

Western Australia

**Tailings Treatment (Kalgoorlie) Agreement Act  
1988**

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Western Australia

# Tailings Treatment (Kalgoorlie) Agreement Act 1988

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## **Tailings Treatment (Kalgoorlie) Agreement Act 1988**

**An Act to ratify an agreement between the State of Western Australia and Mulga Mines Pty. Ltd. and Western Australian Mint relating to the removal and treatment of mine tailings for the recovery of gold and silver; to enable the granting of a special licence to remove and treat those mine tailings; to enable Mulga Mines Pty. Ltd. and Western Australian Mint to enter and re-enter certain lands and carry out rehabilitation operations and works thereon; to provide that certain tailings remaining on the expiry or determination of that special licence shall become the absolute property of the Crown; and for purposes incidental to or connected with the foregoing.**

**1. Short title**

This Act may be cited as the *Tailings Treatment (Kalgoorlie) Agreement Act 1988*<sup>1</sup>.

**2. Commencement**

This Act shall come into operation on the day on which it receives the Royal Assent<sup>1</sup>.

**3. Interpretation**

- (1) In this Act, unless the contrary intention appears —
- mining tenement*** has the meaning given by the *Mining Act 1978* and includes any right —
- (a) which was acquired under the *Mining Act 1904*<sup>2</sup>; and

**s. 3**

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(b) which is continued in existence by the Second Schedule to the *Mining Act 1978*;

*the Agreement* means the agreement a copy of which is set out in the Schedule and includes that agreement as varied from time to time in accordance with its provisions;

*the Joint Venturers* has the meaning given by the Agreement;

*the special licence* means any special licence granted under section 5(1);

*the tailings areas* means the areas to which the licences to remove and treat tailings referred to in recital (a) to the Agreement relate or related, as the case requires, and includes any areas which are specified under subsection (2);

*the underlying lands* means the lands the subject of the mining tenements specified in the Table to this subsection as those mining tenements existed on 8 June 1988, and includes any lands or mining tenements which are specified under subsection (3).

**Table**

<i>Type of mining tenement</i>	<i>Number of mining tenement</i>
Mining lease	26/32
Mining lease	26/55
Mining lease	26/78
Mining lease	26/83
Mineral claim	26/1643
Mineral claim	26/1652
Mineral claim	26/1653
Mineral claim	26/1654
Mineral claim	26/1655
Prospecting licence	26/98
Prospecting licence	26/395
Prospecting licence	26/634
Prospecting licence	26/1051
Prospecting licence	26/1055.

- (2) When an application under clause 5(5) of the Agreement has been approved, the Minister may for the purposes of the definition of “the tailings areas” in subsection (1) by notice published in the *Gazette* specify the tailings to which the application relates.
- (3) The Minister may for the purposes of the definition of “the underlying lands” in subsection (1) by notice published in the *Gazette* specify any lands or mining tenements within or adjacent to the tailings areas.
- (4) The Minister may by notice published in the *Gazette* amend or repeal any specification under subsection (2) or (3).

**4. Agreement ratified and implementation authorised**

- (1) The Agreement is ratified.
- (2) The implementation of the Agreement is authorised.
- (3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Agreement shall operate and take effect notwithstanding any other Act or law.

**5. Power of Minister of Mines to grant special licence to remove and treat certain tailings**

- (1) Notwithstanding anything in the *Mining Act 1978* or in any other law, the Minister to whom the administration of that Act is for the time being committed by the Governor may on the application of the Joint Venturers made under clause 5(1) of the Agreement grant to the Joint Venturers a special licence to remove tailings from the tailings areas and treat them in accordance with the Agreement, and a special licence so granted has effect according to its tenor.
- (2) The provisions of the Agreement relating to the Special Licence apply to and in relation to the special licence as if those provisions were enacted in this Act.

**6. Power of Joint Venturers to enter and re-enter certain lands and carry out rehabilitation operations and works**

The Joint Venturers may, whenever required to do so in writing by the Minister for the purpose of complying with their obligations under the Agreement and the *Environmental Protection Act 1986* with respect to the rehabilitation of the tailings areas —

- (a) enter and re-enter the underlying lands for that purpose together with such agents, employees, vehicles, machinery, equipment and other things; and
- (b) on or beneath the underlying lands carry out such operations and works,

as are necessary or expedient for that purpose.

**7. Tailings remaining on expiry or determination of special licence to become absolute property of Crown**

- (1) On the expiry or determination of the special licence, any tailings remaining in the tailings areas shall become the absolute property of the Crown.
- (2) Notwithstanding anything in subsection (1), the Minister may by notice published in the *Gazette* declare that that subsection does not apply to or in relation to all the tailings referred to in that subsection or to or in relation to such of those tailings as are specified in that notice.
- (3) Subsection (1) ceases to apply to or in relation to the tailings the subject of a notice published under subsection (2) on the day on which that notice is so published or on such subsequent day as is specified or provided for in that notice.

