

South Australia



ANNO QUADRAGESIMO NONO  
ELIZABETHAE II REGINAE  
A.D. 2000

**STATUTES AMENDMENT (BHP INDENTURES) ACT 2000**

No. 15 of 2000

[Assented to 11 May 2000]

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An Act to amend the Broken Hill Proprietary Company's Indenture Act 1937 and the Broken Hill Proprietary Company's Steel Works Indenture Act 1958.

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#### SCHEDULE 1 *The Original Indenture*

23. Insertion of Sched. 2

#### SCHEDULE *The 2000 Deed of Amendment*

The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Statutes Amendment (BHP Indentures) Act 2000*.

**Commencement**

2. (1) This Act, except for section 19, will come into operation on assent.
- (2) Section 19 will come into operation on the day specified by that section.

**Interpretation**

3. A reference in this Act to "the principal Act" is a reference to the Act referred to in the heading to the Part in which the reference occurs.

**PART 2  
AMENDMENT OF THE BROKEN HILL PROPRIETARY COMPANY'S  
INDENTURE ACT 1937**

**Amendment of long title**

4. The long title of the principal Act is amended by inserting "to ratify a Deed amending the Indenture," after "of the third part,".

**Insertion of s. 1A**

5. The following section is inserted after section 1 of the principal Act:

**Interpretation**

- 1A. In this Act, unless the contrary intention appears—

"BHP" means The Broken Hill Proprietary Company Limited;

"the Company" means BHP and includes its successors and assigns;

"the 2000 Deed of Amendment" means the deed set out in Schedule 2;

"the Indenture" means the Indenture set out in Schedule 1, as amended from time to time.

**Amendment of s. 2—Validation of Indenture and 2000 Deed of Amendment**

6. Section 2 of the principal Act is amended by striking out "the schedule to this Act is" and substituting "Schedule 1 and the provisions of the 2000 Deed of Amendment that amend or relate to that Indenture are".

**Repeal of s. 3**

7. Section 3 of the principal Act is repealed.

**Amendment of s. 5—Saving of certain rights**

8. Section 5 of the principal Act is amended—

- (a) by striking out "set out in the schedule to this Act";
- (b) by striking out from paragraph (a) "Broken Hill Proprietary Company Limited" and substituting "Company".

**Amendment of s. 6—Further provisions as to the Indenture**

9. Section 6 of the principal Act is amended—

- (a) by striking out "set out in the Schedule to this Act";
- (b) by striking out from paragraph (b) "Broken Hill Proprietary Company Limited" and substituting "Company".

**Amendment of s. 7—Construction of Government railways**

10. Section 7 of the principal Act is amended—

- (a) by striking out "set out in the schedule to this Act";
- (b) by striking out "Broken Hill Proprietary Company Limited" and substituting "Company".

**Amendment of s. 8—Right to cross tramways, etc, of the Company**

11. Section 8 of the principal Act is amended by striking out "Broken Hill Proprietary Company Limited" twice occurring and substituting in each case "Company".

**Amendment of s. 9—Leases in paragraph B of the schedule to the Indenture**

12. Section 9 of the principal Act is amended—

- (a) by striking out "set out in the schedule to this Act";
- (b) by striking out "Broken Hill Proprietary Company Limited" and substituting "Company".

**Insertion of s. 10**

13. The following section is inserted after section 9 of the principal Act:

**Vesting of Company's statutory rights and obligations in assignee**

10. (1) If at any time the rights and obligations of the Company under the Indenture are duly assigned to and assumed by an assignee in accordance with the Indenture—

- (a) all other rights and obligations of the Company under this Act vest at the same time in the assignee; and
- (b) subject to subsection (2), the assignor and the State are released from any future obligations to each other under this Act.

(2) If the assignee is a subsidiary (within the meaning of the *Corporations Law*) of BHP, subsection (1)(b) does not operate to release BHP from its obligations to the State under this Act unless and until the assignee ceases to be a subsidiary of BHP.

(3) The Minister must, within 14 days of an assignment and assumption of the Company's rights and obligations under the Indenture taking effect, cause notice of the name and registered address of the assignee to be published in the *Gazette* (but failure to comply with this subsection has no prejudicial effect on that assignment and assumption).

#### **Substitution of schedule heading**

14. The heading appearing in the principal Act immediately before the Indenture is repealed and the following heading is substituted:

### **SCHEDULE 1** *The Original Indenture*

#### **Insertion of Sched. 2**

15. The principal Act is amended by inserting after the Indenture, as "SCHEDULE 2", the deed set out in the schedule to this Act.

## **PART 3** **AMENDMENT OF THE BROKEN HILL PROPRIETARY COMPANY'S STEEL WORKS INDENTURE ACT 1958**

#### **Amendment of long title**

16. The long title of the principal Act is amended by inserting ", to ratify a Deed amending the Indenture" after "steel works in South Australia".

#### **Amendment of s. 3—Interpretation**

17. Section 3 of the principal Act is amended by striking out the definitions of "the Indenture" and "the Company" and substituting the following definitions:

"BHP" means The Broken Hill Proprietary Company Limited;

"the Company" means BHP and includes its successors and assigns;

"the 2000 Deed of Amendment" means the deed set out in Schedule 2;

"the Indenture" means the Indenture set out in Schedule 1, as amended from time to time;

"the prescribed day" means the day on which the rights and obligations of the Company under the Indenture and the Indenture under the *Broken Hill Proprietary Company's Indenture Act 1937* first become rights and obligations of a person that is not a related body corporate (within the meaning of the *Corporations Law*) of BHP.

