

## IRON ORE (CLEVELAND- CLIFFS) AGREEMENT.

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No. 35 of 1970.

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AN ACT to amend the Iron Ore (Cleveland-Cliffs) Agreement Act, 1964, to repeal the Iron Ore (Cleveland-Cliffs) Agreement Act Amendment Act, 1969, and for other purposes.

[Assented to 27th May, 1970.]

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

1. (1) This Act may be cited as the *Iron Ore (Cleveland-Cliffs) Agreement Act Amendment Act, 1970.*

Short title  
and citation.

(2) In this Act the Iron Ore (Cleveland-Cliffs) Agreement Act, 1964, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Iron Ore (Cleveland-Cliffs) Agreement Act, 1964-1970.

S. 2A added.

2. The principal Act is amended by adding after section 2 a section as follows—

Repeal of  
Act No. 79  
of 1969, and  
Act and  
variation  
agreement  
declared  
inoperative.

2A. (1) The Iron Ore (Cleveland-Cliffs) Agreement Act Amendment Act, 1969, is hereby repealed and shall be deemed never to have come into operation.

(2) The variation agreement set forth in that Act is hereby declared never to have had any force or effect. .

Amendment  
to s. 2.  
(Interpreta-  
tion.)

3. Section 2 of the principal Act is amended by adding after the word "Agreement" being the last word in the interpretation, "the Company" a passage as follows—

“;

“the variation agreement” means the agreement a copy of which is set forth in the Second Schedule to this Act”.

S. 3A added.

4. The principal Act is amended by adding after section 3 a section as follows—

Variation  
agreement  
approved.

3A. The variation agreement is approved on and from the thirty-first day of December, nineteen hundred and seventy, or on and from the sixtieth day after the commencement date referred to in subclause (3) of clause 7 of the agreement, whichever day is the earlier. .

S. 5 added.

5. The principal Act is amended by adding after section 4, the following section—

Construction.

5. Nothing contained in this Act, including the variation agreement, shall be construed so

as to prejudice or affect any right of the Dampier Mining Company Limited under—

- (a) the Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act, 1964 or any agreement set forth in a Schedule thereto; or
- (b) the Iron Ore (Dampier Mining Company Limited) Agreement Act, 1969 or any agreement set forth in a Schedule thereto. .

6. The heading "Schedule" to the principal Act is deleted and the following headings are substituted— Heading amended.

THE SCHEDULES.

FIRST SCHEDULE. .

7. The principal Act is amended by adding at the end thereof, the following Schedule— Second Schedule added.

S. 2.

SECOND SCHEDULE.

AN AGREEMENT made the 12th day of May One thousand nine hundred and seventy BETWEEN THE HONOURABLE SIR DAVID BRAND, K.C.M.G., M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the Government of the said State and instrumentalities thereof from time to time (hereinafter called "the State") of the one part and CLIFFS INTERNATIONAL INC. a limited company incorporated under the laws of the State of Ohio one of the United States of America and registered in the State of Western Australia under the provisions of the Companies Act, 1961, of the said State and having its registered office situate at 84 Saint George's Terrace Perth in the said State (hereinafter called "the Company") of the other part.

WHEREAS:

- (a) By an agreement under seal dated the 18th day of November On thousand nine hundred and sixty-four made between the State of the one part and Basic Materials Pty. Limited (hereinafter called "Basic") of the other part (which agreement was approved by and is scheduled to the Iron Ore (Cleveland-Cliffs) Agreement Act 1964 and is hereinafter referred to as "the Agreement" Basic acquired upon the terms and conditions set forth in the agreement certain rights interests and benefits and assumed certain obligations with respect to the exploration for and development of specified iron ore deposits and the mining transportation processing pelletising and shipment of iron ore therefrom.
- (b) By virtue of various agreements under seal the Company is now entitled to all the right title interest claim and demand whatsoever of Basic in and under the Agreement and by virtue of deed of covenant with the State has assumed the obligations of Basic thereunder
- (c) The State and The Broken Hill Proprietary Company Limited (which company is hereinafter referred to as "Broken Hill") have entered into an agreement (which agreement was approved by and is scheduled to the Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act, 1964, and is hereinafter referred to as "the Broken Hill Agreement") for the mining by that company of iron ore in specified areas and for the establishment by that company of certain port and railway facilities to be used for the transportation of such iron ore and for the construction and establishment

within the said State of plant for the secondary processing of iron ore and with regard to other matters

