

WUNDOWIE CHARCOAL IRON INDUSTRY SALE AGREEMENT.

No. 64 of 1977.

**AN ACT to amend the Wundowie Charcoal Iron
Industry Sale Agreement Act, 1974.**

[Assented to 23rd November, 1977.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Wundowie Charcoal Iron Industry Sale Agreement Act Amendment Act, 1977*.

Short title
and
citation.

(2) In this Act the Wundowie Charcoal Iron Industry Sale Agreement Act, 1974, is referred to as the principal Act.

Act No. 73
of 1974.

(3) The principal Act as amended by this Act may be cited as the *Wundowie Charcoal Iron Industry Sale Agreement Act, 1974-1977*.

Section 2
amended.

2. Section 2 of the principal Act is amended—
- (a) by adding before the word "Schedule", in line two of the interpretation "the Agreement", the word "First";
 - (b) by deleting the passage "time." in line six of the interpretation "the Agreement" and substituting the passage "time, and, except in section three of this Act, also includes the Agreement as altered by the Variation Agreement;" ; and
 - (c) by adding at the end thereof the following interpretation—

"the Variation Agreement" means the Variation Agreement a copy of which is set out in the Second Schedule to this Act. .

Section 3A
added.

3. The principal Act is amended by adding after section 3 the following section—

3A. The variation Agreement is approved and ratified. .

Approval
and
ratification
of the
Variation
Agreement.Schedule
amended.

4. The Schedule to the principal Act is amended by deleting the heading "SCHEDULE." and substituting the following headings—

THE SCHEDULES.

FIRST SCHEDULE. .

Second
Schedule
added.

5. The principal Act is amended by adding at the end thereof the following Schedule—

SECOND SCHEDULE.

THIS AGREEMENT is made the Second day of November, 1977 BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT O.B.E., M.L.A. Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities (hereinafter called "the State") of the first part AGNEW CLOUGH LIMITED a company incorporated under the Companies Act 1961 of the said State and having its registered office therein at 22 Mount Street, Perth (hereinafter called "the Company" which expression will include its successors and permitted

assigns) of the second part and MT. DEMPSTER MINING PTY. LTD. a company incorporated under the Companies Act 1961 of the said State and having its registered office therein at 22 Mount Street, Perth (hereinafter called "Mt. Dempster" which expression will include its successors and assigns) of the third part.

WHEREAS the parties are the parties to and desire to amend the agreement between them dated the 14th day of November, 1974 referred to in section 2 of the Wundowie Charcoal Iron Industry Sale Agreement Act, 1974 of the State of Western Australia (which agreement is hereinafter referred to as "the principal agreement").

NOW THIS AGREEMENT WITNESSETH—

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the principal agreement.
2. The provisions of this Agreement shall not come into operation unless and until a Bill to approve and ratify this Agreement is passed by the Legislature of the said State and comes into operation as an Act.
3. The principal agreement is hereby varied as follows:
 - (1) as to clause 8—
 - subclause (2)—
 - (a) by substituting for the passage "Mt. Dempster or the Company shall within the twelve (12) months next following the Sale Date commence" in lines 1 and 2, the passage "Mt. Dempster or the Company, having full regard for the necessity to achieve ongoing employment for a substantial number of persons engaged in the Industry at Wundowie if the Industry ceases to operate, shall commence, on or before the 28th day of February, 1978,";
 - (b) by deleting the passage "within the thirty (30) months next following the Sale Date" in lines 11 and 12; and
 - (c) by substituting for the passage "within the thirty six (36) months next following the Sale Date commence and thereafter diligently continue to produce marketable quantities of vanadium pentoxide." in lines 17 to 19 inclusive, the passage "shall not later than the 31st day of August, 1979 have the Coates Stage I Plant in production of vanadium pentoxide at a rate of not less than one million kilograms (1 000 000 kg) per annum.";

(2) by adding after clause 8 two new clauses 8A and 8B as follows:

8A. The provisions of clause 29 shall not apply—

- (a) to paragraph (a) of subclause (1) of clause 8 during the period commencing on the Second day of November, 1977 and terminating on the 30th day of June, 1978;
- (b) to subclause (2) of Clause 8 in respect of the construction of the Coates Stage I Plant except to delays or temporary suspensions caused by or arising from, act of God, floods, storms, tempest, washaways, fire (unless caused by the actual fault or privity of the company) act of war, act of public enemies, riots, civil commotions, strikes, lockouts, stoppages, restraint of labour (whether partial or general), shortages of essential materials or restraints of a fundamental nature (other than financial or market restraints), inability to obtain or delay in obtaining governmental approvals, permits, licences, or allocations (where the company is not at fault) or any law, proclamation, regulation, ordinance or order of any government agency or court.

