

Western Australia

**Broken Hill Proprietary Steel Industry
Agreement Act 1952**

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Broken Hill Proprietary Steel Industry Agreement Act 1952

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Broken Hill Proprietary Steel Industry Agreement Act 1952

An Act to approve, ratify and confirm an agreement relating to the establishment and working of a steel rolling mill and other works in the State; to grant certain mineral leases and other rights; and for other purposes.

1. Short title

This Act may be cited as the *Broken Hill Proprietary Steel Industry Agreement Act 1952*¹.

2. Agreement approved, ratified and confirmed

- (1) The agreement entered into by the Treasurer for and on behalf of the State with The Broken Hill Proprietary Company Limited and executed on 7 October 1952, a copy of which is set forth in the First Schedule, is approved, ratified and confirmed.
- (2) Notwithstanding the provisions of any other Act, the provisions of clauses 1, 3, 4 and 5 of the agreement mentioned in subsection (1) shall have effect as if the same were repeated in and enacted by this Act, and for such purpose clause 5 of the agreement shall be read and construed as if the words, "It is hereby mutually agreed and declared" in line one of the clause were omitted therefrom.

[3-4. Deleted by No. 67 of 1960 s. 7.]

First Schedule — Broken Hill Proprietary Steel Industry Agreement

[s. 2]

[Heading inserted by No. 19 of 2010 s. 10(2).]

AGREEMENT under Seal made seventh day of October 1952 BETWEEN THE HONOURABLE DUNCAN ROSS McLARTY M.L.A. Premier and Treasurer of the State of Western Australia contracting for and on behalf of the said State and the Government and Instrumentalities thereof from time to time (hereinafter referred to as “the State”) of the one part and THE BROKEN HILL PROPRIETARY COMPANY LIMITED a company duly incorporated under the Companies Statutes of the State of Victoria and having its registered office in the State of Western Australia at Steamship Building Saint George’s Terrace Perth (hereinafter referred to as “the Company” in which term shall be incorporated its successors and permitted assigns) of the other part WHEREAS:

- (a) The State of Western Australia is desirous that an integrated iron and steel industry should be established in the said State and has requested the Company whose principal business is that of iron and steel masters in the Commonwealth of Australia to assist in that objective.
- (b) The Company from its experience of smelting iron ores and from investigations already made by its technical officers has advised the State that the Company has satisfied itself and the State accepts that a practical and economical method of using coal of the type found in the Collie coalfields of the said State for the production of pig iron has not yet been developed.
- (c) The Company has agreed in collaboration with the State to continue investigations and research into the use of such coals in primary furnaces for the conversion of iron ore into pig iron.
- (d) The Company has at the further request of the State agreed to establish maintain and operate within the said State a steel rolling mill having the capacity hereinafter mentioned and for that purpose to carry out certain works and to do certain things auxiliary to or connected with such establishment maintenance and operation upon the State entering into this agreement and upon and subject to the covenants terms and conditions hereinafter contained and subject to

the authorisation and ratification of this agreement by the Parliament of Western Australia.

- (e) The State is of the opinion that iron ore from the Islands hereinafter mentioned may be required for use in the said State otherwise than in accordance with this Agreement and has requested the Company to make available for such use quantities of such iron ore upon the terms and conditions hereinafter provided.
- (f) In consideration of the establishment maintenance and operation by the Company of the steel rolling mill and of the other obligations and undertakings to be performed and carried out by the Company in terms of this Agreement the State has agreed upon and subject to the terms and conditions hereinafter mentioned to sell to the Company an area of land for the erection of the steel rolling mill and for other industrial developments and of wharves and other shipping facilities therefor to provide the Company with adequate power water rail and road services for the construction and operation of the said mill and for other purposes of this agreement to make available to the Company certain natural resources of the State and to create preserve and protect the rights of the Company in relation to the matters aforesaid.

1. In this Agreement unless the context otherwise requires the following terms have the following meanings —

“Act” means the Act referred to in Clause 2 hereof.

“Bulk cargo” means any quantity of the usual bulk materials used in an iron and steel industry (but does not include pig iron or steel billets) and consigned for use by the Company or any subsidiary company in connection with operations on the works site or on any adjacent lands.

“Commissioners” means the Commissioners appointed under the *Fremantle Harbour Trust Act 1902-1951*.

“Integrated iron and steel industry” means an industry in which there is a combination of iron smelting steel making and steel rolling units designed to operate in complementary sequence.

“Islands” means the islands of Cockatoo Koolan and Irvine situate in Yampi Sound near Derby in the said State.

“Mill” means the steel rolling mill or mills to be erected on the works site.

“Mining Act” means the *Mining Act 1904-1950* and the regulations for the time being in force thereunder save as modified or as otherwise provided by this Agreement.

“Month” means calendar month.

“Person” or “persons” includes bodies corporate.

“Public Works Department Plan” means the Public Works Department Plan No. 33486 referred to in clause 3(c) hereof and where it is varied or substituted pursuant to clause 5(j) hereof means the plan as so varied or the substituted plan as the case may be.

“Said State” means the State of Western Australia.

“Subsidiary Company” means any Company whether incorporated within the said State or not in which the Company either directly or indirectly holds not less than fifty per centum of the issued shares for the time being and of which the Company has given notice to the State pursuant to Clause 5(k) hereof.

“Ton” means a ton of 2240 pounds weight.