## Schedule

[section 3(1)]

THIS AGREEMENT is made this 6th day of June 1988 BETWEEN THE HONOURABLE PETER M'CALLUM DOWDING, LL.B., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "the State") of the one part and MULGA MINES PTY. LTD. a company incorporated in Victoria and having its principal place of business in Western Australia at 41 Dugan Street, Kalgoorlie and WESTERN AUSTRALIAN MINT, a body corporate established under section 7 of the *Western Australian Mint Act 1970* and trading under the business name "Westmill" and having its principal office at 310 Hay Street, East Perth (hereinafter collectively called "the Joint Venturers" in which term shall be included their respective successors and permitted assigns) of the other part.

WHEREAS:

- (a) Mulga Mines Pty. Ltd. has applied pursuant to clause 7 of the Second Schedule to the *Mining Act 1978* for renewal of licences to remove and treat tailings numbers 26/139, 26/140, 26/146, 26/147, 26/148, 26/149, 26/151, 26/161, 26/163, 26/164, 26/183, 26/223 and 26/224 (hereinafter called "the LTTs");
- (b) the Joint Venturers wish to remove the tailings from the LTTs by hydraulic reclamation and transport and treat the tailings at a treatment area for the recovery of gold and silver and a proposal in connection therewith has been referred to the Environmental Protection Authority pursuant to section 38 of the *Environmental Protection Act 1986* by the Minister (as hereinafter defined);
- (c) the Joint Venturers intend to provide such facilities and services as may be necessary for their activities under this Agreement and for the accommodation and welfare of their workforce;
- (d) the State, for the purpose of promoting employment opportunity and development within Western Australia and in the light of its wish to have the dumps, the subject of the LTTs, removed, has agreed to assist the Joint Venturers upon and subject to the terms of this Agreement.

NOW THIS AGREEMENT WITNESSES:

**Definitions**

1. In this Agreement subject to the context —

“advise”, “apply”, “approve”, “approval”, “consent”, “certify”, “direct”, “notify”, “request”, or “require”, means advise, apply, approve, approval, consent, certify, direct, notify, request, or require in writing as the case may be and any inflexion or derivation of any of those words has a corresponding meaning;

“approved project” means the project as described in the bound volume entitled “Project Description” initialled by or on behalf of the Minister and the Joint Venturers for the purpose of identification;

“approved proposal” means a proposal approved or determined under this Agreement;

“Clause” means a clause of this Agreement;

“Commencement date” means the date the Bill referred to in Clause 3 comes into operation as an Act;

“Commonwealth” means the Commonwealth of Australia and includes the Government for the time being thereof;

“CPI” means the Consumer Price Index-All Groups-Weighted Average of Eight Capital Cities published by the Australian Bureau of Statistics, or, if the same is not published, such other similar index as the Minister may reasonably determine;

“EP Act” means the *Environmental Protection Act 1986*;

“Joint Venturers’ workforce” means the persons (and the dependants of those persons) connected with the Joint Venturers’ activities under this Agreement, whether or not such persons are employed by the Joint Venturers;

“licence areas” means the areas of the dumps the subject of the LTTs;

“local authority” means the council of a municipality that is a city, town or shire constituted under the *Local Government Act 1960*;

“Mining Act” means the *Mining Act 1978*;

“Minister” means the Minister in the Government of the State for the time being responsible for the administration of the Act to ratify this Agreement and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Joint Venturers;

“Minister for Mines” means the Minister in the Government of the State for the time being responsible for the administration of the Mining Act;

“month” means calendar month;

“notice” means notice in writing;

“person” or “persons” includes bodies corporate;

“said State” means the State of Western Australia;

“Special Licence” means the licence granted pursuant to Clause 5 and according to the context shall also describe the areas and tailings the subject of the licence;

“subclause” means subclause of the Clause in which the term is used;

“this Agreement” refers to this Agreement whether in its original form or as added to varied or amended from time to time.

### **Interpretation**

2. In this Agreement —

- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
- (b) power given under any Clause other than Clause 18 to extend any period or date shall be without prejudice to the power of the Minister under Clause 18;
- (c) clause headings do not affect the interpretation or construction;
- (d) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
- (e) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder; and

- (f) any covenant or agreement on the part of the Joint Venturers under this Agreement shall be deemed to be a joint and several covenant or agreement as the case may be.

#### **Ratification of Agreement**

3. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 1988.