#### **Amendment of s. 4—Validation of Indenture and 2000 Deed of Amendment**

18. Section 4 of the principal Act is amended—

(a) by striking out from subsection (1) "is hereby" and substituting "set out in Schedule 1 and the provisions of the 2000 Deed of Amendment that amend or relate to that Indenture are";

(b) by striking out from subsection (1) "the provisions thereof" and substituting "they".

**Substitution of s. 7**

19. (1) Section 7 of the principal Act is repealed and the following section is substituted:

**Liability for certain pollution**

7. (1) The repeal of the section substituted by this section does not affect the exemption afforded to BHP or to any subsidiary of BHP by the repealed section in respect of pollution occurring before the prescribed day (and, to remove any doubt, section 16 of the *Acts Interpretation Act 1915* applies in relation to that repeal).

(2) Despite any Act or law to the contrary, no assignee under the Indenture has any liability for pollution that occurred before the prescribed day and that falls within the exemption afforded to BHP or a subsidiary by the repealed section.

(2) This section will come into operation on the day that is the prescribed day for the purposes of the new section inserted by subsection (1).

**Insertion of ss. 7A and 7B**

20. The following sections are inserted after section 7 of the principal Act:

**Environmental authorisations**

7A. Despite any provision of the *Environment Protection Act 1993*, or of regulations under that Act, to the contrary, any exemption granted under section 37 of that Act to the Company by the Environment Protection Authority in respect of pollution resulting from the Company's undertaking at or near Whyalla on or after the prescribed day may be granted or renewed by the Authority for such period as the Authority thinks fit.

**Special provisions relating to certain land (cl. 26A of the Indenture)**

7B. (1) The Registrar-General must—

(a) on application by the Minister and on being furnished with such certificates of title as the Registrar-General may require, register the Minister, or some other agency or instrumentality of the Crown nominated by the Minister, as the proprietor of an estate in fee simple of land vested in the State by virtue of clause 26A(8) of the Indenture; and

(b) on application by the Company, note the statutory easement arising under clause 26A(10) of the Indenture on each certificate of title affected by the easement.

(2) An application under subsection (1)(b)—

(a) need not include a plan of the easement; but

(b) must include a schedule of all certificates of title affected by the easement.

(3) The owner of land affected by the statutory easement arising under clause 26A(10) may, by agreement with the Company, execute an instrument—

(a) conferring an easement that operates to the exclusion of the statutory easement so far as it affects that land; or

(b) discharging the land from the statutory easement,

and, on registration of the instrument by the Registrar-General, the instrument has effect according to its terms.

**Substitution of s. 12**

21. Section 12 of the principal Act is repealed and the following section is substituted:

**Vesting of Company's statutory rights and obligations in assignee**

12. (1) If at any time the rights and obligations of the Company under the Indenture are duly assigned to and assumed by an assignee in accordance with the Indenture—

- (a) all other rights and obligations of the Company under this Act vest at the same time in the assignee; and
- (b) subject to subsection (2), the assignor and the State are released from any future obligations to each other under this Act.

(2) If the assignee is a subsidiary (within the meaning of the *Corporations Law*) of BHP, subsection (1)(b) does not operate to release BHP from its obligations to the State under this Act unless and until the assignee ceases to be a subsidiary of BHP.

(3) The Minister must, within 14 days of an assignment of the Company's rights and obligations under the Indenture taking effect, cause notice of the name and registered address of the assignee to be published in the *Gazette* (but failure to comply with this subsection has no prejudicial effect on that assignment and assumption).

**Substitution of schedule headings**

22. The headings appearing in the principal Act immediately before the Indenture are repealed and the following heading is substituted:

**SCHEDULE 1**  
*The Original Indenture*

**Insertion of Sched. 2**

23. The principal Act is amended by inserting after the Indenture, as "SCHEDULE 2", the deed set out in the schedule to this Act.

**SCHEDULE***The 2000 Deed of Amendment***DEED OF AMENDMENT**

**THIS DEED** is made 30 March 2000 between:

- 1**      **JOHN WAYNE OLSEN** in his capacity as Premier, for and on behalf of the Crown in right of the State of South Australia (the "State"); and
- 2**      **THE BROKEN HILL PROPRIETARY COMPANY LIMITED** ACN 004 028 077, of 600 Bourke Street, Melbourne, Victoria ("BHP").

**RECITALS**

- A**      The State and BHP are parties to an Indenture dated 4 October 1937 which Indenture is set out (in consolidated form) in Appendix 1 to the Broken Hill Proprietary Company's Indenture Act 1937 (the "1937 Indenture") and to an Indenture dated 4 September 1958 which Indenture is set out in the Schedule to the Broken Hill Proprietary Company's Steel Works Indenture Act 1958 (the "1958 Indenture").
- B**      By this Deed of Amendment the parties have agreed to amend each of the 1937 Indenture and the 1958 Indenture to allow BHP to assign its rights and be released of its obligations under the 1937 Indenture and the 1958 Indenture.

