

IRON ORE (HAMERSLEY RANGE) AGREEMENT AMENDMENT ACT

No. 32 of 1990

AN ACT to amend the *Iron Ore (Hamersley Range) Agreement Act 1963*.

[Assented to 9 October 1990.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Iron Ore (Hamersley Range) Agreement Amendment Act 1990*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Principal Act

3. In this Act the *Iron Ore (Hamersley Range) Agreement Act 1963** is referred to as the principal Act.

*[*Reprinted as approved 1 March 1966 and amended by Acts Nos. 48 of 1968, 39 of 1972, 93 of 1976, 26 of 1979, 39 of 1982 and 27 and 60 of 1987.]*

Section 2 amended

4. Section 2 of the principal Act is amended—

- (a) by deleting the full stop at the end of the section and substituting a semi-colon; and
- (b) by inserting at the end of the section the following definition—

“ “the Ninth Supplementary Agreement” means the agreement a copy of which is set out in the Tenth Schedule. ”.

Section 3I inserted

5. After section 3H of the principal Act the following section is inserted—

Ninth Supplementary Agreement

“ 3I. (1) The Ninth Supplementary Agreement is ratified and its implementation is authorized.

(2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Ninth Supplementary Agreement shall operate and take effect notwithstanding any other Act or law. ”.

Tenth Schedule added

6. After the Ninth Schedule to the principal Act the following schedule is added—

“

TENTH SCHEDULE

THIS AGREEMENT is made this 14th day of June 1990

BETWEEN:

THE HONOURABLE CARMEN MARY LAWRENCE, B.Psych., Ph.D., 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

HAMERSLEY IRON PTY. LIMITED a company incorporated in Victoria and having its principal office in the State of Western Australia at 191 St. George's Terrace, Perth (hereinafter called “the Company” in which term shall be included its successors and assigns) of the other part.

WHEREAS:

- (a) the State and the Company are the parties to the agreement dated the 30th day of July, 1963 which agreement was approved by and is scheduled to the Iron Ore (Hamersley Range) Agreement Act 1963;
- (b) the said agreement has been varied by the following agreements made between the parties hereto—
 - (i) an agreement dated the 27th day of October, 1964 which agreement was approved by and is scheduled to the Iron Ore (Hamersley Range) Agreement Act Amendment Act 1964;
 - (ii) an agreement dated the 8th day of October, 1968 which agreement was approved by and is scheduled to the Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968;
 - (iii) an agreement dated the 9th day of May, 1979 which agreement was approved by and is scheduled to the Iron Ore (Hamersley Range) Agreement Act Amendment Act 1979;

(iv) an agreement dated the 26th day of April, 1982 which agreement was approved by and is scheduled to the Iron Ore (Hamersley Range) Agreement Amendment Act 1982;

(v) an agreement dated the 28th day of May, 1987 which agreement was ratified by and is scheduled to the Iron Ore (Hamersley Range) Agreement Amendment Act 1987; and

(vi) an agreement dated the 27th day of October, 1987 which agreement was ratified by and is scheduled to the Iron Ore (Hamersley Range) Agreement Act (No. 2) 1987,

and as so varied is referred to in this Agreement as "the Principal Agreement";

(c) the agreement dated the 8th day of October, 1968 referred to in paragraph (ii) of recital (b) hereof has been varied by the following agreements made between the State and the Company—

(i) an agreement dated the 10th day of March, 1972 which agreement was approved by and is scheduled to the Iron Ore (Hamersley Range) Agreement Act Amendment Act 1972;

(ii) an agreement dated the 5th day of October, 1976 which agreement was approved by and is scheduled to the Iron Ore (Hamersley Range) Agreement Act Amendment Act 1976;

(iii) the agreement dated the 26th day of April, 1982 referred to in paragraph (iv) of recital (b) hereof;

(iv) the agreement dated the 28th day of May, 1987 referred to in paragraph (v) of recital (b) hereof; and

(v) the agreement dated the 27th day of October, 1987 referred to in paragraph (vi) of recital (b) hereof,

and as so varied is referred to in this Agreement as "the Paraburdoo Agreement"; and

(d) the parties wish to vary the Principal Agreement and the Paraburdoo Agreement.

NOW THIS DEED WITNESSETH—

1. Subject to the context the words and expressions used in this Agreement have the same meanings as they have in and for the purpose of the Principal Agreement and the Paraburdoo Agreement respectively.

