WESTERN AUSTRALIA

IRON ORE (HAMERSLEY RANGE) AGREEMENT AMENDMENT ACT

No. 27 of 1987

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

[*Assented to 29 June 1987*]

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

Short title

1. This Act may be cited as the *Iron Ore (Hamersley Range) Agreement Amendment Act 1987*.

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, and 39 of 1982.*]

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 semicolon; and

(b) by inserting at the end of the section the following definition—

" "the Seventh Supplementary Agreement" means the agreement of which a copy is set out in the Eighth Schedule to this Act. ".

Section 3G inserted

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

Seventh Supplementary Agreement

" 3G. (1) The Seventh Supplementary Agreement is ratified and its implementation is authorized.

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

Eighth Schedule added

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

"

EIGHTH SCHEDULE

THIS AGREEMENT is made this 28th day of May 1987

BETWEEN:

THE HONOURABLE BRIAN THOMAS BURKE, 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; and

(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,

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; and

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

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

(d) the Principal Agreement and the Paraburdoo Agreement contain provisions with regard to the secondary and further processing of iron ore intended, where feasible, to further the economic development of the State; and

(e) the parties, consistent with the above intention but in the light of changed world circumstances with respect to the secondary and further processing of iron ore, have agreed to vary certain of the provisions of the Principal Agreement and the Paraburdoo Agreement in relation thereto and to broaden the scope for substitution of alternative investments.

NOW THIS AGREEMENT 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—

(a) the Bill to ratify this Agreement referred to in clause 2 hereof; and

(b) a Bill to ratify the Agreement referred to in the Schedule hereto

are passed as Acts before the 30th day of June, 1987 or such later date if any as the parties may agree.

4. The Principal Agreement is hereby varied as follows—

(1) Clause 1—

by deleting the paragraph commencing "the phases in which it is contemplated that this Agreement will operate".

(2) By deleting clauses 13, 14, 15, 16 and 17.

(3) Clause 20B—

by deleting, in both cases where it occurs, the following—

", metallised agglomerates, pig iron, foundry iron or steel".

(4) Clause 20C subclause (1)—

by deleting the following—

(a) "or the production or transport or export of metallised agglomerates or steel"; and

(b) "or metallised agglomerates or steel".

(5) Clause 23—

by deleting the following—

"inability to profitably sell metallised agglomerates".

(6) Clause 25—

(a) by inserting after the clause designation 25 the subclause designation (1);

(b) by deleting "Arbitration Act, 1895" and substituting the following—

"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";

(c) by inserting the following subclause—

"(2) The arbitrator determining any submission to arbitration under this Agreement is hereby empowered upon application by either party to grant any interim extension of time or date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of either or both of the parties hereunder and an award in favour of the Company may in the name of the Minister grant any further extension of time for that purpose.".

5. The Paraburdoo Agreement is hereby varied as follows—

(1) Clause 1—

(a) by inserting before the definition of "mineral lease" the following definition—

" "alternative investments" means investments in the said State which are within the ability and competence of the Company or of corporations which are related to the Company for the purposes of the Companies (Western Australia) Code and which are approved by the Minister from time to time as alternative investments for the purpose of this Agreement (which approval shall not be unreasonably withheld in the case of an investment which would add value or facilitate the addition of value, beyond mining, to the mineral resources of the said State);";

(b) by inserting after the definition of "townsite", the following—

"References in this Agreement to provisions of the Principal Agreement are to those provisions as amended from time to time;".

(2) Clause 8—

by deleting sub-paragraph (i) of paragraph (c) and substituting the following—

"(i) sub-paragraph (iii) were deleted;".

(3) By deleting clauses 9 and 10 and substituting the following clauses—

"9. (1) The Company shall subject to sub-clause (5) of this clause and to clause 10 of this Agreement—

(a) on or before the 1st day of October, 1988 submit to the Minister detailed proposals for the establishment within the said State of a plant for the production of metallised agglomerates containing provision that such plant will by the 1st day of October, 1990 have the capacity to produce not less than one million (1,000,000) tons of metallised agglomerates annually; and

(b) on or before the 1st day of October, 1991 submit to the Minister detailed proposals for the expansion of the productive capacity of such plant to not less than two million (2,000,000) tons of metallised agglomerates annually by the 1st day of October, 1993.

(2) The provisions of clause 23 of the Principal Agreement as applying to this Agreement shall not apply to sub-clause (1) of this clause.

(3) The Minister shall within two months of the receipt of such proposals give to the Company notice either of his approval of the proposals (which approval shall not be unreasonably withheld) or of any objections raised or alterations desired thereto and in the latter case shall afford to the Company an opportunity to consult with and to submit new proposals to the Minister. If within two (2) months of receipt of such notice agreement is not reached as to the proposals, the Company may within a further period of two (2) months elect by notice to the State to refer to arbitration as hereinafter provided any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Company the Minister shall be deemed to have then approved the proposals of the Company.