**THE PARTIES AGREE** as follows:

**1**      **AMENDMENT OF 1937 INDENTURE**

The 1937 Indenture is amended by:

- (a)      inserting the following clauses after clause 17 of the 1937 Indenture:

**"Transfer of rights and obligations**

18(a)    The Company may, with the consent of the State, transfer its rights and obligations under this Indenture and under one or more mineral or other leases or other proprietary rights referred to in, or granted pursuant to, this Indenture (the "Leases") to a person or body corporate (the "Assignee") by the Company, the State and the Assignee executing a deed of assignment and assumption substantially in the form of the deed set out in Schedule C to this Indenture. If such a deed of assignment and assumption is executed by the Company, the State and the Assignee, the Company and the State will, in accordance with the provisions of the deed of assignment and assumption, be released from their obligations and liabilities to each other under this Indenture and the Leases.

(b)      The State will not withhold or delay the giving of its consent to a proposed transfer of rights and obligations under this Indenture, or its execution of a deed of assignment and assumption, if the proposed Assignee is:

- (i)      a related body corporate (as defined in the Corporations Law) of the assignor; or



- (ii) a company which is within a group of companies to which the steel works and related operations in and around Whyalla have been, or are to be, transferred as part of an integrated group of steel businesses which have processing plant and equipment which (including any processing plant and equipment at Whyalla) has design capacity which is capable of processing most of the raw steel output from the steel works.
- (c) In all other cases, the State will not unreasonably withhold or delay the giving of its consent to a proposed transfer of rights and obligations under this Indenture, or its execution of a deed of assignment and assumption, provided that the State is satisfied:
  - (i) that the proposed Assignee is responsible and solvent; and
  - (ii) with such proposed Assignee's plans to secure the continued viability of the steel works and related operations in and around Whyalla.
- (d) If, pursuant to paragraph 18(a), The Broken Hill Proprietary Company Limited transfers its obligations under this Indenture and any Leases to a company which is a subsidiary of The Broken Hill Proprietary Company Limited, then, if the company fails to perform such obligations whilst it is a subsidiary of The Broken Hill Proprietary Company Limited, and notwithstanding anything in paragraph 18(a) or in the relevant deed of assignment and assumption, The Broken Hill Proprietary Company Limited will be liable for such failure as if the transfer had not occurred.

#### **Change of control**

- 19(a) Any proposed change in the persons who beneficially own or control more than 50 percent of the voting shares of the Company (including, for the avoidance of doubt, any direct or indirect Assignee of The Broken Hill Proprietary Company Limited which is a body corporate), or more than 50 percent of the voting shares of a parent company of the Company (or relevant Assignee), will require the consent of the State.
- (b) The State will not withhold or delay the giving of its consent to a proposed change in control of the Company (or relevant Assignee) if:
  - (i) the ultimate holding company (as defined in the Corporations Law) of the Company (or relevant Assignee) is to remain the same; or
  - (ii) the Company (or relevant Assignee) will remain, or become, a company which is within a group of companies which holds the steel works and related operations in and around Whyalla as part of an integrated group of steel businesses which have processing plant and equipment which (including any processing plant and equipment at Whyalla) has design capacity which is capable of processing most of the raw steel output from the steel works.

- (c) In all other cases, the State will not unreasonably withhold or delay the giving of its consent to a proposed change in control of the Company (or relevant Assignee), provided that the State is satisfied:
- (i) that any proposed new ultimate holding company (as defined in the Corporations Law) of the Company (or relevant Assignee) is responsible and solvent; and
  - (ii) with the Company's (or relevant Assignee's) plans to secure the continued viability of the steel works and related operations in and around Whyalla.
- (d) Paragraph 19(a) will not apply if the voting shares of the Company (or relevant Assignee) are listed on a stock exchange, or to any proposed change in the persons who beneficially own or control voting shares in a parent company of the Company (or relevant Assignee) where the voting shares of such parent company are listed on a stock exchange, but paragraph 19(a) will apply to any proposed listing of the Company or any such parent company as if, but irrespective of whether, the proposed listing involves a change in the persons who beneficially own or control more than 50 percent of the relevant voting shares.”; and
- (b) by inserting the form of deed of assignment and assumption set out in Annexure 2 to this Deed of Amendment as Schedule C to the 1937 Indenture.

## 2 AFFIRMATION OF REMAINING TERMS OF 1937 INDENTURE

Except for the variations provided for in clause 1 of this Deed of Amendment, the 1937 Indenture is in all respects affirmed.

## 3 AMENDMENT OF 1958 INDENTURE

The 1958 Indenture is amended by:

- (a) inserting the following clause after clause 26 of the 1958 Indenture:

\*Disposal of certain land 26A(1) The Company has agreed with the State:

- (a) to dispose of such of the land comprised in Certificates of Title Register Book Volumes 5280 Folio 990, 5184 Folio 639, 4215 Folio 661 and 5523 Folio 190 which is shown on the plan set out in Appendix D to this Indenture and which is owned by the Company (being approximately 3,600 hectares of the area described in paragraph 26(a)) (the “Subject Area”), in accordance with the provisions of this clause; and
- (b) save for the continuation and renewal of existing tenancies, sub-leases, licences and similar, not to allow third parties to use the remainder of the area described in paragraph 26(a), or any part of it, for any purposes which are not steelmaking, or related to or ancillary to or in support of steelmaking, without the consent of either one of the State or the City of Whyalla.