2. 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.
3. The subsequent clauses of this Agreement shall not operate unless and until the Bill to ratify this Agreement referred to in clause 2 hereof is passed as an Act before the 30th day of June, 1990 or such later date if any as the parties hereto may agree.
4. The Principal Agreement is hereby varied as follows—

(1) Clause 1—

(a) by deleting the definitions of “direct shipping ore”, “fine ore”, “fines”, “f.o.b. revenue” and “iron ore concentrates”;

(b) by inserting, in the appropriate alphabetical positions, the following definitions—

“agreed or determined” means agreed between the Company and the Minister or, failing agreement within three months of the Minister giving notice to the Company that he requires the value of a quantity of iron ore to be agreed or determined, as determined by the Minister (following, if requested by the Company, consultation with the Company and its consultants in regard thereto) and in agreeing or determining a fair and reasonable market value of such iron ore assessed at an arm’s length basis the Company and/or the Minister as the case may be shall have regard to the prices for that type of iron ore prevailing at the time the price for such iron ore was agreed between the Company and the purchaser in relation to the type of sale and the market into which such iron ore was sold and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value;

“deemed f.o.b. point” means on ship at the Company’s wharf;

“deemed f.o.b. value” means an agreed or determined value of the iron ore at the time the iron ore becomes liable to royalty established on the basis that the iron ore was sold f.o.b. at the deemed f.o.b. point;

“fine ore” means iron ore (not being iron ore concentration products) which is nominally sized minus six millimetres;

“f.o.b. value” means—

- (i) in the case of iron ore shipped and sold by the Company, the price which is payable for the iron ore by the purchaser thereof to the Company or an associated company or, where

the Minister considers, following advice from the appropriate Government department, that the price payable in respect of the iron ore does not represent a fair and reasonable market value for that type of iron ore assessed at an arm's length basis, such amount as is agreed or determined as representing such a fair and reasonable market value, less all export duties and export taxes payable to the Commonwealth on the export of the iron ore and all costs and charges properly incurred and payable by the Company from the time the iron ore shall be placed on ship at the Company's wharf to the time the same is delivered and accepted by the purchaser including—

- (1) ocean freight;
 - (2) marine insurance;
 - (3) port and handling charges at the port of discharge;
 - (4) all costs properly incurred in delivering the iron ore from port of discharge to the smelter and evidenced by relevant invoices;
 - (5) all weighing sampling assaying inspection and representation costs;
 - (6) all shipping agency charges after loading on and departure of ship from the Company's wharf;
 - (7) all import taxes by the country of the port of discharge; and
 - (8) such other costs and charges as the Minister may in his discretion consider reasonable in respect of any shipment or sale;
- (ii) in all other cases, the deemed f.o.b. value.

For the purpose of subparagraph (i) of this definition, it is acknowledged that the consideration payable in an arm's length transaction for iron ore sold solely for testing purposes may be less than the fair and reasonable market value for that iron ore and in this circumstance where the Minister in his discretion is satisfied such consideration represents the entire consideration payable, the Minister shall be taken to be satisfied that such entire consideration represents the fair and reasonable market value;

"iron ore" includes iron ore concentration products;

"iron ore concentration products" means saleable products from iron ore which has—

- (i) been treated in the Heavy Medium Drum Plants, the Heavy Medium Cyclone Plant or the Wet High Intensity Magnetic Separation Plant of the Mount Tom Price concentration plant; or
- (ii) passed through the primary wet screens of the Mount Tom Price concentration plant with the intention that it would be treated in the said Heavy Medium Drum Plants, Heavy Medium Cyclone Plant or Wet High Intensity Magnetic Separation Plant but which was not able to be so treated in the normal course of operating practice because of malfunction in any of those plants or maintenance or repair of or operational plant surges of the feed to any of those plants.

The Minister may approve other iron ore upgrading plants of the Company for the purpose of this definition;

"lump ore" means iron ore (not being iron ore concentration products) which is nominally sized plus six millimetres minus thirty millimetres;"

- (c) in the definition of "associated company", by deleting "section 6 of the Companies Act, 1961" and substituting the following—

"section 7 of the Companies (Western Australia) Code";

- (d) in the definition of "metallised agglomerates", by deleting "iron ore concentrates" and substituting the following—

"iron ore concentration products";

- (e) in the definition of "mineral lease", by inserting after "10F" the following—

"or 10I".

- (2) Clause 9(1)(b)—

in the proviso, by deleting "concentrates" and substituting the following—

"concentration products".