- (d) By assignment and deed of covenant made and given pursuant to Clause 27 of the Broken Hill Agreement the rights and obligations of Broken Hill arising under that agreement are now the rights and obligations of Dampier Mining Company Limited (hereinafter referred to as "Dampier").
- (e) The areas covered by the Agreement and the Broken Hill Agreement are adjacent and the Company and Dampier have now entered into an agreement (hereinafter referred to as "the Companies Agreement") which provides for various consultation and co-operation between them and subject to any necessary consents of the State for—
  - (i) Dampier to make available for use by the Company iron ore from the areas covered by the Broken Hill Agreement of an amount of up to 150,000,000 tons or such greater amount that the terms of the Companies Agreement may oblige it to supply;
  - (ii) The company to make available for purchase by Dampier in accordance with the Companies Agreement any iron ore that Dampier may require up to an amount of 2,000,000 tons per annum or such amount as the Companies may agree;
  - (iii) a right to Dampier to purchase part of the railway facilities and/or part or whole of the port facilities to be provided by that Company pursuant to its obligations under the Agreement; and
  - (iv) possible additional pelletising facilities at Cape Lambert to be constructed by Dampier or the Company or jointly by Dampier and the Company.
- (f) The State the Company and Dampier have now agreed that Cape Lambert is a more desirable port site for the initial development of the deposits covered by the Agreement and the Broken Hill Agreement than those considered earlier and the Company has already submitted proposals for the development of certain facilities at Cape Lambert.
- (g) In view of the Companies Agreement, it is desirable that there should be some addition to the various rights and obligations of the parties created by the Agreement and by the Broken Hill Agreement and that certain additional provisions be in-

cluded to facilitate the carrying out of the Agreement by the joint venture proposed to be established by the Company and referred to in the Companies Agreement.

NOW THIS AGREEMENT WITNESSETH:

1. This agreement except for this clause shall have no force or effect and shall not be binding upon the parties until it is approved by an Act of the Parliament of Western Australia.

2. If an Act to ratify this agreement is passed by the Parliament of the said State the provisions of this agreement shall take effect as though the same had been enacted by the ratifying Act and notwithstanding any Act or law to the contrary the State and the Minister shall for the purpose of implementing this agreement have all the powers discretions and authorities conferred on them respectively by the Agreement for the purpose of implementing that agreement.

3. The Agreement is added to and varied as hereinafter provided and the Agreement shall be read and construed accordingly.

4. The Agreement is amended as follows:—

(1) Clause 1 is amended by—

(a) adding after the definition "Company's wharf" a definition "Dampier" as follows—

"means Dampier Mining Company Limited and includes "the Company" mentioned in the agreement approved by the Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act, 1964, and any successor or assignee of that Company permitted under that Agreement";

(b) by deleting the words "Cape Preston" in the definitions of "harbour" and "plant site" and substituting therefor the words "Cape Lambert";

(c) by adding to the definition "mineral lease" after the word "includes" in the second line, the words—

"the sublease of any area of a mineral lease sublet to the Company by Dampier and" and by substituting for the word "thereof" in the last line, the words "of such lease or sublease";

- (d) by adding to the definition "mining areas" the words—

"and also any area within the mineral lease and also the areas the subject of Temporary Reserves 4269H to 4273H (both inclusive) reserved under section 276 of the Mining Act";

- (e) by adding after the definition "said State" a definition "secondary processing" as follows—

"means concentration or other beneficiation of iron ore other than by crushing or screening and includes thermal electrostatic magnetic and gravity processing and agglomeration pelletisation or comparable changes in the physical character of iron ore."

- (2) Clause 5 is amended by deleting subclause (5).

- (3) Clause 8 is amended by—

- (a) adding to paragraph (a) of subclause (1) as follows—

- (i) in the fifth line after the words "mining areas" the following:

"(other than the mining areas included in the sublease referred to in the definition of "mineral lease")",  
and

- (ii) by changing the word "thereof" in the thirteenth line to the following:

"of the lands so applied for (notwithstanding the survey in respect thereof has not been completed)".

- (b) inserting before the existing subparagraph (ii) of paragraph (b) of subclause (1) a new subparagraph as follows—

"(ii) on application by the Company include in the area of any lease to be granted to the Company at Cape Lambert (for the purposes hereof) adequate provision for—

- (a) the development of such facilities at Cape Lambert as Dampier may require in connection with the production transportation processing and shipment of iron ore produced pursuant to the agreement approved by the Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act, 1964; and

- (b) the expansion of any proposed iron ore pellet plant facilities to meet any requirements for increased production therefrom as may be required for Dampier; and "

and renumbering the existing subparagraph (ii) accordingly.