“Wharf” includes any jetty structure.

“Works site” means the land referred to in Clause 5(b) hereof.

2. This Agreement is made subject to approval and ratification by the Parliament of Western Australia expressed in an Act to be passed before the thirtyfirst day of December One thousand nine hundred and fifty two. If the Act is not so passed this Agreement shall not operate and shall be of no effect and neither of the parties hereto shall have any claim against the other of them with respect to any matter or thing arising out of this Agreement.

3. The Company hereby covenants and agrees with the State: —

- (a) That the Company will on the passing of the Act commence the construction on the works site of a steel rolling mill or mills of modern design and construction having an aggregate capacity of not less than 50,000 tons of steel products per annum operating on a three shift basis. The type of plant to be installed and the range and quantity of sections to be produced by the mill shall be determined by the Company after officers of the Company have made a full

investigation of the steel requirements of the said State but in any event such construction shall consist substantially of new plant machinery and equipment and shall provide for the production by the mill of such merchant size sections comprising rounds flats squares light angles light beams light channels fence standards and other merchant size sections of a like nature as shall in the opinion of the Company be within the economic capacity of the mill. The Company will proceed with the construction and establishment of the mill with all reasonable expedition and will use its best endeavours to have the same in production within a period of four years and in any event will have the same completed in no more than five years from the passing of the Act and thereafter will during the term of this Agreement maintain the mill or an equivalent replacement in a proper and efficient state of repair order and condition.

- (b) That the Company will operate the mill for such periods in each year during the currency of the agreement as may be necessary having regard to the demand for use in the said State of the products of the mill from time to time.
- (c) That the Company will within the period referred to in paragraph (a) preceding at its own expense and in the positions shown on the Public Works Department Plan and in accordance with the plans and specifications already signed by the parties hereto for the purposes of identification or in accordance with such other plans and specifications as the parties hereto may from time to time agree —
 - (i) construct a retaining wall or other means of retaining the dredged material referred to in Clause 4(f) hereof within the No. 1 Reclamation Area shown on the Public Works Department Plan (the retaining wall or other means of retention of the dredged material being hereinafter referred to as “the retaining wall”)
 - (ii) take adequate and proper measures to retain the dredged material within the No. 1 Reclamation Area and to form consolidate and maintain the same.
 - (iii) construct a wharf of approximately six hundred feet in length together with the shore approaches thereto.

- (d) That the Company will at all times during the currency of this Agreement maintain in good order and condition all retaining walls wharves and shore approaches constructed by the Company under this Agreement.
- (e) That so long as such use shall not interfere with its own requirements (a matter which shall be within the sole determination of the Company) the Company will permit the Company's wharves to be used for the handling of inward and outward cargo belonging to persons other than the Company or any subsidiary company if the Company and the Commissioners shall from time to time mutually agree upon the terms and conditions (including charges) of such handling and if required by the Commissioners shall act as their agent in relation to the collection of such charges and shall remit to the Commissioners that portion of such charges as shall be due to the Commissioners.
- (f) That the Company will in relation to the goods of the Company or any subsidiary company pay to the Commissioners a sum equal to one shilling and four pence per ton by weight or measurement in respect of all inward cargoes (other than bulk cargoes) discharged upon or over the Company's wharves up to 100,000 tons in any year and such sum being an amount less than one shilling and four pence per ton in respect of all inward cargoes discharged upon or over the Company's wharves where such tonnage exceeds 100,000 tons in any year and also such rate for bulk cargoes as the Commissioners may in each case from time to time determine. For the purposes of this sub-clause the rate to be determined by the Commissioners for bulk cargoes shall be reasonable in relation to an estimate as at the date of this Agreement of three pence per ton. Save as aforesaid no other charges or dues (except for services actually rendered at the request of the Company) shall be levied by the Commissioners or any other State authority upon inward cargo belonging to the Company or any subsidiary company discharged over the Company's wharves. For the purposes of this sub-clause the word "year" shall mean the period from the first day of January to the thirtyfirst day of December next following.
- (g) That the Company will continue and pursue investigations and will carry out in collaboration with the State research into the use of coals from the Collie coalfields of the said State in primary furnaces for the conversion of iron ore into pig iron and will keep closely in

touch with overseas developments in blast furnace practice including the production of pig iron by the use of non-coking coals and for this purpose will arrange to send officers and technicians overseas at appropriate times in order to study and gather information on the latest practices that may be applicable to the conditions pertaining to the said State. The Company will also keep the State informed of its plans and progress in regard to the matters mentioned in this sub-clause.

- (h) That the Company will not during the term of the mineral leases (the subject of this Agreement) on the Islands export from Australia any iron ore won from any of the leases provided however that the Company may without restriction dispose of any such iron ore to any person for use in the Commonwealth of Australia.
- (i) That the Company will if so requested by the State from time to time upon twelve months' prior notice in writing of its desire in that behalf arrange for Australian Iron & Steel Limited (a Company duly incorporated under the Companies Statutes of New South Wales and having its registered office in the said State at Steamship Building Saint George's Terrace Perth) or other the holder for the time being of the mineral leases on the Islands to make available to the State such quantity or quantities of iron ore from the said leases not exceeding in the aggregate 200,000 tons in any one year of the term of this Agreement as the State may require for use within the said State. Any quantity of iron ore so made available will be delivered by the Company at the Company's loading plant at the Islands and the price of the ore delivered as aforesaid shall be the cost of production of such ore (in estimating which cost there shall be included depreciation and interest on capital as well as all overhead charges properly taken into account in arriving at net profits) plus five per centum. The Company or Australian Iron & Steel Limited or other holder as aforesaid will make available iron ore pursuant to this sub-clause from such locations on the Islands where the Company or Australian Iron & Steel Limited or other holder as the case may be is for the time being carrying on operations and has loading plant available.
- (j) That the Company will ensure that during the currency of this Agreement the orders from the State and from persons in the said State for products of the mill for use in the said State will be fulfilled within a reasonable time.