- (2) The Company and the State have identified that portions of the Subject Area (as approximately depicted on the plan set out in Appendix D to this Indenture) may be suited to the following uses:
- (a) the portion marked A, to extend the Whyalla Conservation Park;
  - (b) the portion marked B, to extend the width of the adjoining road reserves;
  - (c) the portion marked C, as a site for the development of an industrial park;
  - (d) the portion marked D, to continue as the site for the existing golf course;
  - (e) the portion marked E, as a site for the development of a recreation and leisure park; and
  - (f) the portion marked F, for such use as the City of Whyalla chooses.
- (3) During the period from when this clause takes effect until 31 December 2000, the Company will use its reasonable endeavours to negotiate with appropriate potential transferees for the transfer of the above portions of the Subject Area (or of portions approximating such portions) on terms and conditions consistent with the provisions of this clause and otherwise acceptable to the Company.
- (4) The Company and the State have identified the following potential transferees as likely to be appropriate:
- (a) in relation to the portion marked A, the Minister for Environment and Heritage;
  - (b) in relation to the portion marked B, the Minister for Transport and Urban Planning; and
  - (c) in relation to the portions marked C, D, E and F, the City of Whyalla.
- (5) The size and location of the identified portions of the Subject Area, the potential uses for such portions and the potential appropriate transferees of such portions may be altered by the Company in consultation with the State.
- (6) Any transfer or vesting of land pursuant to this clause will be:
- (a) for no monetary consideration, except that the Company may require the transferee to be responsible for all or some of any applicable costs of subdivision or transfer including registration fees and stamp duty; and
  - (b) made subject to all third party rights of access, occupation and use which are in existence, or otherwise required to access occupied or used portions of the land, as at the time of such transfer or vesting.

- (7) Any land transferred or vested pursuant to this clause (other than the portion of the Subject Area marked F) will, for so long as the steel works continue to operate, carry with it the following restrictive covenants (which covenants will run with the land):
- (a) subject to any agreement between the Company and an owner, occupier or user of the land from time to time, the land must not be used for residential purposes, or for any other use that (in the Company's opinion, acting reasonably) adversely affects or compromises the operation of the steel works (including the steel works, or its operation, as it is changed from time to time, provided that no change to the steel works or its operation shall prevent the continuation of any then existing use which did not adversely affect the operation of the steel works when the use commenced); and
  - (b) subject to any agreement between the Company and an owner, occupier or user of the land from time to time, the land must not be used in any way which:
    - (i) changes or interferes with any infrastructure which is presently on, under or above such land and which is owned or operated by the Company in connection with the steel works; or
    - (ii) compromises the availability of, or the Company's access to, sufficient quantities of gas, electricity and water for use in connection with the steel works (including the steel works, or its operation, as it is changed from time to time, provided that no change to the steel works or its operation shall prevent the continuation of any then existing use which did not adversely affect the steel works in this manner when the use commenced).
- (8) If, as at 31 December 2000, the Company has not disposed of, or entered into agreements to dispose of, all of the Subject Area, substantially in the manner contemplated by this clause (or as otherwise agreed by the State) then, effective from 1 January 2001, legal and beneficial title to all such portions of the Subject Area not so disposed of will immediately, and without further action, vest in the State. Any costs or fees (including costs of subdivision, registration fees and stamp duty) which are incurred consequent upon such vesting will be borne by the State.
- (9) Clause 26 will cease to apply to any land transferred or vested pursuant to this clause, as and from the date of transfer or vesting.
- (10) (a) This sub-clause (10) applies to infrastructure that is presently owned or operated by the Company in connection with the steel works and is situated on, under or above land transferred or vested pursuant to this clause.

- (b) Subject to any agreement in writing to the contrary, any infrastructure to which this clause applies and which is owned by the Company will continue to be owned by the Company after the land is transferred or vested, notwithstanding any affixation or annexation to the land.
- (c) The Company will have an easement over land transferred or vested pursuant to this clause which entitles the Company to:
  - (i) operate, examine, maintain, repair, modify or replace the relevant infrastructure;
  - (ii) enter the land, by its agents or employees, at any reasonable time, for any of the above purposes; and
  - (iii) bring on to the land any vehicles or equipment that may be reasonably necessary for any of the above purposes.
- (d) The powers conferred by the easement under this sub-clause (10) must be exercised so as to minimise, as far as reasonably practicable, interference with the enjoyment of the land by persons lawfully occupying the land.
- (e) If the Company has an easement over land relating to any relevant infrastructure otherwise than by virtue of this sub-clause (10), the application of the easement under this sub-clause (10) to the land is excluded to the extent necessary to avoid the same part of the land being subject to both easements.
- (f) The Company may, by instrument in writing, limit rights or impose conditions on the exercise of rights arising under the easement under this sub-clause (10) (and such an instrument has effect according to its terms).
- (g) An easement under this sub-clause (10) may, but need not, be registered."

(b) inserting the following sub-clauses after such clause 31(4) of the 1958 Indenture:

"Transfer of rights and obligations

31(5)(a) Notwithstanding clauses 31(1) to (4) above, the Company may, with the consent of the State, transfer its rights and obligations under this Indenture and under one or more mineral or other leases or other proprietary rights referred to in, or granted pursuant to, this Indenture (the "Leases") to a person or body corporate (the "Assignee") by the Company, the State and the Assignee executing a deed of assignment and assumption substantially in the form of the deed set out in Appendix E to this Indenture. If such a deed of assignment and assumption is executed by the Company, the State and the Assignee, the Company and the State will, in accordance with the provisions of the deed of assignment and assumption, be released from its obligations and liabilities to each other under this Indenture and the Leases.