- (c) adding to paragraph (b) of subclause (1) in the last line after the word "pellets" the words—

"PROVIDED FURTHER that additional rental will be payable pursuant to this paragraph in respect of iron ore sold to Dampier as if such iron ore were produced under a mineral lease granted pursuant to the agreement approved by the Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act, 1964."

- (d) adding two new paragraphs to subclause (1) thereof as follows—

"(d) All leases rights mining tenements easements reserves and licenses granted under the provisions of this subclause may be so granted notwithstanding the survey in respect thereof has not been completed;

"(e) Notwithstanding the provisions of Section 82 of the Mining Act and of regulations 192 and 193 made thereunder and of Section 81D of the Transfer of Land Act 1893 and Section 143 of the Land Act insofar as the same or any of them may apply—

- (a) no assignment mortgage charge sublease or disposition made or given pursuant to Clause 13 hereof of or over any lease sublease license reserve or tenement granted hereunder or pursuant hereto by the Company or any assignee or appointee who has executed and is for the time being bound by deed of covenant made pursuant to Clause 13 hereof and

- (b) no transfer assignment mortgage or sublease made or given in exercise of any power contained in any such mortgage or charge

shall require any approval or consent other than such consent as may be necessary under Clause 13 of the Agreement and no



equitable mortgage or charge shall be rendered ineffectual by the absence of any approval or consent otherwise than as required by Clause 13 hereof or because the same is not registered under the provisions of the Mining Act”.

- (e) inserting after the word “provisions” in the first line of subclause (3) the words—

“of paragraph (e) of subclause (1) of this clause and the provisions”.

- (f) adding a new paragraph after paragraph (f) of subclause (4) as follows —

“(g) (i) shall permit Dampier to sublet to the Company the whole or any part of any mineral lease granted pursuant to the agreements approved by the Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act, 1964, and the Iron Ore (Dampier Mining Company Limited) Agreement Act, 1969;

(ii) shall in the event of the termination of any mineral lease subleased in whole or in part to the Company by Dampier grant to the Company a mineral lease for the unexpired term of the sublease covering the same mining areas and on the same terms as were applicable under the sublease except that royalties shall be payable at the rates provided for in this Agreement.

PROVIDED THAT any sublease referred to in subparagraph (i) and any mineral lease granted to the Company pursuant to subparagraph (ii) shall be included in the definition of “mineral lease” in Clause 1 of this agreement and shall be subject to the provisions of Clause 13 and paragraph (e) of subclause (1) of Clause 8.”

- (g) adding a subclause as follows—

“(6) No fee simple lease sublease license or other title or right granted or assigned under or pursuant to this Agreement and no chattel belonging to or owned jointly or in individual shares by the Company and an associated company shall be subject to or capable of parti-

tion otherwise than by agreement including partition under the Property Law Act 1969 or under any order of any court of competent jurisdiction made under that Act or otherwise or be subject to the making of an order for sale under the said Act."

(4) Clause 9 is amended by—

- (a) substituting for the proviso to paragraph (e) of subclause (2) thereof, the following proviso—

"PROVIDED HOWEVER that this paragraph shall not apply either to:—

- (i) iron ore used for the production of iron ore pellets or for secondary processing or for the manufacture of iron or steel in any part of the said State lying north of the twenty-sixth parallel of latitude; or
- (ii) iron ore sold or otherwise disposed of to Dampier."

- (b) adding to paragraph (j) of subclause (2) after subparagraph (xi) and before the last sentence of the said paragraph the following provisos:—

"PROVIDED THAT for the purposes of this paragraph the words "mineral lease" shall not include any sublease from Dampier and

PROVIDED FURTHER THAT the royalty payable on any iron ore sold to Dampier shall be computed as if such iron ore were produced under a mineral lease granted pursuant to the agreement approved by the Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act, 1964, and

PROVIDED FURTHER THAT with regard to the contracts which the Company has advised the State were entered into prior to September One thousand nine hundred and sixty-nine by an associated company for the sale of iron ore pellets and prepared sinter fines to Japanese steel mills the royalty for fines as well as iron ore pellets shall be computed at the rate specified in subparagraph (v) of this paragraph subject to the adjustment specified in subparagraph (xi)".

- (c) deleting the last proviso of paragraph (o) of subclause (2) thereof and substituting therefor the following:—

“PROVIDED ALSO that the provisions of this paragraph shall not apply:

(i) to iron ore pellets or to ore the subject of secondary processing or iron or steel manufacture by the Company or an associated company within the said State, or

(ii) to ore sold or otherwise disposed of to Dampier.”