4. The State hereby covenants and agrees with the Company —

- (a) That the State will within six months of the passing of the Act provide at the boundary of the works site power for construction purposes in such quantities and under such conditions as shall be mutually agreed and subject to the Company giving to the State reasonable notice in writing of its requirements will otherwise during the currency of the agreement supply and maintain a supply of electric power to the Company and any subsidiary company on the works site or adjacent thereto in manner and quantities from time to time agreed between the parties hereto and at a cost in accordance with the industrial schedule rates of the State Electricity Commission of Western Australia from time to time prevailing. If the Company shall at any time instal on the works site plant from which power is available for use in the operations of the Company or any adjacent subsidiary Company then notwithstanding the provisions of the *State Electricity Commission Act 1945* or any other Act such power may be so used and in the case of a subsidiary company may be charged for at such rate as the Company may determine.
- (b) That the State will upon six months prior notice in writing in that behalf given to it by the Company make available to the Northern boundary of the works site such quantity of potable water and bore water not exceeding in the aggregate 4,000,000 gallons per week as the Company and any subsidiary company may from time to time reasonably require and upon the Company giving to the State at least twelve months' notice in writing in that behalf such further quantities of potable and bore water as may be reasonably required by the Company or any subsidiary company for further development of the works site. The price to be paid for such water shall in the case of potable water be the rate ruling from time to time for excess water supplied for industrial purposes by the Metropolitan Water Supply Sewerage and Drainage Department pursuant to the provisions of the *Metropolitan Water Supply Sewerage and Drainage Act 1909-1951* and in the case of bore water the price shall be such as shall be mutually agreed by the parties hereto it being understood that the estimate of such price as at the date of this Agreement is approximately sixpence per 1,000 gallons.
- (c) That subject to the provisions of Section 96 of the *Public Works Act 1902-1950* the State will at its own cost on or before the thirtyfirst day of December 1954 construct and thereafter maintain

and operate an efficient and adequate railway (including an exchange siding) to a point on the boundary of the works site to be determined by the parties and will if and when large tonnages of raw materials are required by the Company to be transported by rail to the works site use its best endeavours when reasonable and practical to do so to provide and maintain an efficient and adequate rail service to the boundary of the works site to effect such transportation and will fix reasonable rates therefor having regard to the quantity and nature of the freight.

- (d) (i) That the State will during the period of the construction of the mill ensure that a suitable road for the Company's use and providing access to the works site is maintained and will prior to the completion of the mill construct and thereafter maintain in a proper state of repair and condition a bitumen surfaced road adequate to the Company's reasonable needs and connecting the works site to a new highway to be constructed east of the works site.
- (ii) That the State will within a period of five years from the passing of the Act close or cause to be closed so much of the existing Fremantle Rockingham Road as traverses the works site and upon such closure the Registrar of Titles shall make all necessary amendments to the Certificate or Certificates of Title to the land adjoining such closed portion of the road as shall be necessary to include the area of the closed portion therein.
- (e) (i) That subject to the construction and maintenance by the Company of the retaining wall and to the giving to the State by the Company of twelve months' notice in writing of the date upon which it expects to complete the retaining wall the State will within three years of the giving of the notice or within two years of the completion of the retaining wall whichever is the longer period at its own cost do any necessary dredging to ensure a depth of thirty feet at low water of the berth and swinging basin shown on the Public Works Department Plan and will before the completion of the mill or within four years from the passing of the Act whichever is the longer period complete the dredging of the remainder of the channels shown on the Public Works Department Plan.

- (ii) That as and when any additions of not less than two hundred feet to the wharf referred to in clause 3(c) of this Agreement are made by the Company pursuant to sub-clause (g) of this clause and if at the time of the commencement of such additions the total of all cargo (excluding bulk cargo) loaded or discharged over the said wharf shall during the period of twelve months immediately preceding have exceeded 200,000 tons by weight or measurement then the State will within twelve months of the receipt of notice in writing of the fact of the commencement of such additions or within such period as may be mutually agreed for the whole length of such additions dredge a berth or berths having a depth of thirty feet and a bottom width of three hundred feet or as may be mutually agreed by the parties hereto. For the purpose of the computation of the said quantity of 200,000 tons bulk cargo may at the option of the Company be included therein on the basis of the same proportion as the sum payable under sub clause (f) of clause 3 hereof in respect of such bulk cargo bears to the sum payable under that sub-clause in respect of cargo other than bulk cargo.
- (iii) That the State will at its own cost during the currency of this Agreement keep and maintain to the depth and width aforesaid all dredging carried out pursuant to this Agreement.
- (f) (i) That the State will at its own cost deposit in the reclamation area shown on the Public Works Department Plan such of the spoil obtained from the dredging referred to in paragraph (i) of sub-clause (e) preceding or such other material as shall be necessary to raise the level of the No. 1 Reclamation Area to the level shown on the Public Works Department Plan and will also at its own cost deposit in the remainder of the reclamation area shown on the Public Works Department Plan such of the spoil obtained from the additional dredging to be effected by the State in terms of paragraph (ii) of sub-clause (e) preceding as shall be available from such additional dredging and be required by the Company to assist it to raise the level of the remainder of the reclamation area to the level shown in the Public Works Department Plan or as otherwise mutually agreed between the parties hereto. The State will deposit the spoil on the area to be reclaimed and with a view