- (b) The State will not withhold or delay the giving of its consent to a proposed transfer of rights and obligations under this Indenture, or its execution of a deed of assignment and assumption, if the proposed Assignee is:
- (i) a related body corporate (as defined in the Corporations Law) of the assignor; or
  - (ii) a company which is within a group of companies to which the steel works and related operations in and around Whyalla have been, or are to be, transferred as part of an integrated group of steel businesses which have processing plant and equipment which (including any processing plant and equipment at Whyalla) has design capacity which is capable of processing most of the raw steel output from the steel works.
- (c) In all other cases, the State will not unreasonably withhold or delay the giving of its consent to a proposed transfer of rights and obligations under this Indenture, or its execution of a deed of assignment and assumption, provided that the State is satisfied:
- (i) that the proposed Assignee is responsible and solvent; and
  - (ii) with such proposed Assignee's plans to secure the continued viability of the steel works and related operations in and around Whyalla.
- (d) If, pursuant to paragraph 31(5)(a), The Broken Hill Proprietary Company Limited transfers its obligations under this Indenture and any Leases to a company which is a subsidiary of The Broken Hill Proprietary Company Limited, then, if the company fails to perform such obligations whilst it is a subsidiary of The Broken Hill Proprietary Company Limited, and notwithstanding anything in paragraph 31(5)(a) or in the relevant deed of assignment and assumption, The Broken Hill Proprietary Company Limited will be liable for such failure as if the transfer had not occurred.
- 31(6)(a) Any proposed change in the persons who beneficially own or control more than 50 percent of the voting shares of the Company (including, for the avoidance of doubt, any direct or indirect Assignee of The Broken Hill Proprietary Company Limited which is a body corporate), or more than 50 percent of the voting shares of a parent company of the Company (or relevant Assignee), will require the consent of the State.
- (b) The State will not withhold or delay the giving of its consent to a proposed change in control of the Company (or relevant Assignee) if:
- (i) the ultimate holding company (as defined in the Corporations Law) of the Company (or relevant Assignee) is to remain the same; or

- (ii) the Company (or relevant Assignee) will remain, or become, a company which is within a group of companies which holds the steel works and related operations in and around Whyalla as part of an integrated group of steel businesses which have processing plant and equipment which (including any processing plant and equipment at Whyalla) has design capacity which is capable of processing most of the raw steel output from the steel works.
- (c) In all other cases, the State will not unreasonably withhold or delay the giving of its consent to a proposed change in control of the Company (or relevant Assignee), provided that the State is satisfied:
  - (i) that any proposed new ultimate holding company (as defined in the Corporations Law) of the Company (or relevant Assignee) is responsible and solvent; and
  - (ii) with the Company's (or relevant Assignee's) plans to secure the continued viability of the steel works and related operations in and around Whyalla.
- (d) Paragraph 31(6)(a) will not apply if the voting shares of the Company (or relevant Assignee) are listed on a stock exchange, or to any proposed change in the persons who beneficially own or control voting shares in a parent company of the Company (or relevant Assignee) where the voting shares of such parent company are listed on a stock exchange, but paragraph 31(6)(a) will apply to any proposed listing of the Company or any such parent company as if, but irrespective of whether, the proposed listing involves a change in the persons who beneficially own or control more than 50 percent of the relevant voting shares"; and
- (c) by inserting the plan set out in Annexure 1 to this Deed as Appendix D to the 1958 Indenture; and
- (d) by inserting the form of deed of assignment and assumption set out in Annexure 2 to this Deed of Amendment as Appendix E to the 1958 Indenture.

#### **4 AFFIRMATION OF REMAINING TERMS OF 1958 INDENTURE**

Except for the variations provided for in clause 3 of this Deed of Amendment, the 1958 Indenture is in all respects affirmed.

#### **5 RATIFICATION OF THIS DEED**

- 5.1 The Government of the State will, as early as practicable after execution of this Deed, introduce a Bill into the Parliament of the State for ratification and approval of this Deed of Amendment and to secure to BHP (and its successors and assigns) the rights provided for in this Deed and enable this Deed to be fully carried into operation.
- 5.2 The provisions of this Deed, other than this clause 5, will not come into operation unless and until the Bill referred to in clause 5.1 has been passed by the Parliament of the State of South Australia and the Act founded on such Bill comes into operation.

- 5.3 BHP agrees that clause 1(3) of the 1958 Indenture will not apply to any Act passed by the Parliament of the State of South Australia the sole effect of which is to ratify and approve (or otherwise support the terms of) this Deed of Amendment, except that such Act may also provide for the repeal of section 7 of the Broken Hill Proprietary Company's Steel Works Indenture Act 1958 in accordance with the following principles:
- (a) the repeal of such section takes effect from the date on which a transfer of The Broken Hill Proprietary Company Limited's rights and obligations under the 1937 Indenture and the 1958 Indenture (and certain leases) to an Assignee pursuant to new clause 18 of the 1937 Indenture and new clause 31(5) of the 1958 Indenture takes effect, unless the relevant Assignee is a related body corporate of The Broken Hill Proprietary Company Limited, in which case the repeal of such section takes effect on the date on which the Assignee ceases to be a related body corporate of The Broken Hill Proprietary Company Limited ("Repeal Date");
  - (b) section 16 of the Acts Interpretation Act 1915 applies to provide that such repeal does not affect the operation of the repealed enactment, or alter the doing, suffering or omission of anything, prior to the repeal or affect any right or privilege, or any status existing, prior to the repeal;
  - (c) notwithstanding any other Act or law, an Assignee (as defined in new clause 18 of the 1937 Indenture and in new clause 31(5) of the 1958 Indenture (and including any assignee from an Assignee)) shall not be liable for the doing, suffering or omission of anything by The Broken Hill Proprietary Company Limited or its subsidiaries (including any Assignee, whilst a subsidiary of The Broken Hill Proprietary Company Limited) prior to the Repeal Date, where the Broken Hill Proprietary Company Limited and its subsidiaries (including any Assignee, whilst a subsidiary of The Broken Hill Proprietary Company Limited) are not so liable by reason of the prior application of the repealed section; and
  - (d) an environmental authorisation under section 37 of the Environment Protection Act 1993, which exempts the Company from the application of a specified provision of the Environment Protection Act 1993 in respect of specified activities at its operations in or around Whyalla, may be granted or renewed so that it remains in force for more than two years under Regulation 5(b) of the Environment Protection (General) Regulations 1994 without the need for compliance with Regulation 5(b)(ii).