(3) Clause 10(2)(j)—

by deleting paragraph (j) of clause 10(2) and substituting the following paragraph—

“(j) pay to the State royalty on all iron ore from the mineral lease (other than iron ore shipped solely for testing purposes and in respect of which no purchase price or other consideration is payable or due) as follows—

(i) on lump ore and on fine ore where such fine ore is not sold or shipped separately as such at the rate of 7.5% of the f.o.b. value;

(ii) on fine ore sold or shipped separately as such at the rate of 3.75% of the f.o.b. value;

(iii) on iron ore concentration products at the rate of 3.25% of the f.o.b. value;

(iv) on all other iron ore of whatever kind at the rate of 7.5% of the f.o.b. value.

Where iron ore concentration products are produced from an admixture of iron ore from the mineral lease and other iron ore a portion (and a portion only) of the iron ore concentration products so produced being equal to the proportion that the amount of iron in the iron ore from the mineral lease used in the production of those iron ore concentration products bears to the total amount of iron in the iron ore so used shall be deemed to be produced from iron ore from the mineral lease;”.

(4) Clause 10(2)(k)—

(a) by deleting “or iron ore concentrates the subject of royalty hereunder and shipped sold” and substituting the following—

“(and in respect of iron ore concentration products specifying whether they fall within paragraph (i) or (ii) of the definition of iron ore concentration products) the subject of royalty hereunder and shipped sold transferred or otherwise disposed of”;

(b) by deleting “of iron ore concentrates produced or iron ore used and in respect of all iron ore shipped or sold” and substituting the following—

“thereof or if the f.o.b. value is not then finally calculated, agreed or determined”;

(c) by inserting after "of such iron ore" the following—

"or on the basis of estimates as agreed or determined";

(d) by deleting "f.o.b. revenue realised in respect of the shipments shall have been ascertained" and substituting the following—

"f.o.b. value shall have been finally calculated, agreed or determined".

(5) Clause 10(2)(n)—

(a) by inserting after "the Company" the following—

"including contracts";

(b) deleting "f.o.b. revenue payable in respect of any shipment of iron ore hereunder the Company will take reasonable steps" and substituting the following—

"f.o.b. value in respect of any shipment sale transfer or other disposal or use or production of iron ore hereunder the Company will take reasonable steps (i) to provide the Minister with current prices for iron ore and other details and information that may be required by the Minister for the purpose of agreeing or determining the f.o.b. value and (ii)";

(c) by deleting "hereunder; and" and substituting the following—

"hereunder."

(6) By deleting clause 10(2)(o).

(7) By inserting after clause 10H the following clause—

Brockman No. 2 Detritals Deposit

"10I. (1) Notwithstanding the provisions of the Mining Act or the Mining Act 1978 the Company may on or before the 1st day of October, 1990 or such later date as the parties may agree apply to the Minister for Mines for inclusion in the mineral lease of such of the land coloured red on the plan marked 'D' (initialled by or on behalf of the parties hereto for the purpose of identification) as the Company at the time of such application holds under exploration licences granted under the Mining Act 1978 and the Minister for Mines shall, subject to the Company surrendering the lands so applied for out of the exploration licences include the land so applied for (hereinafter called "the Brockman No. 2 Detritals

Deposit") in the mineral lease by endorsement on the mineral lease subject to such of the conditions of the surrendered exploration licences as the Minister for Mines determines but otherwise subject to the same terms covenants and conditions as apply to the mineral lease (with such apportionment of rents as is necessary) and notwithstanding that the survey of the Brockman No. 2 Detritals Deposit has not been completed but subject to correction to accord with the survey when completed at the Company's expense.

- (2) On or before the 1st day of October, 1990 (or thereafter within such extended time as the Minister may allow as hereinafter provided) the Company shall submit to the Minister to the fullest extent reasonably practicable its detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister) with respect to the mining of iron ore from the Brockman No. 2 Detritals Deposit and the transportation of iron ore mined to the Company's Paraburdoo-Dampier railway which proposals shall make provision for the necessary workforce and associated population required to enable the Company to mine and recover iron ore from the Brockman No. 2 Detritals Deposit and shall include the location, area, layout, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely
- (a) the mining and recovery of iron ore including mining crushing screening handling transport and storage of iron ore and plant facilities;
 - (b) roads;
 - (c) housing and accommodation for the persons engaged in the development and/or mining of the Brockman No. 2 Detritals Deposit and associated activities including the provision of utilities, services and associated facilities;
 - (d) water supply;
 - (e) power supply;
 - (f) iron ore transportation;
 - (g) airstrip and other airport facilities and services;
 - (h) any other works, services or facilities desired by the Company;