to the subsequent levelling by the Company of the spoil will move the discharge point of the dredge pipe line from time to time as may be reasonably required by the Company and in the event of the spoil from the dredging provided under paragraph (i) of sub-clause (e) preceding being insufficient to fill up the No. 1 Reclamation Area to the level shown on the Public Works Department Plan then the State will at its own cost provide such further material or do such further dredging as may be necessary in that behalf and if the spoil obtained from such first mentioned dredging shall prove to be more than sufficient for the purpose aforesaid then the State will if required by the Company and subject to the prior construction by the Company of adequate retaining walls deposit the spoil on the remainder of the reclamation area shown on the Public Works Department Plan or as may be mutually agreed between the parties. So long as the same shall be adequately contained by the retaining wall to be constructed by the Company pursuant to this Agreement the Company shall be entitled to deposit on such portion or portions of the reclamation area as it may desire any quantity of spoil refuse or other material from its operations on the works site.

- (ii) That the area from time to time reclaimed pursuant to paragraph (i) of this sub-clause shall so long as it remains above low water mark be deemed to form portion of the works site and that the Registrar of Titles shall from time to time on application by the Company supported by plans approved by the Registrar make all necessary amendments to the Certificate or Certificates of Title to the land comprised in the works site and adjoining the reclaimed area so as to include the reclaimed area therein and that the State will from time to time grant to the Company an exclusive license for a term of ninety-nine years to use, occupy and maintain such portion of any wharf constructed pursuant to this Agreement as shall not be included in the said Certificate or Certificates of Title. Such license shall be subject to the performance by the Company of its obligations under this Agreement relating to the works site and the operations to be carried out thereon by the Company.

- (g) That the Company shall be entitled at any time and from time to time during the currency of this Agreement to construct on and from the works site in accordance with plans and specifications to be approved by the State and to maintain and use in addition to the wharf referred to in Clause 3(c) hereof other wharves (including retaining walls and approaches) on the wharf line referred to in the Public Works Department Plan and the Company shall maintain in good order and condition any further wharf retaining wall and shore approaches so constructed.
- (h) That subject to any wharf retaining wall and shore approaches being constructed in accordance with the provisions of this Agreement or as may be mutually agreed between the parties and to the Company reasonably maintaining such parts of the wharf or wharf structures (including retaining walls and shore approaches) as are below the high water mark in manner provided by Clauses 3(c) and 4(g) hereof the Company shall be under no liability of any kind whatsoever to any person and no person shall be entitled to bring or maintain any action suit claim or demand against the Company in respect of any erosion or other change in the present or any future shore line of Cockburn Sound caused or alleged to have been caused by the construction maintenance or use of any wharf as aforesaid or in anywise relating thereto and the State will indemnify and keep and save harmless the Company against any such action suit claim or demand.
- (i) That the State will: —
- (i) Within one month from the passing of the Act extend the term of the respective mineral leases described in the Schedule hereto and held at the date of such passing by Australian Iron & Steel Limited for the period hereinafter in this sub-clause mentioned and cause to be executed such endorsements or instruments as shall be necessary in that behalf.
 - (ii) Within one month from the passing of the Act grant to the Company or to Australian Iron & Steel Limited as the Company may in writing nominate mineral leases under the Mining Act of the areas on Koolan and Irvine Islands delineated and coloured green on the plan hereunto annexed and marked with the letter “A”.

- (iii) If at any time during the currency of any mineral lease extended or granted under this Agreement the ore bodies therein shall be found to extend beyond the boundary of such lease then subject to the due compliance by the Company with the provisions of the Mining Act and upon application for a mineral lease or leases comprising such extension of the ore body being made by the Company to the State grant to the Company or Australian Iron & Steel Limited as the Company may nominate a mineral lease or leases under that Act in respect of the area comprised in such application.
- (iv) From time to time when requested by the Company so to do grant to the Company or to Australian Iron & Steel Limited as the Company may nominate such wharf water machinery magazine special and other leases licenses and rights under the Mining Act the *Land Act 1933-1950* or other appropriate Act as the Company may reasonably require in respect of any operations on or in relation to the Islands or any of them under this Agreement and shall extend for the period hereinafter in this sub-clause mentioned the term of any wharf water machinery magazine special or other lease license or right held by Australian Iron & Steel Limited at the date of the passing of the Act.
- (j) That the term of the mineral leases referred to in the Schedule hereto shall subject to the provisions of the Mining Act and to the payment of royalty under the provisions of the next succeeding paragraph be for a period of fifty years from the passing of the Act and subject as aforesaid and also to the performance by the Company of its obligations under Clauses 3(a) and 3(c) of this Agreement the term of all other leases licenses or rights granted pursuant to this sub-clause shall subject to the compliance by the Company with the provisions of the relevant Acts be granted for a like period.
- (k) That —
 - (a) The mineral lease instruments the subject of this Agreement shall provide for the payment by the lessee to the State of a royalty of sixpence per ton on all iron ore

(other than ore supplied to the State pursuant to Clause 3(i) hereof) shipped from the Islands and that it shall be sufficient compliance with the labour conditions of all of the mineral leases if the horse power and labour employed on any one or more of the Islands in connection with the winning of iron ore from the said leases shall satisfy the total labour conditions of the whole of the said leases. For the purposes of this sub-clause every six horse power of machinery installed on the Islands and used for the purposes of this Agreement shall be counted as one man.