## **6 MISCELLANEOUS PROVISIONS**

### **6.1 Law**

The governing law of this Deed of Amendment is the law of the State of South Australia, and the parties submit to the non-exclusive jurisdiction of the Courts of South Australia and to the courts which hear appeals from those courts.

### **6.2 Costs**

Each party will bear its own legal costs of preparation and review of this Deed of Amendment. BHP will pay all stamp duty levied on this Deed of Amendment.



**6.3 Counterparts**

This Deed of Amendment may be executed in counterparts, which when taken together are one instrument.

**EXECUTION**

**EXECUTED** by the parties as a Deed.

**SIGNED SEALED and DELIVERED** for and )  
 on behalf of the Crown in right of the State of )  
 South Australia by **JOHN WAYNE OLSEN,** )  
 Premier, in the presence of: ) .....(J W Olsen).....  
 ) Premier

.....(Peter Lockett).....  
Witness

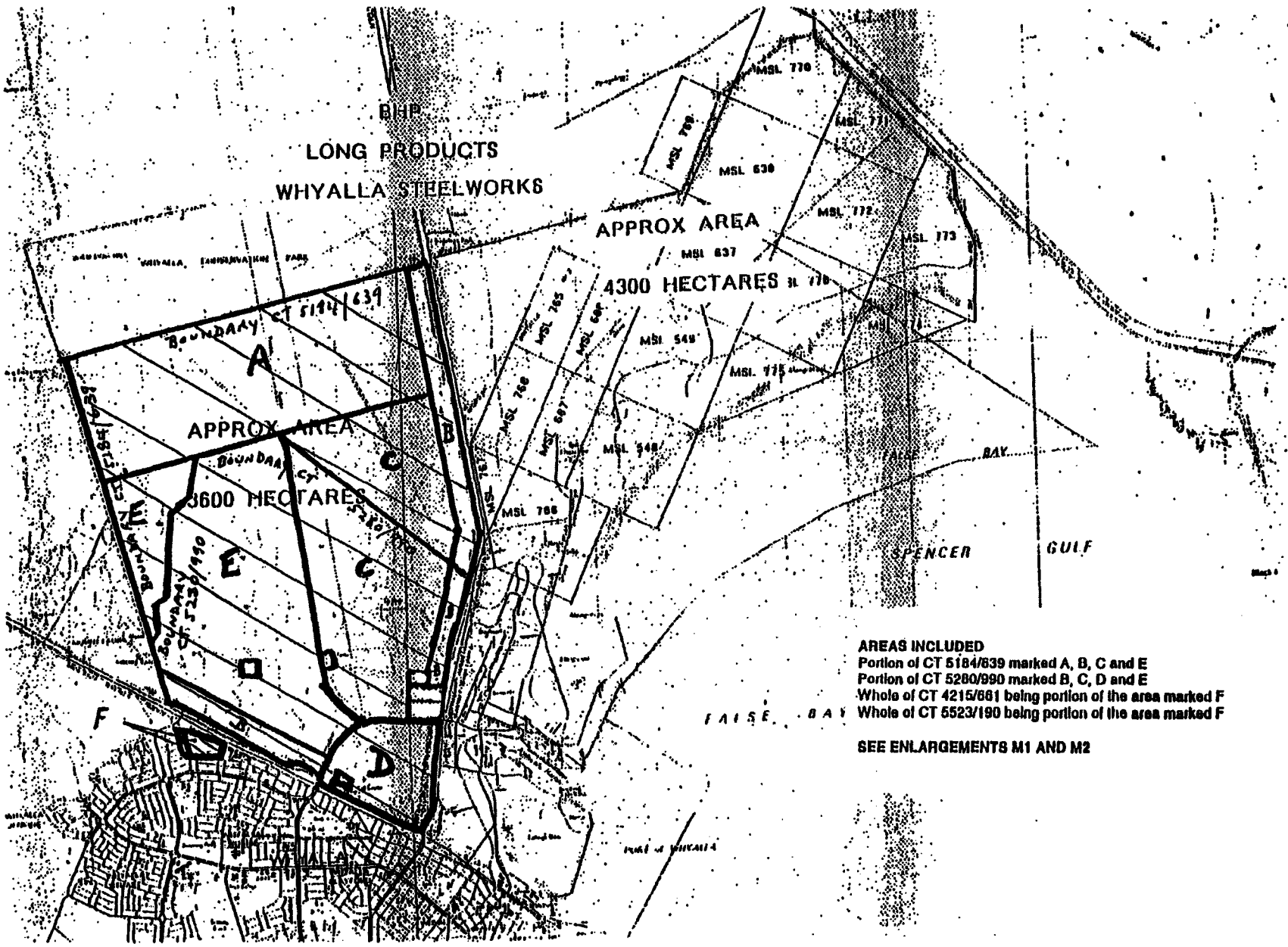
.....**PETER LOCKETT**.....  
Print Name