- (i) use of local labour professional services manufacturers suppliers contractors and materials and measures to be taken with respect to the engagement and training of employees by the Company its agents and contractors;
 - (j) any leases licences or other tenures of land required from the State; and
 - (k) an environmental management programme as to measures to be taken, in respect of the Company's activities at the Brockman No. 2 Detritals Deposit, for rehabilitation and the protection and management of the environment.
- (3) The proposals pursuant to subclause (2) of this clause may with the approval of the Minister or if so required by him be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (k) of that subclause.
- (4) On receipt of the said proposals the Minister shall subject to the Environmental Protection Act 1986—
- (a) approve of the said proposals either wholly or in part without qualification or reservation; or
 - (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in subclause (2) of this clause not covered by the said proposals; or
 - (c) require as a condition precedent to the giving of his approval to the said proposals that the Company makes such alteration thereto or complies with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use of other parties as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions

PROVIDED ALWAYS that where implementation of any proposals hereunder has been approved pursuant to the Environmental Protection Act 1986 subject to conditions or procedures, any approval or decision of the Minister under this clause shall if the case so requires incorporate a requirement that the Company make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

- (5) The Minister shall within two months after receipt of the said proposals or, if applicable, within two months of service on him of an authority under section 45(7) of the Environmental Protection Act 1986 give notice to the Company of his decision in respect of the same.
- (6) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (4) of this clause the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (7) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (4) of this clause and the Company considers that the decision is unreasonable the Company within two months after receipt of the notice mentioned in subclause (5) of this clause 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 (4) of this clause shall not be referable to arbitration hereunder.
- (8) The Company may withdraw its proposals submitted pursuant to subclause (2) of this clause at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that it shall not be proceeding with the proposed mining of the Brockman No. 2 Detritals Deposit.
- (9) The Company shall implement the proposals as approved by the Minister or an award made on arbitration (except where the proposals are withdrawn) as the case may be in accordance with the terms thereof and in such implementation shall comply with all requirements in connection with the protection of the environment 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.
- (10) (a) If the Company at any time during the continuance of this Agreement desires to significantly modify expand or otherwise vary its activities at the Brockman No. 2 Detritals Deposit beyond those specified in any proposals approved or determined under this clause it shall give notice of such desire to the Minister and if required by

the Minister within two 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 of the other matters mentioned in paragraphs (a) to (k) of subclause (2) of this clause as the Minister may require. The provisions of subclauses (3) to (8) of this clause shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this subclause. The Company shall implement the proposals as approved by the Minister or an award made on arbitration as the case may be in accordance with the terms thereof and the provisions of subclause (9) of this clause.

- (b) If the Minister does not require the Company to submit proposals under paragraph (a) of this subclause the Company may, subject to compliance with all applicable laws, proceed with the modification expansion or variation of its activities the subject of the notice to the Minister under that paragraph.
- (11) (a) The Company shall, in respect of the matters referred to in paragraph (k) of subclause (2) of this clause and which are the subject of proposals approved or determined under this clause carry out a continuous programme including monitoring to ascertain the effectiveness of the measures it is taking pursuant to such proposals for rehabilitation and the protection and management of the environment and shall as and when reasonably required by the Minister from time to time (but not more frequently than once in every twelve months) submit to the Minister a detailed report thereon.
- (b) Whenever as a result of its monitoring under paragraph (a) of this subclause or otherwise information becomes available to the Company which in order to more effectively rehabilitate, protect or manage the environment may necessitate or could require any changes or additions to any proposals approved or determined under this clause or require matters not addressed in any such proposals to be addressed the Company shall forthwith notify the Minister thereof and with such notification shall submit a detailed report thereon.
- (c) The Minister may within two (2) months of the receipt of a detailed report pursuant to paragraphs (a) or (b) of this subclause notify the Company that he requires

additional detailed proposals to be submitted in respect of all or any of the matters the subject of the report and such other matters as the Minister may require.