- (b) The said royalty shall be computed upon the total quantity of iron ore shipped from the Islands during every period of six calendar months ending respectively on the thirtieth day of June and the thirty first day of December in each year and also during any portion of any such period occurring at the beginning or at the end of the term of this Agreement and the Company agrees that it will pay the said royalty not later than two months after the end of the period for which it shall be computed.
- (c) 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 shall be necessary to achieve reasonable exactitude shall be accepted as correct and the Company agrees that it will in every month of July and every month of January during the currency of this Agreement and within one month after the expiration thereof furnish to the Under Secretary for Mines of the said State a full and complete return of all iron ore shipped as aforesaid during the period of six months ending on the preceding thirtieth day of June or the thirty first 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 Under Secretary for the purpose of enabling him to compute the amount of royalty payable by the Company. The Under Secretary and his officers 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 insofar as they show the quantities of iron ore shipped and shall also have the right to enter and examine the lands comprised in the said mineral leases.

- (l) That the covenants terms conditions and provisos (including those provided for in subclauses (j) and (k) of this clause) of all leases licenses and rights extended or granted pursuant to paragraphs (i) (ii) and (iv) of subclause (i) of this clause shall during their currency (including any renewal thereof) remain as at the date of such extension or grant and any further leases licenses or rights granted pursuant to paragraphs (iii) and (iv) of subclause (i) of this clause shall during their currency (including any renewal thereof) be in the same form and contain the same covenants terms conditions and provisos as similar leases licenses and rights existing at the date of this Agreement.
- (m) That upon the expiration of the term of the said leases licenses and rights the Company or Australian Iron & Steel Limited as the case may be shall (subject as aforesaid) have the right to the renewal thereof or of any of them which may be then subsisting for successive periods of twenty one years and otherwise upon the like terms and conditions as are contained therein.
- (n) That if and to the extent that the State may erect in the areas from which the Company shall principally draw its labour workers dwellings under the *State Housing Act 1946-1951* and the same shall be available for that purpose the State will make available to the employees of the Company engaged in the operations of the Company on the works site a reasonable proportion of such dwellings and for such purpose the Company will keep the State advised of its labour requirements.
- (o) That if and when the establishment of an integrated iron and steel industry in the said State becomes economically possible the State will if requested co-operate with the Company in locating suitable deposits of limestone magnesite dolomite fire clay and silica rock.
- (p) That if as the result of research and investigations into the operation of a blast furnace as portion of an integrated iron and steel industry within the said State it is found necessary to utilise ores other than those available to the Company from the Islands and the Company undertakes to proceed with the establishment of such blast furnace in

the said State then the State will make available to the Company on favourable terms and conditions Crown resources necessary to supply such ores.

- (q) That having regard to the particular nature of the industries proposed to be established by the Company and any subsidiary companies on the works site and subject to the performance by the Company of its obligations under this Agreement relating to the works site and the operations to be carried out thereon by the Company the State will not during the currency of this Agreement resume nor suffer or permit to be resumed by any State instrumentality or by any local or other authority of the said State any portion of the works site nor will the State create or grant nor permit or suffer to be created or granted by any instrumentality or authority of the State as aforesaid any road right-of-way or easement of any nature or kind whatsoever over or in respect of the works site nor will the State construct or suffer or permit to be constructed any State railway or consent to the construction by the Commonwealth of Australia or by any person of any railway upon or across the works site without the consent in writing of the Company first had and obtained which consent shall not be unreasonably or arbitrarily withheld provided nevertheless that the Company shall not refuse its consent to the laying of any water mains through the works site if the same be laid in such manner and in such positions as not in the opinion of the Company to interfere with the operations of the Company on the works site and subject to the condition that the State shall at its own cost as soon as practicable remove the mains to such other position as the Company may at any time thereafter reasonably require and the operations of the Company may necessitate.
- (r) That the Commissioners shall not make or levy any charge (other than for services actually rendered by the Commissioners at the request of the Company) in relation to the loading of any outward cargo being the products of the Company or of any subsidiary company loaded from or over any wharf constructed by the Company pursuant to authority in that behalf contained in this Agreement for shipment by or on behalf of the Company or any subsidiary company whether to any port in the State or elsewhere.

- (s) That no charges shall be levied by the Commissioners in respect of vessels using the Company's wharves other than —
 - (i) tonnage rates from time to time levied by the Commissioners for the Port of Fremantle on the gross registered tonnage of vessels (such rate at the date of this Agreement being one penny plus 20% per ton per day)
 - (ii) the usual charges from time to time prevailing made by the Commissioners in respect of services rendered to any vessel by the Commissioners.