#### **Commencement and operation of Agreement**

4. (1) The provisions of this Agreement other than this Clause and Clauses 1, 2 and 3 shall not come into operation until the Bill referred to in Clause 3 has been passed by the Parliament of Western Australia and comes into operation as an Act.
- (2) If before 31 December 1988 the said Bill has not commenced to operate as an Act then unless the parties otherwise agree this Agreement shall then cease and determine and no party to this Agreement shall have any claim against any other party with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (3) On the said Bill commencing to operate as an Act all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

#### **Special Licence**

5. (1) Notwithstanding the provisions of the Mining Act the State shall on application made by the Joint Venturers not later than three months after the coming into operation of this Agreement but subject to the withdrawal by Mulga Mines Pty. Ltd. of its applications for renewal of the LTTs, cause to be granted to the Joint Venturers a licence to remove and treat tailings within the licence areas in the form of the Schedule hereto and subject to such further terms and conditions as the Minister for Mines may consider reasonable.
- (2) The term of the Special Licence shall, subject to the sooner determination thereof on the determination or cessation of this Agreement, be for a period of 10 years from the grant thereof Provided However that the Minister at his discretion may from time

to time agree that the term of the Special Licence be extended for such period or periods not exceeding in the aggregate 5 years as he determines and an endorsement of any such extension shall be made by the Department of Mines on the Special Licence.

- (3) The Joint Venturers shall not be entitled to surrender the Special Licence or any part or parts thereof without the prior consent of the Minister.
- (4) The Joint Venturers shall pay to the State in respect of the Special Licence an annual licence fee during the term thereof of \$5,000.
- (5) Notwithstanding the provisions of the Mining Act the Joint Venturers may from time to time during the currency of this Agreement apply to the Minister for tailings held by the Joint Venturers or either of them or any company related to the Joint Venturers or either of them within the meaning of that term as used in section 7 of the *Companies (Western Australia) Code* under a licence to treat tailings or other mining tenement under the Mining Act to be included in the Special Licence. The Minister shall confer with the Minister for Mines in regard to any such application and if they approve the application the Minister for Mines shall upon the surrender of the relevant licence or other mining tenement include the tailings the subject of the application in the Special Licence subject to such of the conditions of the surrendered licence or mining tenement as the Minister for Mines determines but otherwise subject to the same terms covenants and conditions as apply to the Special Licence and subject to such amendment to the annual licence fee referred to in subclause (4) as the Minister for Mines considers appropriate.

#### **Implementation of approved project**

6.
  - (1) The Joint Venturers shall subject to and in accordance with the EP Act and any approvals and licences required under that Act implement the approved project in accordance with the terms thereof.
  - (2) The Joint Venturers shall not remove or treat any tailings from any of the dumps within the Special Licence otherwise than in accordance with the approved project or approved proposals or pursuant to subclause (2) of Clause 8.

**General Purpose Leases**

7. (1) The State shall in accordance with the approved project and notwithstanding the Mining Act, upon application by the Joint Venturers within 3 months after the commencement date, cause to be granted to the Joint Venturers, at the rentals specified from time to time in the Mining Act, general purpose leases of the sites for the treatment plant and tailings residue dam (notwithstanding that the survey in respect thereof has not been completed but subject to such corrections to accord with the survey when completed at the Joint Venturers' expense and notwithstanding that the areas thereof may exceed the maximum area provided for in the Mining Act in respect of general purpose leases) such general purpose leases to be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act and subject to such conditions as the Minister for Mines determines.
- (2) Subject to the performance by the Joint Venturers of their obligations under this Agreement and the Mining Act and subject to Clause 20 and notwithstanding any provisions of the Mining Act to the contrary —
- (a) the initial term of the general purpose lease for the treatment plant shall be 21 years from the commencement date; and
- (b) the term of the general purpose lease for the tailings residue dam shall be a period commencing on the commencement date and continuing until the expiration of 10 years after the expiration or sooner determination of the term (and any extensions thereof) of the Special Licence.
- (3) The Joint Venturers shall not be entitled to surrender the general purpose lease for the tailings residue dam in whole or in part without the prior consent of the Minister.

**Additional proposals**

8. (1) If the Joint Venturers at any time during the continuance of this Agreement desire to significantly modify expand or otherwise vary their activities carried on pursuant to this Agreement beyond those specified in the approved project or in any approved proposals or, having first obtained the Minister's consent thereto, to treat gold bearing material other than tailings from the Special Licence they

shall give notice of such desire to the Minister and if required by the Minister within 2 months of the giving of such notice shall submit to the Minister within such period as the Minister may reasonably allow detailed proposals in respect of all matters covered by such notice and such other matters, including matters relating to any of the following, namely —

- (a) methods of removal and treatment of the tailings or other material;
- (b) sites for the treatment plant and tailings residue dam;
- (c) water supply;
- (d) power supply;
- (e) residue disposal;
- (f) use of local labour, professional services, manufactures, suppliers, contractors and materials and measures to be taken with respect to the engagement and training of employees by the Joint Venturers, their agents or contractors; and
- (g) an environmental management programme as to measures to be taken in respect of the Joint Venturers' activities under the Agreement for the protection and management of the environment

and other relevant information as the Minister may require.