(4) The Company shall (except to the extent otherwise agreed by the Minister) within the respective times specified in sub-clause (1) of this clause complete the construction of plant in accordance with the Company's proposals as finally approved or determined under this clause.

(5) (a) The Company may at any time before the time for submission of proposals pursuant to sub-clause (1) of this clause apply to the Minister for approval that the carrying out by the Company of alternative investments be accepted by the State in lieu of all or some part of the Company's obligations in respect of metallised agglomerates pursuant to this clause.

(b) Where the Minister approves a request under paragraph (a) of this sub-clause the Company shall implement the investments in accordance with that approval and upon completion thereof, or earlier with the agreement of the Minister, the provisions of sub-clause (1) of this clause or that part of those provisions which pursuant to the said approval are to be satisfied by those investments shall cease to apply.

10. (1) If the Company at any time considers that the establishment of plant for the production of metallised agglomerates or, as the case may be, the expansion of the productive capacity of such plant as required to be proposed or as required pursuant to any proposals finally approved or determined under clause 9 hereof (hereinafter called "the metallising

operation") is for any technical, economic or other reason not feasible, whether in whole or in part, then the Company may submit to the Minister in detail the reasons why it considers the metallising operation is not feasible, together with supporting data and such other relevant information as the Minister may require.

(2) Within two (2) months after receipt of a submission from the Company under sub-clause (1) of this clause the Minister shall notify the Company whether or not he agrees with its submission.

(3) (a) If the Minister notifies the Company that he does not agree with its submission then at the request of the Company made within two (2) months after receipt by the Company of the notification from the Minister, the Minister will refer the matter to arbitration pursuant to clause 25 of the Principal Agreement as applying to this Agreement to decide whether or not the metallising operation is feasible.

(b) If the Company does not request a reference to arbitration under paragraph (a) of this sub-clause or if on a reference to arbitration it is decided that the metallising operation is feasible the Company shall comply with its obligations under clause 9 hereof provided that the period from the time that the Company made its submission under sub-clause (1) of this clause to the time when the Minister notified the Company that he did not agree with its submission or the time when it was decided by arbitration that the metallising operation was feasible as the case may be shall be added to the respective times by which the Company is required to comply with those obligations.

(4) If the Minister notifies the Company that he agrees with its submission or if on reference to arbitration it is decided that all or part of the metallising operation is not feasible, then—

(a) the Company shall not have any obligation or further obligation to submit proposals in respect of so much of the metallising operation as has been found not to be feasible or to carry out the relevant part of any proposals in respect thereof that may have been finally approved or determined pursuant to clause 9 hereof; and

(b) the Company shall thenceforth be obliged to identify and investigate potential alternative investments which would (either alone or in the aggregate with other alternative investments) represent economic development within the said State approximately equivalent to the metallising operation (or relevant part thereof).

(5) In carrying out its obligations under sub-clause (4) (b) of this clause the Company shall take account of and investigate, to the extent reasonable under the circumstances having regard, inter alia, to the expertise of the Company and related corporations, any potential alternative investments which are prima facie feasible and which are formally referred to the Company by the Minister from time to time.

(6) The Company shall submit to the Minister in detail its programme for the identification and investigation of potential alternative investments pursuant to paragraph (b) of sub-clause (4) and sub-clause (5) of this clause not later than two (2) months after receiving the notice from the Minister or the decision on arbitration as the case may be referred to in sub-clause (4) of this clause which programme shall specify the

potential alternative investments it is investigating and any potential alternative investments it intends to investigate and shall set forth the Company's proposed timetable for its investigations of those investments and the feasibility thereof.

(7) (a) Within two (2) months after receipt of a programme from the Company under sub-clause (6) of this clause the Minister shall notify the Company of any investments referred to in the programme which he would be prepared to approve as alternative investments and forthwith after such a notice the Company and the Minister shall meet to agree upon a programme (including timing) for studies by the Company into the feasibility of those investments.

(b) The Company shall duly investigate the feasibility of any potential alternative investments referred to in paragraph (a) of this sub-clause and report to the Minister thereon in accordance with the programme agreed pursuant thereto or determined by arbitration hereunder.

(c) Where any such potential alternative investment is accepted by the Minister as an alternative investment and agreed by the Company and the Minister or found on arbitration to be feasible the Company and the Minister shall forthwith meet to agree on a date by which Company shall submit detailed proposals for that alternative investment.

(d) The Company shall report to the Minister on its progress in performing its obligations under paragraphs (b) and (c) of this sub-clause at such intervals as the Minister may require but not more frequently, in respect of any such matter, than once in every three (3) months for summary reports and once in every twelve (12) months for detailed written reports.

(8) (a) The Company shall submit its detailed proposals for any alternative investment referred to in sub-clause (7) (c) of this clause not later than the date agreed pursuant to that sub-clause.

(b) The provisions of sub-clause (3) of clause 9 hereof shall apply mutatis mutandis to the approval or determination of proposals made under this sub-clause. The Company shall implement proposals so approved or determined in accordance with the terms thereof.