5. It is hereby mutually agreed and declared: —

- (a) That it is understood between the State and the Company that the aim of the parties is the establishment in the said State of steel making furnaces (either open hearth electric or such other types as may in the opinion of the Company prove suitable and economic) and auxiliary equipment to provide steel for the mill and while the Company intends to pursue such establishment in good faith any decision in this respect by the Company shall in no way affect any of the rights or obligations conferred or imposed upon the Company by this Agreement and the Company shall keep the State advised of its plans and progress in connection with such establishment.
- (b)
 - (i) That the State will sell to the Company and the Company will purchase an estate in fee simple free of encumbrances except as mentioned in paragraph (iii) below in an area of land of as near to six hundred acres as shall be possible having regard to the location of the proposed railway and road along the eastern boundary thereof but in any event having an area of not less than five hundred acres and having a frontage of at least three thousand feet to Cockburn Sound the approximate position of which land is delineated and coloured red and green on the plan hereunto annexed and marked with the letter "B".
 - (ii) That the area to be sold shall take into account the area contained in so much of the Fremantle Rockingham Road as traverses the land shown on the plan hereunto annexed and marked with the letter "B" as if such road were closed pursuant to Clause 4(d) of this Agreement.

- (iii) That the purchase price of the land sold shall be a sum equivalent to the total cost incurred by the State in acquiring the same for the purpose of sale to the Company and in transferring the same to the Company and the respective prices to be paid for the land coloured red and green respectively shall be paid against presentation for registration of a transfer or transfers thereof free of encumbrances (except in the case of the land coloured green which shall be subject to the provisions of the *Industrial Development (Kwinana Area) Act 1952*) at the Land Titles Office Perth as soon as reasonably possible after the passing of the Act.
- (iv) That for the purpose of giving effect to the sale the land coloured green shall be taken and resumed by the State under the provisions of the *Industrial Development (Kwinana Area) Act 1952* and the Advisory Committee referred to in Section 6 of that Act shall be deemed to have given the approval mentioned in that Section to the sale.
- (c) That the Company shall be entitled to discharge into the sea at any point off the shore of the works site any industrial drainage from works on the works site but so that the Company shall provide that such industrial drainage shall not be dangerous or injurious to public health.
- (d) That the Company and Australian Iron & Steel Limited shall during the term of the mineral leases granted pursuant to Clause 4 (i) hereof have the right to continue to draw from Silver Gull Creek such supplies of fresh water as it may reasonably require for town supplies or industrial purposes in connection with the Islands.
- (e) That the Company and any subsidiary company may without charge draw sea water from Cockburn Sound for its operations on the works site and for this purpose may construct such works as may be agreed by the parties hereto.
- (f) That the Company shall have the right with the consent in writing of the State to assign or otherwise dispose of its rights and obligations under this Agreement or any interest therein and such consent shall not be arbitrarily or unreasonably withheld and any subsidiary company shall have a right to assign in like manner any right or obligation it may have under this Agreement.

- (g) That without affecting the liability of the parties under the provisions of this Agreement either party shall have the right from time to time to entrust to third parties the carrying out of any portion of the operations which it is authorized or obliged to carry out under this Agreement.
- (h) That notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of the works site (except as to any part upon which a permanent residence shall be erected) shall for rating purposes be or be deemed to be on the unimproved value and the works site shall not be subject to any discriminatory rate.
- (i)
 - (i) That while the policy of the Company in selling its products in all the capital cities and main ports of Australia at the same c.i.f. price continues then the Company shall sell in the said State and to the State and to any person in the said State for use in the said State the products of the mill at f.o.r. or f.a.s. prices which are the same as the c.i.f. prices for the time being charged by the Company for identical products produced at its Newcastle Works or the Port Kembla Works of Australian Iron & Steel Limited.
 - (ii) That subject to the provisions of paragraph (i) of this sub-clause if and when the said policy of the Company is altered the Company will thereafter during the currency of this Agreement when so requested by a purchaser accept and fulfil to the best of its ability his orders placed in the said State for its products for use in the said State and will deliver f.o.r. or f.a.s. its Newcastle Works or the Port Kembla Works of Australian Iron & Steel Limited at the f.o.r. or f.a.s. selling prices ruling at those works at the date of shipment.
 - (iii) That subject to the provisions of paragraphs (i) and (ii) of this sub-clause and so long as the Company shall operate its interests in the said State as efficiently as can be reasonably expected and shall perform its obligations under this Agreement the State while price fixing legislation shall be in force in the said State will not under any legislation prevent the products of the Company from being sold at prices which will allow the Company reasonable depreciation as determined by the Company and the creation by the Company

of reasonable reserves and a reasonable return on the capital employed by the Company in the said State. To enable the fixing of the prices of any products as aforesaid the Company shall in any case in which the same shall be considered by the State to be necessary furnish the State with all information reasonably requisite in that behalf and shall permit the State reasonable opportunity and facilities to verify the information so supplied.