**SIGNED SEALED and DELIVERED** by )  
**THE BROKEN HILL PROPRIETARY** ) .....(P Laity).....  
**COMPANY LIMITED** by its attorney and ) Attorney  
 in the presence of: )  
 ) .....Philip M Laity.....  
 ) Print Name  
 )

.....(D J Goodwin).....  
Witness

.....**DAVID GOODWIN**.....  
Print Name

ANNEXURE 1  
LAND TO BE DISPOSED

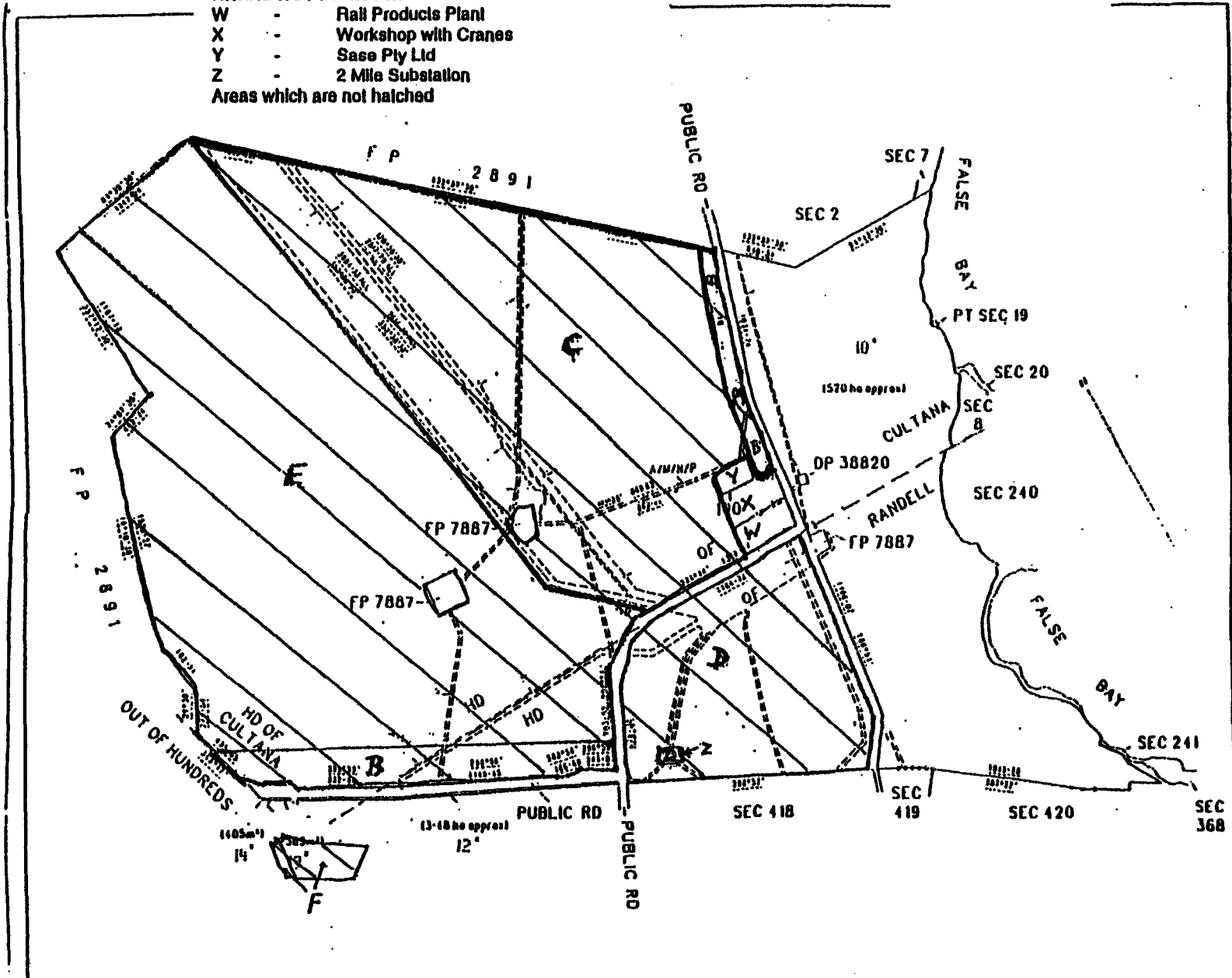


**AREAS INCLUDED**  
 Portion of CT 5184/839 marked A, B, C and E  
 Portion of CT 5280/990 marked B, C, D and E  
 Whole of CT 4215/661 being portion of the area marked F  
 Whole of CT 5523/190 being portion of the area marked F

**SEE ENLARGEMENTS M1 AND M2**

AREAS NOT INCLUDED

- W - Rail Products Plant
  - X - Workshop with Cranes
  - Y - Sase Ply Ltd
  - Z - 2 Milsa Substation
- Areas which are not hatched





**ANNEXURE 2**  
**FORM OF DEED OF ASSIGNMENT AND ASSUMPTION**  
**DEED OF ASSIGNMENT AND ASSUMPTION**

**THIS DEED** is made between:

- 1**     **THE MINISTER FOR PRIMARY INDUSTRIES AND RESOURCES**, the Minister administering the Broken Hill Proprietary Company's Indenture Act 1937 and the Broken Hill Proprietary Company's Steel Works Indenture Act 1958, a body corporate pursuant to the provisions of the Administrative Arrangements Act 1994, acting for and on behalf of the Crown in right of the State of South Australia (the "State");
- 2**     **THE BROKEN HILL PROPRIETARY COMPANY LIMITED** ACN 004 028 077 of 600 Bourke Street, Melbourne, Victoria ("BHP"); and
- 3**     [*Insert name, ACN and address of Assignee*] (the "Assignee").