- (2) If the Minister does not require the Joint Venturers to submit proposals under subclause (1) the Joint Venturers may, subject to compliance with all applicable laws, proceed with the modification, expansion or variation of their activities carried on pursuant to this Agreement.
- (3) Subject to the EP Act the Minister shall within 2 months of the receipt of proposals submitted pursuant to subclause (1) give to the Joint Venturers notice either of —
  - (a) his approval thereof; or
  - (b) any objections or alterations desired thereto and in such case shall afford the Joint Venturers an opportunity to consult with and submit new proposals to the Minister.

- (4) If within 2 months of receipt of a notice pursuant to paragraph (b) of subclause (3) the Minister has not given approval to the said proposals, the said proposals shall not be referable to arbitration hereunder but shall lapse.
- (5) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Joint Venturers shall implement proposals approved pursuant to this Clause in accordance with the terms thereof.

**Protection and management of the environment**

- 9. (1) The Joint Venturers shall in respect of the matters relating to the environment which are referred to in the approved project or which are the subject of approved proposals carry out a continual programme of investigation, research and monitoring to ascertain the effectiveness of the measures they are taking both generally and pursuant to the approved project or the approved proposals as the case may be for the protection and management of the environment.
- (2) The Minister may from time to time during the currency of this Agreement require the Joint Venturers to report to him within one month or such longer period as the Minister may allow concerning —
  - (a) measures which have been taken for the protection and management of the environment both generally and pursuant to approved proposals;
  - (b) investigations, research and monitoring carried out pursuant to subclause (1); and
  - (c) any changes proposed to be adopted in the ongoing measures for protection and management of the environment, including investigations, research and monitoring.
- (3) The Minister may within 2 months of receipt of a report pursuant to subclause (2) notify the Joint Venturers that he —
  - (a) requires amendment of the report and the changes to be adopted in the ongoing programme or either of them; or

- (b) requires additional detailed proposals to be submitted for the protection and management of the environment in relation to matters the subject of approved proposals.
- (4) The Joint Venturers shall within 2 months of receipt of a notice pursuant to paragraph (a) of subclause (3) submit to the Minister an amended report and programme or either of them as required. The Minister shall afford the Joint Venturers full opportunity to consult with him on his requirements during the preparation of any amended report or programme.
- (5) The Minister may within 1 month of receipt of an amended report or programme pursuant to subclause (4) notify the Joint Venturers that he requires additional detailed proposals to be submitted for the protection and management of the environment in relation to matters the subject of approved proposals.
- (6) The Joint Venturers shall within 2 months of receipt of a notice pursuant to paragraph (b) of subclause (3) or subclause (5) submit to the Minister additional detailed proposals as required.
- (7) On receipt of proposals pursuant to subclause (6) the Minister shall —
  - (a) approve of the said proposals either wholly or in part without qualification or reservation; or
  - (b) require as a condition precedent to the giving of his approval to the said proposals that the Joint Venturers make such alteration thereto or comply with such conditions in respect thereto as he thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions,

PROVIDED ALWAYS that any approval or decision of the Minister under this clause shall be in accordance with the conditions and procedures, if any, to which implementation of the project is made subject pursuant to the EP Act and such approval or decision shall if the case so requires incorporate a requirement that the Joint Venturers make such alterations to the said proposals as may be necessary to make them accord with those conditions or procedures.

- (8) Subject to the EP Act the Minister shall within two months after receipt of the proposals pursuant to subclause (7) give notice to the Joint Venturers of his decision in respect to the same.
- (9) If the decision of the Minister is as mentioned in paragraph (b) of subclause (7) the Minister shall afford the Joint Venturers full opportunity to consult with him and should they so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (10) If the decision of the Minister is as mentioned in paragraph (b) of subclause (7) and the Joint Venturers consider that the decision is unreasonable the Joint Venturers within two months after receipt of the notice of the decision may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (7) shall not be referable to arbitration hereunder.
- (11) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Joint Venturers shall implement the decision of the Minister or an award on arbitration as the case may be in accordance with the terms thereof.

