 33 of the Indenture to the *Broken Hill Proprietary Company's Steel Works Indenture Act 1958*. These amendments have not been incorporated into this consolidated Indenture.

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:

Broken Hill Proprietary Company's Indenture Act 1937

"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.

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.

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—

H.G. DARLING, Director.

C. SYME, Director.

F.M. MITCHELL, Secretary.

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

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.

C.

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]

Broken Hill Proprietary Company's Indenture Act 1937

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.
- Legislative history since 3 February 1976 (**entries in bold type indicate amendments incorporated since the last reprint**) is as follows:

Long title:	amended by 15, 2000, s. 4
Section 1A:	inserted by 15, 2000, s. 5
Section 2:	amended by 15, 2000, s. 6
Section 3:	repealed by 15, 2000, s. 7
Section 5:	amended by 15, 2000, s. 8
Section 6:	amended by 95, 1981, s. 3(1)(a); 15, 2000, s. 9
Section 7:	amended by 15, 2000, s. 10
Section 8:	amended by 15, 2000, s. 11
Section 9:	amended by 15, 2000, s. 12
Section 10:	inserted by 15, 2000, s. 13
Schedule 1 heading:	inserted by 15, 2000, s. 14
Indenture	
Heading:	substituted by 15, 2000, s. 14
Clause 7:	amended by 95, 1981, s. 3(1)(c)
Clause 7(b):	repealed by 95, 1981, s. 3(1)(b)
Clauses 18 and 19:	inserted by the 2000 Deed of Amendment (as inserted by 15, 2000, s. 15 (Sched.))
Schedule	
Part C:	inserted by the 2000 Deed of Amendment (as inserted by 15, 2000, s. 15 (Sched.))
Schedule 2:	inserted by 15, 2000, s. 15 (Sched.)