- (iv) That if the Company produces in the mill steel products not produced by it at its Newcastle Works or the Port Kembla Works of Australian Iron & Steel Limited (for example window frame sections) or in the event of the Company or a subsidiary company with a view to increasing the availability in the said State of further processed steel products (for example fence posts) installing in the said State plant and equipment for the further processing of steel products and using either the products of the mill or products from elsewhere then the provisions of paragraph (iii) of this sub-clause shall apply to the products so produced or further processed as the case may be.
- (j) That any obligation or right under the provisions of or any plan referred to in this Agreement may from time to time be cancelled added to varied or substituted by agreement in writing between the parties so long as such cancellation addition variation or substitution shall not constitute a material or substantial alteration of the obligations or rights of either party under this Agreement.
- (k) That the Company will from time to time as the necessity arises and also whenever requested by the State so to do furnish the State with a list of subsidiary companies within the meaning of this Agreement with evidence showing the interest which the Company holds in such subsidiaries and the State may for the purpose of this Agreement rely and act upon the list of subsidiary companies as last furnished by the Company.
- (l) That any dispute or difference between the parties arising out of or in connection with this Agreement or any agreed variation thereof or as to the construction of this Agreement or any such variation or as to the rights duties or liabilities of either party thereunder or as to any matter to be agreed between the parties in terms of this

Agreement shall in default of agreement between the parties be referred to and settled by arbitration under the provisions of the *Arbitration Act 1895* and its amendments for the time being in force.

- (m) That this Agreement shall be deemed to be made subject to any delays in the performance of obligations under this Agreement which may be occasioned by or arise from circumstances beyond the power and control of the party responsible for the performance of such obligations including delays caused by or arising from act of God act of war force majeure act of public enemies strikes lock-outs stoppages restraint of labour or other similar acts (whether partial or general) shortage of labour or essential materials reasonable failure to secure contractors delays of contractors riots and civil commotion.
- (n) That subject to the due observance by the Company of its obligations under this Agreement and subject also in the case of any leases licenses or rights granted or extended hereunder to the due observance and performance by the Company of the covenants and agreements on its part therein contained and of the respective Acts under which they are granted (except as modified by this Agreement) the State shall ensure that during the currency of this Agreement and as to any such leases licenses or rights during the term thereof respectively the rights of the Company under this Agreement and under such leases licenses or rights as the case may be shall not in anywise through any act of the State be impaired disturbed or prejudicially affected.
- (o) That this Agreement shall be interpreted according to the laws for the time being in force in the said State.
- (p) That any notice consent or other writing authorized or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister of the Crown for the time being charged with the administration of the Act or the Director of Industrial Development for the time being of the said State and forwarded by prepaid post to the Company at its registered office in the said State or at the works site and by the Company if signed on behalf of the Company by the managing director general manager secretary or attorney of the Company and forwarded by prepaid post to the said Minister or Director of Industrial Development and any such notice consent or writing shall

be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

- (q) That the term of this Agreement shall subject to the provisions hereof be fifty years from the date of the passing of the Act with the right to the Company (subject to the provisions of this Agreement) at any time not later than two years prior to the expiration of the said term to give to the State written notice of its desire to extend the term of the Agreement for a further period of twenty one years whereupon if there shall not at the time of the giving of the notice be any existing breach or non-observance of any of the provisions of this Agreement by the Company or Australian Iron & Steel Limited or other the holder for the time being of any of the mineral leases the subject of or granted under the provisions of this Agreement the term of this Agreement shall be extended accordingly upon the same terms and conditions except this present right of renewal and shall continue after the expiration of such extended term until determined by either party giving to the other two years' notice in writing in that behalf which notice may if so desired be given at any time within two years prior to the expiration of the extended term.

THE SCHEDULE HEREINBEFORE REFERRED TO:

Mineral Lease Number W.K. 10.
Mineral Lease Number W.K. 11.
Mineral Lease Number W.K. 12.
Mineral Lease Number W.K. 43.

IN WITNESS WHEREOF the Honourable DUNCAN ROSS McLARTY has hereunto set his hand and seal and the Common Seal of the Company has hereunto been affixed the day and year first hereinbefore mentioned.

SIGNED SEALED AND DELIVERED
by THE HONOURABLE DUNCAN
ROSS McLARTY in the presence
of: —

Arthur F. Watts.

}

ROSS McLARTY.
[L.S.]

THE COMMON SEAL of THE
BROKEN HILL PROPRIETARY
COMPANY LIMITED
was hereunto affixed
in the presence of: —

}

[C.S.]

C. Y. SYME,
L. DARLING,
Directors

R. G. NEWTON,
Secretary

[Second Schedule deleted by No. 19 of 2010 s. 10(3).]

Notes

¹ This is a compilation of the *Broken Hill Proprietary Steel Industry Agreement Act 1952* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Broken Hill Proprietary Steel Industry Agreement Act 1952</i>	46 of 1952	18 Dec 1952	18 Dec 1952
<i>Broken Hill Proprietary Steel Industry Agreement Act Amendment Act 1958</i>	9 of 1958	29 Sep 1958	29 Sep 1958
<i>Broken Hill Proprietary Company's Integrated Steel Works Agreements Act 1960 s. 7²</i>	67 of 1960	2 Dec 1960	23 Dec 1960 (see s. 2 and Gazette 23 Dec 1960 p. 4074)
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	s. 4-9: 14 Feb 1966 (see s. 2(2)); balance: 21 Dec 1965 (see s. 2(1))
Reprint of the <i>Broken Hill Proprietary Steel Industry Agreement Act 1952</i> as at 1 Feb 2002 (includes amendments listed above)			
<i>Standardisation of Formatting Act 2010 s. 10</i>	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and Gazette 10 Sep 2010 p. 4341)

² The Agreement ratified by this Act was amended or affected by cl. 25 and 26 of the Agreement set forth in the Schedule to the *Broken Hill Proprietary Company's Integrated Steel Works Agreements Act 1960*. Those clauses read as follows:

“

25. Harbour charges

- (1) As from the commencement date Clause 3(f) of the Agreement ratified by the 1952 Act is amended by deleting therefrom the passage “and such sum being an amount less than one shilling and four pence per ton in respect of all inward cargoes discharged upon or over the Company's wharves where such tonnage exceeds 100,000 tons in any year” in lines 7 to 11.