**Use of local labour and professional services**

- 10. (1) The Joint Venturers shall, for the purposes of this Agreement —
  - (a) except in those cases where the Joint Venturers can demonstrate it is impracticable so to do, use labour available within the said State;
  - (b) so far as it is reasonable and economically practicable so to do, use the services of engineers, surveyors, architects and other professional consultants, project managers manufacturers suppliers and contractors resident and available within the said State;
  - (c) when preparing specifications for works materials plant equipment and supplies (which shall, except where it is impracticable so to do, use or be based upon Australian Standards or Codes) and when calling for tenders and letting contracts ensure that Western Australian manufacturers

suppliers and contractors are given fair and reasonable opportunity to tender or quote; and

- (d) give proper consideration and where possible preference to Western Australian manufacturers suppliers and contractors when letting contracts or placing orders for works materials plant equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere.
- (2) The Joint Venturers shall in every contract entered into with a third party for the supply of services labour works materials plant equipment and supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake the same obligations as are referred to in subclause (1) and shall report to the Joint Venturers concerning such third party's implementation of that condition.
- (3) The Joint Venturers shall submit a report to the Minister at monthly intervals commencing from the commencement date or such longer periods as the Minister may from time to time determine concerning their implementation of the provisions of this Clause and the performance of third parties in relation thereto pursuant to subclause (2) together with a copy of any report received by the Joint Venturers pursuant to that subclause during that month or longer period as the case may be.
- (4) The Joint Venturers shall keep the Minister informed on a regular basis during the currency of this Agreement of any services (including any elements of the project investigations design and management) and any works materials plant equipment and supplies that they may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia together with their reasons therefore and shall, as and when required by the Minister, consult with the Minister with respect thereto.

#### **Water**

- 11. (1) The Joint Venturers shall endeavour to obtain their requirements for water by utilizing subterranean water from beneath land to which the Joint Venturers have rights of ownership or occupancy or hold a miscellaneous licence under the Mining Act or other appropriate title

from time to time (hereinafter referred to as “the Joint Venturers’ land”).

- (2) To enable the Joint Venturers to investigate the availability of subterranean water beneath the Joint Venturers’ land the State shall grant to the Joint Venturers a licence under the *Rights in Water and Irrigation Act 1914* to permit the Joint Venturers to explore for water beneath the Joint Venturers’ land.
- (3) The Joint Venturers shall furnish to the State a full report on the result of their investigations as to the amount of subterranean water available from bores or wells to be constructed on the Joint Venturers’ land.
- (4) The State shall if it is satisfied with the report referred to in subclause (3) grant to the Joint Venturers under the *Rights in Water and Irrigation Act 1914* a licence to permit the Joint Venturers to construct bores on the Joint Venturers’ land and draw water up to a specified maximum annual quantity subject to such conditions as the State considers necessary to ensure good water management PROVIDED THAT the State may in consultation with the Joint Venturers, amend the licence from time to time.
- (5) The Joint Venturers shall be wholly responsible for the expenses incurred in the investigations referred to in subclause (2) and in constructing any works referred to in subclause (4) required for development of a subterranean water supply source for the Joint Venturers’ operations under this Agreement.
- (6) In the event of interest being expressed by a third party in utilisation of water from the aquifer developed under subclause (4) the State will first direct the third party to consider other options for securing a water supply. If the State is satisfied that other suitable options are not available to the third party the State, having regard for the capability of the aquifer to support the combined draw of both parties, may grant a licence to the third party under the *Rights in Water and Irrigation Act 1914* allowing the third party to draw water from the aquifer unless the Minister determines that such grant is likely to unduly prejudice the operations of the Joint Venturers under this Agreement. Before granting such a licence the State shall consult with the Joint Venturers and shall give fair and reasonable consideration to the expense and effort expended by the Joint

Venturers in investigation and development of the aquifer and to the impact of the third party's draw of water on availability of water to the Joint Venturers. In the event of granting of a licence to the third party to draw water from the aquifer the State will where it considers it appropriate require the third party to reimburse the Joint Venturers for a reasonable proportion of the expenses incurred by the Joint Venturers in investigations of the aquifer carried out under subclause (2). In the event the State requires a reduction in the quantity of water that may be drawn from the aquifer it shall reduce the amount that may be withdrawn by the third party before reducing the Joint Venturers' allowable draw.

- (7) Notwithstanding the foregoing provisions of this Clause the State may from time to time determine that the Joint Venturers shall obtain water for their operations under this Agreement from sources in lieu of or in addition to those hereinbefore provided for. The Joint Venturers shall bear the whole or such proportion of the costs involved in providing such water supply as the Minister may determine.