8B. (1) Notwithstanding anything herein contained where the Minister is of the opinion that Mt. Dempster or the Company is irrevocably committed to proceed with and complete the construction of the Coates Stage I Plant, the Minister shall give notice to the Company releasing the Company from its obligations under—

- (a) paragraph (b) of subclause (3) of clause 5; and
- (b) subclause (1) of clause 8 to the intent that the provisions of clause 27 shall cease to have any further force or affect after the date of such notice.

(2) The State shall within 60 days after the date of the notice referred to in subclause (1) of this clause, re-imburse the Company for

amounts paid by the Company to the Board pursuant to paragraph (b) of subclause (3) of clause 5 on and after the 1st day of May, 1977. ;

(3) as to clause 15—

- (a) by substituting for the word "ton" in line 8 the word "tonne"; and
- (b) by adding after the words "subject to" in line 11, the passage "the provisions of clause 15B and to";

(4) by adding after clause 15 three new clauses, 15A, 15B and 15C as follows:

15A. Notwithstanding the provisions of clause 15 but subject to the provisions of clause 15B and to the due performance by the Company and Mt. Dempster respectively of their obligations hereunder the State shall as from the Second day of November, 1977, provide, in addition to the freight subsidy referred to in clause 15, an extra freight subsidy of THREE DOLLARS AND NINETY TWO CENTS (\$3.92) per tonne of iron ore transported by the Western Australian Government Railways Commission from Koolyanobbing to Wundowie for the period commencing on the 1st day of May, 1977 and terminating on the 30th day of June, 1978 Provided However that if this Agreement is determined by the State pursuant to clause 27 prior to the 30th day of June, 1978 the Company shall forthwith pay to the State an amount equal to the total extra freight subsidy received by the Company pursuant to this clause.

Extra
subsidy.

15B. The total amount of the freight subsidy payable to the Company pursuant to clauses 15 and 15A during the continuance of this Agreement shall not exceed One Million Two Hundred Thousand Dollars (\$1,200,000).

Total
subsidy.

15C. Subject to the due performance by the Company and Mt. Dempster of their respective obligations hereunder up to and including the 30th day of June, 1978, the State shall pay to the Company as soon as practicable after the 30th day of June, 1978 (but not later than 60 days after that date) an amount equal to the total pay-roll tax actually paid by the Company under the provisions of the Pay-roll Tax Assessment Act, 1971 in respect of the taxable wages paid by the Company to those of its employees employed solely in the Industry and

Reimburse-
ment of
Pay-roll
Tax.

at Koolyanobbing for the period commencing on the 1st day of May, 1977 and terminating on the 30th day of June, 1978, (less any refund made to the Company or to which the Company is entitled under the Pay-roll Tax Assessment Act in respect of that period). ;

and

(5) as to clause 18 by adding after subclause (4) a new subclause (5) as follows:

(5) Where the Minister has served the notice referred to in clause 8B the State shall within 60 days after the date of the notice discharge, (subject to payment by the Company of the appropriate legal costs therefor), the mortgage and debenture referred to in paragraph (b) of subclause (1) of this clause.

IN WITNESS whereof these presents have been executed by or on behalf of the parties hereto the day and year first hereinbefore written.

SIGNED by THE HONOUR-
ABLE SIR CHARLES WALTER
MICHAEL COURT, O.B.E., } CHARLES COURT
M.L.A. in the presence of

ANDREW MENSAROS,
MINISTER FOR INDUSTRIAL
DEVELOPMENT.

The Common Seal of AGNEW
CLOUGH LIMITED was here-
unto affixed by authority of the
Directors and in the presence
of— } [C.S.]

Director, W. H. CLOUGH.
Secretary, J. S. SMITHSON.

The Common Seal of Mt.
DEMPSTER MINING PTY.
LTD. was hereunto affixed by
authority of the Directors and
in the presence of— } [C.S.]

Director, W. H. CLOUGH.
Secretary, J. S. SMITHSON.