(9) (a) The obligations of the Company under sub-clause (4) (b) of this clause shall continue until the parties agree or it is found on arbitration that alternative investments presenting economic development within the said State approximately equivalent to the metallising operation (or relevant part thereof) as provided for in that sub-clause have become the subject of proposals approved or determined in accordance with sub-clause (8) of this clause.

(b) So long as the Company has continuing obligations under sub-clause (4)(b) of this clause the Company shall as and when it identifies any potential alternative investment forthwith submit to the Minister a programme for the investigation of that investment and the feasibility thereof by the Company including its proposed timetable for the investigations.

(c) The provisions of sub-clauses (7) and (8) of this clause shall mutatis mutandis apply to a programme submitted under paragraph (b) of this sub-clause as if it were a programme under sub-clause (6) of this clause.

(10) The Company may invoke the foregoing provisions of this clause at any time and from time to time in respect of all or any of its obligations arising under or pursuant to clause 9 hereof and the references to the metallising operation in those provisions shall as the case may require be read and construed as referring to the one or more of those obligations in respect of which those provisions are invoked by the Company.".

(4) Clause 11—

(a) sub-clause (1)—

(i) by deleting "20B, 20C, 21, 23, 24, 25," and substituting the following—

'21, 24,";

(ii) by deleting "subclauses (3) and (4)" and substituting the following—

"sub-clause (3)";

(b) by inserting after sub-clause (2) the following sub-clauses—

"(2a) The provisions of clauses 20B and 20C of the Principal Agreement shall apply to and be deemed incorporated in this Agreement—

(a) with respect to clause 20B, as if the passage "or metallised agglomerates, or to implement alternative investments," were inserted after "iron ore pellets" in both cases where it occurs; and

(b) with respect to clause 20C, as if the passage "or the production or transport or export of metallised agglomerates or the product of any production facility required to be established pursuant to this Agreement" were inserted after "pellets" where it first occurs and the passage "or metallised agglomerates or the product of any production facility required to be established pursuant to this Agreement" were inserted after "pellets" where it secondly occurs.

(2b) Subject to sub-clause (2) of clause 9 of this Agreement the provisions of clause 23 of the Principal Agreement shall apply to and be deemed incorporated in this Agreement as if the passage "inability to profitably sell metallised agglomerates or the product of any production facility required to be established pursuant to this Agreement" were inserted after "ore".

(2c) The provisions of clause 25 of the Principal Agreement shall apply to and be deemed incorporated in this Agreement with the following variations—

(a) sub-clause (1)—

by deleting "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" and substituting the following—

"Commercial Arbitration Act 1985 Provided That—

(a) notwithstanding sections 6 and 7 of that Act if the dispute or difference relates to—

(i) the feasibility of the metallising operation or a part thereof or any alternative investment;

(ii) a failure by the Minister to approve an alternative investment in a case where he is required not to withhold unreasonably such approval; or

(iii) sub-clause (9) (a) of clause 10 hereof,

the matter, unless the parties agree to the appointment of a specific single arbitrator, shall be referred to and settled by arbitration under that Act by a tribunal of three (3) arbitrators appointed by the Minister, of which tribunal one member shall be a Judge of the Supreme Court of Western Australia, a Commissioner appointed pursuant to section 49 of the Supreme Court Act 1935 or a Queen's Counsel and the other members shall have appropriate technical or economic qualifications; and

(b) notwithstanding section 20 (1) of that Act each party may be represented by a duly qualified legal practitioner or other representative";

(b) sub-clause (2)—

by inserting after "arbitrator" the following—

"or arbitrators as the case may be"; and

(c) by inserting after sub-clause (2) the following sub-clause—

"(3) In deciding issues of economic feasibility the arbitrator or arbitrators as the case may be shall have regard to any submissions made by the Minister and by the Company and also (inter alia) to the amount of capital required for the investment, the availability of that capital at that time on reasonable terms and conditions, the likelihood of the investment being able to generate sufficient cash flow for a sufficient period to justify the same having regard to the amount and rate of return on total capital that would be involved in or in connection with the investment and the weighted average cost of capital to the Company.".

(5) Clause 12—

(a) in paragraph (a), by deleting "8A,";

(b) in paragraph (b)—

(i) by deleting "clause 9(3) hereof" where it occurs in sub-paragraphs (i) and (ii) and substituting in each place the following—

"clause 9(4) hereof";

(ii) by deleting sub-paragraph (iii); and

(c) in paragraph (c), by deleting "or of its covenants or obligations under clause 13 of the Principal Agreement if and while amended by clause 14 of this Agreement".

(6) By deleting clauses 13 and 14.

THE SCHEDULE

The Agreement of even date with this Agreement between THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities and MOUNT BRUCE MINING PTY. LIMITED.

IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto on the date first hereinbefore mentioned.

SIGNED by the said THE HONOURABLE BRIAN THOMAS BURKE, M.L.A. in the presence of: BRIAN BURKE

D. PARKER
MINISTER FOR MINERALS AND ENERGY

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

Director T. BARLOW

Secretary G. B. BABON

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