### **Roads**

12. (1) The Joint Venturers shall —
- (a) be responsible for the cost of the construction and maintenance of all private roads which shall be used in their operations hereunder;
  - (b) at their own cost make such provision as shall ensure that all persons and vehicles (other than those engaged upon the Joint Venturers' operations and their invitees and licencees) are excluded where required by the Joint Venturers from use of any such private roads; and
  - (c) at any place where such private roads cross any railways or public roads provide at their cost such reasonable protection as may be required by the Railways Commission or the Commissioner of Main Roads as the case may be.
- (2) In the event that for or in connection with the Joint Venturers' operations hereunder the Joint Venturers or any person engaged by the Joint Venturers uses or wishes to use a public road which is inadequate for the purpose, or any use by the Joint Venturers or any

person engaged by the Joint Venturers of any public road results in excessive damage thereto or deterioration thereof (other than fair wear and tear) the Joint Venturers shall pay to the State or the relevant local authority as the case may require the whole or an equitable part of the total cost of any upgrading required or of making good the damage or deterioration as may be reasonably required by the Commissioner of Main Roads or relevant local authority having regard to the use of such public road by others.

**Other infrastructure**

13. The Joint Venturers shall confer with the Minister and the relevant local authorities with a view —
- (a) to ensuring that appropriate planning is being made for the provision of adequate serviced land for housing the Joint Venturers' workforce; and
  - (b) to assisting in the cost of providing community, recreation, civic and social amenities where appropriate, having due regard to the size of the Joint Venturers' workforce and the scope of the Joint Venturers' operations to be carried out pursuant to this Agreement.

**Compensation for removal or destruction of natural vegetation**

14. (1) The Joint Venturers shall pay to the Executive Director of the Department of Conservation and Land Management as and when demanded from time to time compensation at the specified amount per hectare of natural vegetation on any land reserved under the Land Act removed or destroyed by or in connection with the Joint Venturers' activities or by water escaping from the areas of the Joint Venturers' operations PROVIDED THAT the Executive Director and the Joint Venturers may agree from time to time that land shall be transferred by the Company to the Executive Director in lieu of a payment under this subclause.
- (2) In subclause (1) "specified amount" means \$1150 escalated on 1 January in each year commencing with 1 January 1989 by the percentage by which the CPI last published prior to the relevant 1 January has increased over the CPI last published prior to 1 January 1988.

**Resumption for the purposes of this Agreement**

15. The State may as and for a public work under the *Public Works Act 1902*, resume any land required for the purposes of this Agreement and notwithstanding any other provisions of that Act may sell lease or otherwise dispose of that land to the joint Venturers and the provisions of subsections (2) and (7) inclusive of sections 17 and 17A of that Act shall not apply to or in respect of that land or the resumption thereof. The Joint Venturers shall pay to the State on demand the costs of and incidental to any land resumed at the request of and on behalf of the Joint Venturers.

**Assignment**

16. (1) Subject to the provisions of this Clause the joint Venturers or either of them may at any time with the consent of the Minister assign mortgage charge sublet or dispose of the whole or any part of the rights of the Joint Venturers or either of them under this Agreement (including their respective rights to or as holder of the Special Licence and the general purpose leases referred to in Clause 7) and of the obligations of the Joint Venturers under this Agreement subject however in the case of an assignment subletting or disposition to the assignee sub-lessee or disponsee (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions of this Agreement on the part of the Joint Venturers to be complied with observed or performed in regard to the matter or matters the subject of such assignment subletting or disposition.
- (2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) the Joint Venturers shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on their part contained in this Agreement PROVIDED THAT the Minister may agree to release the Joint Venturers or either of them from such liability where he considers such release will not be contrary to the interests of the State.

**Variation**

17. (1) The parties to this Agreement may from time to time by agreement in writing add to substitute for cancel or vary all or any of the

provisions of this Agreement, the Special Licence or the general purpose leases for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

- (2) The Minister shall cause any agreement made pursuant to subclause (1) in respect of any addition substitution cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.
- (3) Either House may, within 12 sitting days of that House after the agreement has been laid before it pass a resolution disallowing the agreement but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

#### **Power to extend periods**

18. Notwithstanding any provision of this Agreement the Minister may at the request of the Joint Venturers from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement or in the approved project or an approved proposal for such period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

#### **Determination of Agreement**

19. (1) In any of the following events namely if —
  - (a) the Joint Venturers, after the commissioning of the treatment plant, fail to treat pursuant to the approved project at least 3,000,000 tonnes, or such lesser tonnage as the Minister may from time to time allow, of tailings in any period of 12 consecutive months (or such extended period as the Minister may allow); or
  - (b) (i) the Joint Venturers make default which the State considers material in the due performance or observance of any of the covenants or obligations in this Agreement on the Joint Venturers' part to be performed or observed;  
or

- (ii) the Joint Venturers abandon or repudiate this Agreement or their operations under this Agreement

and such default is not remedied or such operations resumed within a period of 90 days after notice is given by the State as provided in subclause (2) or, if the default or abandonment is referred to arbitration, then within the period mentioned in subclause (3); or

- (c) the Joint Venturers or either of them go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) or, in the case of Western Australian Mint if it ceases to subsist, and unless within 3 months from the date of such liquidation or cessation the interest of the Joint Venturer is assigned to the other Joint Venturer or to an assignee approved by the Minister under Clause 16,

the State may by notice to the Joint Venturers determine this Agreement.