- (d) inserting a new paragraph after paragraph (o) of subclause (2) thereof as follows:

“(p) honour its undertakings with Dampier under any agreement with Dampier pursuant to which it receives a sublease referred to in subparagraph (i) of paragraph (g) of subclause (4) of clause 8 PROVIDED THAT as sole remedy for a breach of this covenant the State may if the breach is not cured within a period as provided in paragraph (1) of clause 10 after notice as provided therein require Dampier to terminate such a sublease for any breach thereof which the State considers material AND the Company shall not thereafter be entitled to a lease under subparagraph (ii) of paragraph (g) of subclause (4) of clause 8 AND the State may require the surrender of areas included in any lease or leases pursuant to subparagraph (ii) of paragraph (b) of subclause (1) of clause 8.

- (e) inserting after the word “hereof” in the eighth line of subclause (3) the following:

“including the conferring upon the Company of power and authority requisite for the control and management of the works referred to in the said provisions”.

- (5) Clause 10 is amended by substituting for paragraph (1) thereof the following paragraph:

“(1) (i) that in any of the following events namely if the Company shall make default which the State considers material in the due performance or observance of any of the covenants or obligations to the State herein or in any lease sublease

license or other title or document granted or assigned under this Agreement on its part to be performed or observed or shall abandon or repudiate its operations under this Agreement and such default shall not have been remedied or such operations resumed within a period of one hundred and eighty (180) days after notice as provided in subparagraph (ii) of this paragraph is given by the State (or—if the alleged default abandonment or repudiation is contested by the Company and within sixty (60) days after such notice is submitted by the Company to arbitration—within a reasonable time fixed by the arbitration award but not less than ninety (90) days after the making of the arbitration award where the question is decided against the Company the arbitrator finding that there was a bona fide dispute and that the Company had not been dilatory in pursuing the arbitration) or if the Company shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Company determine this Agreement and the rights of the Company hereunder and under any lease license easement or right granted hereunder or pursuant hereto or if the Company shall surrender the entire mineral lease as permitted under Clause 8 (1) (a) of this Agreement then this Agreement and the rights of the Company hereunder and under any lease license easement or right granted hereunder or pursuant hereto shall thereupon determine: PROVIDED HOWEVER that if the default shall not have been remedied after such notice or within the time fixed by the 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 Company and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied

such default shall be a debt payable by the Company to the State on demand; and

- (ii) the notice to be given by the State in terms of subparagraph (i) of this paragraph 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 Company and all such assignees mortgagees chargees and disponees for the time being of the Company's said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of Clause 13 (1) (a) hereof whose name and address for service of notice has previously been notified in writing to the State by the Company or any such assignee mortgagee chargee or disponee;
- (iii) the abandonment or repudiation by or liquidation of the Company referred to in subparagraph (i) of this paragraph means the abandonment or repudiation by or the liquidation of all of them the Company and all assignees and appointees who have executed and are for the time being bound by a deed of covenant in favour of the State as provided in Clause 13 hereof; and".

(6) Clause 13 is amended by—

- (a) adding to subclause (1) a new subparagraph after subparagraph (b) and before the words "subject however" as follows:

"and (c) assign sublet or dispose of to Dampier in whole or in part rights under this Agreement (including its rights to or as the holder of any lease license easement grant or other title) in relation to the railway and the port and related facilities or any of them";

- (b) adding the following to subclause (2):

"PROVIDED HOWEVER that the Minister may agree to release the Company from such liability where having regard to all the circumstances of any such assignment mortgaging charging subletting disposition

or appointment as mentioned in subclause (1) of this clause he considers such release will not be contrary to the interest of the State hereunder”;

(c) adding a new subclause as follows:

“(3) To the extent that it imposes any obligation on the Company with regard to the management preservation or control of any of the facilities mentioned in subparagraph (c) of subclause (1) of this clause whether as to maintenance operation or otherwise this Agreement shall no longer apply with regard to any such facilities which become the sole property of Dampier.”

(7) Clause 19 is amended by inserting after the words “prior notice” in line 9 the words:

“or in the case of any other addressee to his or its address for service of notices notified in writing to the State”.

IN WITNESS whereof these presents have been executed as a deed the day and year first hereinbefore written.

SIGNED by the said THE  
HONOURABLE SIR DAVID  
BRAND, K.C.M.G., M.L.A. in  
the presence of—

DAVID BRAND

C. W. COURT,  
Minister for Industrial  
Development.  
ARTHUR GRIFFITH,  
Minister for Mines.

SIGNED by WILLIAM E.  
DOHNAL pursuant to and with  
the authority of a resolution  
of the Board of Directors of  
CLIFFS INTERNATIONAL  
INC. in the presence of—

WILLIAM E. DOHNAL

T. R. COLBORN  
[C.S.]