- (d) The Company shall within two months of the receipt of a notice given pursuant to paragraph (c) of this subclause submit to the Minister additional detailed proposals as required and the provisions of subclauses (4), (5), (6), (7), (9) and (10) of this clause and this subclause shall *mutatis mutandis* apply in respect of such proposals.
- (12) The Company shall, in respect of its activities at the Brockman No. 2 Detritals Deposit in lieu of the provisions of clause 10(2)(i) of this Agreement—
- (a) except in those cases where the Company can demonstrate it is impracticable so to do, use labour available within Western Australia or if such labour is not available then, except as aforesaid, use labour otherwise available within Australia;
 - (b) as far as it is reasonable and economically practicable so to do, use the services of engineers surveyors architects and other professional consultants experts and specialists, project managers, manufacturers, suppliers and contractors resident and available within Western Australia or if such services are not available within Western Australia then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;
 - (c) during design and when preparing specifications calling for tenders and letting contracts for works materials plant equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that Western Australian and Australian suppliers manufacturers and contractors are given fair and reasonable opportunity to tender or quote;
 - (d) give proper consideration and where possible preference to Western Australian suppliers manufacturers 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 or, subject to the foregoing, give that consideration and where possible preference to other Australian suppliers manufacturers and contractors;

- (e) if notwithstanding the foregoing provisions of this subclause a contract is to be let or an order is to be placed with other than a Western Australian or Australian supplier, manufacturer or contractor, give proper consideration and where possible preference to tenders arrangements or proposals that include Australian participation;
 - (f) except as otherwise agreed by the Minister in every contract entered into with a third party for the supply of services labour works materials plant equipment and supplies require as a condition thereof that such third party shall undertake the same obligations as are referred to in paragraphs (a) — (e) of this subclause and shall report to the Company concerning such third party's implementation of that condition;
 - (g) submit a report to the Minister at monthly intervals or such longer period as the Minister determines commencing from the 1st day of October, 1990 concerning its implementation of the provisions of this subclause together with a copy of any report received by the Company pursuant to paragraph (f) of this subclause during that month or longer period as the case may be PROVIDED THAT the Minister may agree that any such reports need not be provided in respect of contracts of such kind or value as the Minister may from time to time determine; and
 - (h) keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as required by the Minister 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 it may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia together with its reasons therefor and shall as and when required by the Minister consult with the Minister with respect thereto.
- (13) The Company shall be responsible for the provision at no cost to the State in Tom Price of suitable accommodation if required for its employees and the dependants of its employees and for other persons (and dependants of those persons) engaged in the development and/or mining of the Brockman No. 2 Detritals Deposit and associated activities.

(14) The Company shall except as otherwise agreed by the Minister pay to the State or the appropriate authority the capital cost of establishing and providing additional services and facilities and associated equipment including sewerage and water supply schemes, main drains, education, police and hospital services in Tom Price to the extent to which those additional works and services are made necessary by reason of the persons (and their dependants) engaged in the development and/or mining of the Brockman No. 2 Detritals Deposit and associated activities residing therein or by reason of the Company's activities in relation to the Brockman No. 2 Detritals Deposit or such proportion of any such cost as may be agreed by the Minister taking into account the permanent or temporary nature of the services or facilities. The additional services, works and associated equipment referred to in this subclause shall be provided by the State (or the State shall cause the same to be provided) to a standard normally adopted by the State in providing new services works and associated equipment in similar cases in comparable towns.

(15) The Company shall confer with the Minister and the relevant local authority with a view to assisting in the cost of providing at Tom Price appropriate community recreation, civic, social and commercial amenities if required as a result of the development and/or mining of the Brockman No. 2 Detritals Deposit and associated activities.”

5. The Paraburdoo Agreement is hereby varied as follows—

(1) Clause 6(2)(b)—

in the proviso, by deleting “concentrates” in both cases where it occurs and substituting in each place the following—

“concentration products”.

(2) Clause 7(4)—

(a) by deleting “, (n) and (o)” and substituting the following—

“and (n)”;

(b) in paragraph (f), by deleting “therefrom:” and substituting the following—

“therefrom.”;

(c) by deleting paragraph (g).

IN WITNESS WHEREOF these presents have been executed the day and the year first hereinbefore written.

SIGNED by the said
THE HONOURABLE CARMEN
MARY LAWRENCE, B.Psych.,
Ph.D., M.L.A., in the
presence of:

} CARMEN LAWRENCE

J. M BERINSON
MINISTER FOR RESOURCES

THE COMMON SEAL of
HAMERSLEY IRON PTY.
LIMITED was hereunto
affixed by authority
of the Directors in the
presence of:

} [C.S.]

Director M. A. O'LEARY

Secretary G. BABON

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