- (2) The notice to be given by the State in terms of subclause (1) shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the party or parties responsible therefor and shall be given to the Joint Venturers and all such assignees mortgagees chargees and disponees for the time being of the Joint Venturers' said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of Clause 16 whose name and address for service of notice has previously been notified to the State by the Joint Venturers or any such assignee mortgagee chargee or disponee.
- (3) (a) If the Joint Venturers contest an alleged default abandonment or repudiation referred to in paragraphs (b)(i) and (b)(ii) of subclause (1) the Joint Venturers shall within 60 days after notice given by the State as provided in subclause (2) refer the matter in dispute to arbitration.
- (b) If the question is decided against the Joint Venturers, the Joint Venturers shall comply with the arbitration award within a reasonable time to be fixed by that award PROVIDED THAT if the arbitrator finds that there was a *bona fide* dispute and that the Joint Venturers were not dilatory in pursuing the arbitration,

the time for compliance with the award shall not be less than 90 days from the date of such award.

- (4) If a default referred to in paragraphs (b)(i) or (b)(ii) of subclause (1) shall not have been remedied after receipt of the notice referred to in that subclause or within the time fixed by arbitration award as aforesaid, the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Joint Venturers and to make use of all plant machinery and installations thereon) and the actual costs and expenses incurred by the State in remedying or causing to be remedied such default shall be payable by the Joint Venturers to the State on demand.

**Effect of cessation or determination of Agreement**

20. (1) On the cessation or determination of this Agreement —
- (a) except as otherwise agreed by the Minister the rights of the Joint Venturers to in or under this Agreement and the rights of the Joint Venturers or of any assignee of the Joint Venturers or any mortgagee to in or under the Special Licence and, subject to paragraph (b) of this subclause, the general purpose lease for the treatment plant shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given hereunder;
  - (b) if at the cessation or determination of this Agreement all dumps within the licence areas at the commencement date shall have been removed and all rehabilitative and other conditions and obligations in relation to the licence areas shall have been performed and observed by the Joint Venturers, the general purpose lease for the treatment plant shall not then cease and determine but shall continue for its remaining unexpired term under and in accordance with the Mining Act;
  - (c) the general purpose lease for the tailings residue dam shall continue for its remaining unexpired term (subject to earlier surrender with the consent of the Minister) under and in

accordance with the Mining Act and notwithstanding the cessation or determination of this Agreement shall continue to be subject to all rehabilitative and other conditions and obligations that were applicable thereto under the Agreement and approved proposals;

- (d) the Joint Venturers shall forthwith pay to the State all moneys which may then have become payable or accrued due;
  - (e) save as aforesaid and as otherwise provided in this Agreement neither of the parties shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.
- (2) Subject to the provisions of subclause (3) upon the cessation or determination of this Agreement except as otherwise determined by the Minister all buildings erections and other improvements erected on any land then occupied by the Joint Venturers under the Special Licence and, if it then ceases and determines, the general purpose lease for the treatment plant shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Joint Venturers or any other party and freed and discharged from all mortgages and other encumbrances and the Joint Venturers shall do and execute all such deeds documents and other acts matters and things (including surrenders) as the State may reasonably require to give effect to the provisions of this subclause.
- (3) In the event of the Joint Venturers immediately prior to the cessation or determination of this Agreement or subsequently thereto desiring to remove any of their fixed or movable plant and equipment to any part thereof from any part of the land occupied by them at the date of such cessation or determination they shall give to the State notice of such desire and thereby grant to the State the right or option exercisable within 3 months thereafter to purchase in situ such fixed or movable plant and equipment at a fair valuation to be agreed between the State and the Joint Venturers or failing agreement determined by arbitration hereunder.

**Environmental protection**

21. Nothing in this Agreement shall be construed to exempt the Joint Venturers from compliance with any requirement in connection with the

protection of the environment arising out of or incidental to their activities hereunder that may be made by the State or by any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act from time to time in force.

### **Indemnity**

22. The Joint Venturers shall indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Joint Venturers pursuant to this Agreement or relating to their operations hereunder or arising out of or in connection with the construction maintenance or use by the Joint Venturers or their servants agents contractors or assignees of the Joint Venturers' works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith PROVIDED THAT subject to the provisions of any other relevant Act such indemnity shall not apply in circumstances where the State, its servants, agents or contractors are negligent in carrying out work for the Joint Venturers pursuant to this Agreement.