- (2) As from the production date —
- (i) Clause 3(f) of the Agreement ratified by the 1952 Act is deleted and the following paragraph shall have effect in relation to inward cargoes both under the 1952 Agreement and under this Agreement:
- “ That the Company will pay to the Commissioners in respect of inward cargoes discharged upon or over the Company’s wharves, being goods and products of the Company or any subsidiary company or being raw materials and semi finished products for processing within the said State of any associated company —
- (a) a sum equal to two shillings (2/-) per ton by weight or measurement in respect of all such inward cargoes (other than bulk cargoes); and
- (b) a sum equal to four pence (4d.) per ton by weight or measurement in respect of all inward bulk cargoes.

No other charges or dues (except tonnage rates as referred to in Clause 4(s)(i) of the Agreement ratified by the 1952 Act, light dues and charges for services actually rendered at the request of the Company or any subsidiary or associated company) shall be levied by the Commissioners or any other State authority upon inward cargo discharged over the Company’s wharves being goods or products of the Company or any subsidiary company or being raw materials or semi finished products for processing within the said State of any associated company. In this paragraph the word “year” means the period from the 1st day of January to the 31st day of December next following. The parties hereto agree that after the said production date the rates mentioned in this paragraph shall be increased or decreased as the case may be by the same percentage as the general rate for wharfage on inward goods for which other specific rates are not provided at the Port of Fremantle (which rate as at the date of this Agreement is thirteen shillings and six pence (13/6d.) per ton) is increased or decreased after the production date. ”

- (ii) Clause 4(r) of the Agreement ratified by the 1952 Act is amended first by substituting for the passage “the products of the Company or of any subsidiary company” the passage “the goods or products of the Company or of any subsidiary or associated company” and secondly by substituting for the passage “any subsidiary company” where secondly occurring the passage “any Subsidiary or associated company”.

26. Amendments to 1952 Act

- (1) The 1952 Act and the Agreement ratified by that Act are respectively amended or affected as in this Clause provided and the Act ratifying this Agreement shall enact accordingly.
- (2) As from the commencement date —
 - (a) Sections 3 and 4 of the 1952 Act are repealed;
 - (b) The definition of “Bulk cargo” in Clause 1 of the said Agreement is deemed amended to accord with the definition of “bulk cargo” in Clause 2 of this Agreement;
 - (c) With respect to Clause 3(c) of the Agreement ratified by the 1952 Act the State acknowledges that in view of the construction of the existing jetty from works site the Company has no further obligations under the said Clause 3(c);
 - (d) The provisions of Clause 4(a), 4(b) and 4(d) of the Agreement ratified by the 1952 Act are to be read and construed subject to the provisions of this Agreement;
 - (e) Clause 4(e) of the said Agreement is deleted;
 - (f) Clause 4(f)(i) of the said Agreement is deleted;
 - (g) Clause 4(f)(ii) of the Agreement ratified by the 1952 Act is deleted and the following provision shall have effect: —
 - “ The State hereby grants to the Company an exclusive license during the currency of this Agreement to use occupy and maintain any wharf or jetty constructed pursuant to this Agreement or the Agreement ratified by the 1952 Act as shall not be included in any Certificate of Title to the works site. Such license shall be subject to the performance by the Company of its obligations under this Agreement. ”;
 - (h) Clause 4(g) of the Agreement ratified by the 1952 Act is amended first by inserting after the words “works site” in line 3 the words “in places and” and secondly by deleting

- from lines 8 and 9 thereof the words “on the wharf line referred to in the Public Works Department plan”;
- (i) Clause 4(k)(a) of the Agreement ratified by the 1952 Act is amended to substitute “one shilling and six pence” for the words “six pence” in line 4;
 - (j) Clause 4(k)(b) of the said Agreement is amended by inserting after the word “total” in line 2 the words “dry weight”;
 - (k) Clause 4(m) of the Agreement ratified by the 1952 Act is deleted and the following substituted:—
 - “ Subject to the performance by the Company of its obligations under this Agreement the leases licenses and rights granted under this Agreement to the Company or Australian Iron & Steel Proprietary Limited as the case may be shall continue for successive periods of twenty-one (21) years unless and until they are respectively surrendered by the Company concerned upon the like terms and conditions as those contained in this Clause. ”;
 - (l) Clause 5(a) of the Agreement ratified by the 1952 Act is deleted;
 - (m) Clause 5(c) of the said Agreement is amended by adding thereto the passage “and that any structures conveying drainage or effluent into the sea shall be designed so as to avoid as far as possible permanent changes to the foreshore and so as not to constitute a hazard to navigation”;
 - (n) Clause 5(f) of the said Agreement is deleted;
 - (o) Clause 5(i) of the said Agreement is amended by deleting paragraphs (i) and (ii) thereof and by deleting from lines 1 and 2 of paragraph (iii) the passage “That subject to the provisions of paragraphs (i) and (ii) of this subclause and ”;
 - (p) Clause 5(p) and Clause 5(q) of the said Agreement are deleted.

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