**RECITALS**

- A**     The State and BHP are parties to an Indenture dated 4 October 1937 which Indenture is set out (in consolidated form) in Appendix 1 to the Broken Hill Proprietary Company's Indenture Act 1937 (the "1937 Indenture") and to an Indenture dated 4 September 1958 which Indenture is set out in the Schedule to the Broken Hill Proprietary Company's Steel Works Indenture Act 1958 (the "1958 Indenture").
- B**     By clause 18 of the 1937 Indenture BHP is permitted to assign its rights under the 1937 Indenture and the Leases by the execution of a deed of assignment and assumption substantially in the form of this Deed.
- C**     By clause 31(5) of the 1958 Indenture BHP is permitted to assign its rights under the 1958 Indenture and the Leases by the execution of a deed of assignment and assumption substantially in the form of this Deed.
- D**     By [*Insert details of sale or other agreement between BHP and the Assignee*], BHP has agreed to assign with effect from the Effective Date, its right and interest under the 1937 Indenture, the 1958 Indenture and the Leases to the Assignee and the Assignee has agreed to accept that assignment and to assume BHP's obligations and liabilities under the 1937 Indenture, the 1958 Indenture and the Leases.
- E**     The parties are entering into this Deed to effect the assignment and assumption referred to in Recital D.

**THE PARTIES AGREE** as follows:

- 1.     ASSIGNMENT AND ASSUMPTION**
- 1.1   Effective Date**

The Effective Date is [*Insert date*] or such other date on or after the date of this Deed as is agreed in writing by BHP and the Assignee, and notified to the State.

**1.2 Deed applies from Effective Date**

All provisions of this Deed will have effect from and, if necessary, relate back to the Effective Date, so as to have full force and effect on and from that date.

**1.3 Assignment and Assumption**

From the Effective Date:

- (a) BHP assigns to the Assignee all of its rights and interests under the Assigned Instruments; and
- (b) the Assignee assumes all of BHP's obligations and liabilities under the Assigned Instruments and will be bound by and comply with those provisions of the Assigned Instruments which were, immediately prior to the Effective Date, binding upon BHP.

**2. THE STATE'S COVENANTS****2.1 Covenant**

The Assignee covenants with the State that it will, from the Effective Date, observe and perform the Assigned Instruments and be bound by all terms of the Assigned Instruments which, but for this Deed, were to be performed by BHP.

**2.2 Consent of the State**

In consideration of the promise contained in clause 2.1, the State consents to the assignment to the Assignee of BHP's rights under the Assigned Instruments, with effect from the Effective Date.

**2.3 Release of BHP by the State**

- (a) With effect on and from the Effective Date, the State releases BHP from all its obligations and liabilities under the Assigned Instruments and from all actions, claims or proceedings that it may have against BHP under or in respect of the Assigned Instruments.
- (b) Nothing in clause 2.3(a) relieves BHP of any obligations and liabilities accrued under the Assigned Instruments prior to the Effective Date except to the extent the Assignee discharges such obligations and liabilities.

**2.4 Release of State by BHP**

- (a) With effect on and from the Effective Date, BHP releases the State from all its obligations and liabilities under the Assigned Instruments and from all actions, claims or proceedings that it may have against the State under or in respect of the Assigned Instruments.
- (b) Nothing in clause 2.4(a):
  - (i) relieves the State of any obligations and liabilities accrued under the Assigned Instruments prior to the Effective Date except to the extent such obligations and liabilities are discharged in favour of the Assignee; or

- (ii) shall be taken to constitute a release by the Assignee of any obligations and liabilities of the State.

### **3. MISCELLANEOUS PROVISIONS**

#### **3.1 Law and Jurisdiction**

The governing law of this Deed is the law of the State of South Australia, and the parties submit to the non-exclusive jurisdiction of the Courts of South Australia and to the courts which hear appeals from those courts.

#### **3.2 Costs**

Each party will bear its own legal costs of preparation and review of this Deed. The Assignee will pay all stamp duty levied on this Deed.

#### **3.3 Counterparts**

This Deed may be executed in counterparts, which when taken together are one instrument.

#### **3.4 Interpretation**

In this Deed:

- (a) "Assigned Instruments" means the 1937 Indenture, the 1958 Indenture and the Leases.
- (b) "Leases" means all mineral and other leases and other proprietary rights held by BHP which are referred to in, or granted pursuant to, the 1937 Indenture or the 1958 Indenture.
- (c) A reference to the 1937 Indenture, the 1958 Indenture and the Leases is a reference to those instruments and proprietary rights as they have been, or are, amended from time to time.

**EXECUTED** by the parties as a Deed.

*[Insert Execution clauses]*