### **Sub-contracting**

23. The State shall ensure that without affecting the liabilities of the parties under this Agreement either party shall have the right from time to time to entrust to third parties the carrying out of any portions of the operations which it is authorised or obliged to carry out hereunder.

### **Arbitration**

24. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement the construction of this Agreement or as to the rights, duties or liabilities of a party under this Agreement or as to any matter to be agreed upon between the parties shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the *Commercial Arbitration Act 1985* and notwithstanding section 20(1) of that Act each party may be represented by a duly qualified legal practitioner or other representative.

- (2) Except where otherwise provided in this Agreement, the provisions of this Clause shall not apply to any case where the State the Minister or any other Minister in the Government of the said State is by this Agreement given either expressly or impliedly a discretionary power.
- (3) The arbitrator of any submission to arbitration hereunder is hereby empowered upon the application of either of the parties to grant in the name of the Minister any interim extension of any period or variation of any date referred to in this Agreement which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties under this Agreement and an award may in the name of the Minister grant any further extension or variation for that purpose.

#### **Notices**

25. Any notice, consent or other writing authorised 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 or by any senior officer of the Public Service of the said State acting by the direction of the Minister and forwarded by prepaid post or handed to the Joint Venturers at their respective addresses in the said State hereinbefore set forth or other addresses in the said State nominated by the Joint Venturers to the Minister from time to time for the purpose of this Clause and by the Joint Venturers if signed on their behalf by any person or persons authorised by the Joint Venturers or by their solicitors as notified to the State from time to time and forwarded by prepaid post or handed to the Minister and except in the case of personal service any such notice, consent or writing shall be deemed to have been served on the day on which it would be delivered in the ordinary course of post.

#### **Term**

26. Subject to the provisions of Clauses 19 and 20 this Agreement shall expire on the expiration or sooner determination or surrender of the Special Licence.

#### **Applicable Law**

27. This Agreement shall be interpreted according to the law for the time being in force in the State of Western Australia.

THE SCHEDULE

WESTERN AUSTRALIA

*TAILINGS TREATMENT (KALGOORLIE) AGREEMENT ACT 1988*

SPECIAL LICENCE TO REMOVE AND TREAT TAILINGS

No.

WHEREAS by the Agreement (hereinafter called "the Agreement") ratified by the *Tailings Treatment (Kalgoorlie) Agreement Act 1988* the State agreed to grant to Mulga Mines Pty. Ltd. a company incorporated in Victoria and having its principal place of business in Western Australia at 41 Dugan Street, Kalgoorlie and Western Australian Mint a body corporate established under section 7 of the *Western Australian Mint Act 1970* and trading under the business name 'Westmill' and having its principal place of business at 310 Hay Street, East Perth (hereinafter with their successors and permitted assigns called "the Joint Venturers") a licence to remove and treat tailings within the "licence areas" defined in the Agreement AND WHEREAS the Joint Venturers pursuant to clause 5(1) of the Agreement have made application for the said licence and Mulga Mines Pty. Ltd. has withdrawn its applications for renewal of the licences to remove and treat tailings referred to in that clause;

NOW THIS IS TO CERTIFY THAT the Joint Venturers are hereby licensed in accordance with the provisions of the Agreement to remove and treat tailings within the licence areas defined in the Agreement that is to say the areas formerly the subject of the late licences to remove and treat tailings referred to in recital (a) to the Agreement for the term of 10 years from the date hereof subject to the sooner determination of the said term on the determination or cessation of the Agreement and subject also to any extension of the said term granted pursuant to the Agreement and for the purposes and upon and subject to the terms covenants and conditions set out in the Agreement and the said Act and any amendments to the Agreement and the said Act from time to time and to the terms and conditions (if any) endorsed hereon and to the payment of the annual licence fee provided for in the Agreement.

**Endorsements**

(Any further terms and conditions)

DATED at Perth this            day of                            1988.

MINISTER FOR MINES



**Notes**

<sup>1</sup> This is a compilation of the *Tailings Treatment (Kalgoorlie) Agreement Act 1988*. The following table contains information about that Act and any reprint.

**Compilation table**

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Tailings Treatment (Kalgoorlie) Agreement Act 1988</i>	9 of 1988	30 Jun 1988	30 Jun 1988 (see s. 2)

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**Reprint 1: The *Tailings Treatment (Kalgoorlie) Agreement Act 1988* as at 2 Dec 2005**

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<sup>2</sup> Repealed by the *Mining Act 1978*.