

Version No. 001
Winchelsea Coal Mine Act 1951
Act No. 5557/1951

Version as at 3 March 2003

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Winchelsea Coal Mine Act 1951

Act No. 5557/1951

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An Act relating to the Purchase Working and Sale of an Open
Cut Brown Coal Mine near Winchelsea.

Preamble

WHEREAS by contract dated the twenty-ninth day of May One thousand nine hundred and fifty-one certain lands near Winchelsea, being the lands described in the certificates of title referred to in Part A of the First Schedule to this Act and the land described in the Crown grant referred to in Part B of the said Schedule, were purchased for the State of Victoria for a consideration of One hundred and thirty-five thousand pounds, and by transfers and surrenders executed on the same day the said lands together with the mineral lease referred to in Part C of the said Schedule were transferred and surrendered to His Majesty by Wensley-Bray Coal Mine Pty. Limited, a company incorporated under the **Companies Act 1938**:

AND WHEREAS on the twenty-ninth day of May One thousand nine hundred and fifty-one the agreement (a copy of which is set out in the Second Schedule to this Act) and the contract of sale (a copy of which is set out in the Third Schedule to this Act) were entered into by the Honorable John Gladstone Black McDonald in his capacity as Premier for the time being of the State of Victoria for and on behalf of the said State:

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AND WHEREAS it is expedient to make provision with respect to the payment of the consideration for the purchase of the said lands as aforesaid, to ratify and approve the said purchase, to ratify and approve the hereinbefore recited agreement and contract of sale and to provide for carrying them into effect as hereinafter provided:

BE IT THEREFORE ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. Short title

This Act may be cited as the **Winchelsea Coal Mine Act 1951**.

2. Payment of purchase price of lands from State Loans Repayment Fund

- (1) The consideration for the purchase of the lands hereinbefore recited (which purchase is hereby ratified and approved) shall be paid out of the State Loans Repayment Fund notwithstanding that the application of moneys for that purpose has not been authorized by any Loan Application Act.
- (2) The lands described in the certificates of title Crown grant and mineral lease referred to in the First Schedule to this Act shall immediately on the execution of the hereinbefore recited transfers and surrenders to His Majesty be deemed to have become unalienated lands of the Crown freed and discharged from all trusts encumbrances reservations restrictions and limitations whatsoever and from every estate or interest therein.

3. Ratification and approval of agreement and contract of sale set out in Second and Third Schedules

- (1) The execution for and on behalf of the State of Victoria of the agreement, a copy of which is set out in the Second Schedule to this Act, and of the contract of sale, a copy of which is set out in the Third Schedule to this Act, is hereby ratified and the said agreement and contract are hereby approved and shall be carried into effect notwithstanding anything to the contrary in any Act enactment or law.
 - (2) Without affecting the generality of the last preceding sub-section, the Governor in Council may notwithstanding anything to the contrary in the Land Acts or the Mines Acts or any other Act or enactment, make and issue the Crown grants and mineral lease referred to in clause 7 of the said contract of sale pursuant to and in accordance with the terms of the said clause 7.
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SCHEDULES

FIRST SCHEDULE

**Preamble,
section 2.**

LANDS AND MINERAL LEASE SURRENDERED TO HIS MAJESTY

PART A

Certificates of Title: Volume 3343 Folium 668475;
 Volume 3377 Folium 675223;
 Volume 4532 Folium 906336;
 Volume 4822 Folium 964375.

PART B

Crown Grant: Volume 4545 Folium 908872.

PART C

Mineral Lease: Volume 327 Folium 36045.

SECOND SCHEDULE

**Preamble,
section 3.**

AGREEMENT

AN AGREEMENT made the 29th day of May One thousand nine hundred and fifty-one between the Honorable JOHN GLADSTONE BLACK McDONALD in his capacity as Premier for the time being of the State of Victoria for and on behalf of THE STATE OF VICTORIA (hereinafter called "the State") of the one part and ROCHE BROS PROPRIETARY LIMITED a Company incorporated under the Companies Acts of the said State the registered office of which is situate at 22 Dynon-road South Kensington in the said State (hereinafter called "the Company") of the other part WHEREBY IT IS AGREED as follows:

1. The Company shall during the period of five years commencing on the date hereof (hereinafter called "the said period") have the exclusive right—
 - (1) to search work mine for win carry away and dispose of for the use and benefit of the Company all coal or any other product except petroleum as defined in the **Mines (Petroleum) Act 1935** on or in ALL THOSE pieces of land in the said State described in Certificates of Title volume 3343 folio 668475 volume 3377 folio 675223 volume 4532 folio 906336 and volume 4822 folio 964375 Crown Grant volume 4545 folio 908872 and Mineral Lease volume 327 folio 36045 entered in the Register Book of the Office of Titles; and
 - (2) for the purposes aforesaid on the said land—
 - (a) to cut and construct races drains dams reservoirs roads and tramways and to divert control and/or use water and do any other works incidental to the working of the open cut situate on or in the said land; and
 - (b) to erect offices buildings and machinery and if incidental to the working of the open cut to alter reconstruct remove or destroy the same; and
 - (c) to erect dwellings;
 - (d) to use the fixtures and improvements on the said land which are the property of the State subject to the same being kept by the Company in good repair and condition (fair wear and tear excepted).
2. The Company shall continuously operate the open cut during the said period on all usual working days prescribed by any awards of the Commonwealth Court of Conciliation and Arbitration or of any State

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tribunals which are applicable to the employment of labour required for working the open cut except those days on which the Company is prevented from so doing by fire flood incursion of water strikes or any events beyond the control of the Company AND the Company undertakes unless prevented by the matters aforesaid (the onus of proof whereof shall lie upon it) to win or extract from the open cut a minimum quantity of fifty-two thousand tons of coal during each period of sixty-five usual working days while this agreement continues in force.

3. The Company shall subject to the provisions of clause 2 hereof within ninety days of the end of each calendar month during the continuance of this Agreement pay to the Accountant to the Mines Department at Melbourne the sum of three shillings for each ton of coal won and sold during that month but the Company shall in any event pay a minimum fee for that month which will be equivalent to an average of One hundred and twenty pounds for each usual working day except any working day on which the Company is prevented from working the open cut by the matters mentioned in Clause 2 hereof PROVIDED that the Company shall not be required to make any payment in respect of coal used for the purpose of operating the open cut or supplied for domestic purposes to its employees engaged in the operation of the open cut.
 4. In the event of the Company winning or extracting from the open cut before the expiration of the said period one million tons of coal and paying to the State royalties as provided herein the obligation of the Company to pay royalties shall thereupon cease but without prejudice to its right to continue to exercise the rights conferred upon it by Clause 1 hereof during the residue (if any) of the said period then remaining.
 5. The Company shall—
 - (a) operate the open cut in a thorough and workmanlike manner according to the mode of working open cuts of a similar character and will at all reasonable times permit the Minister of Mines for the time being of the State (hereinafter called "the Minister") or any person authorised by him in writing to enter into every part of the said land and to examine the condition thereof;
 - (b) take such measures for the prevention of fire in or flooding of the open cut or both such risks as the Minister may reasonably require from time to time but in any event the Company shall be bound at all times to take reasonable precautions against the said risks.
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6. The Company shall—
 - (a) keep proper records of the quantities of coal won from the open cut and of the quantities and prices of coal sold by it and shall permit the Minister or any person authorised by him in writing to inspect such records at all reasonable times and to take extracts from or copies of the said records;
 - (b) from time to time when requested so to do by the Minister supply him with such information relating to the operation of the open cut as he may reasonably require;
 - (c) furnish to the Secretary for Mines within fourteen days of the end of each calendar month during the continuance of this Agreement a return verified by the Secretary or a Director of the Company showing the quantity of coal won from the open cut and particulars of sales of coal during that month.
 7. In the event of coal ceasing to be declared goods pursuant to the Prices Regulation Acts of the said State the Minister shall fix the maximum price (not being less than the maximum price fixed pursuant to the said Acts at the time when coal ceased to be so declared) at which coal won from the open cut may be sold by the Company which shall not sell coal so won at a price higher than that so fixed PROVIDED that the Minister shall not refuse his approval to an increase in price if the Company produces to him reasonable evidence that the cost of producing coal from the open cut justifies such increase.
 8. If the Company shall make default in the observance or performance of any of the provisions or conditions hereof the State may by notice signed by its Premier and given to the Company by leaving the same at its registered office require the Company to remedy the default and if it shall fail to do so within thirty days of the service of such notice or to do so as far as possible within that time continuing the necessary action until the default is remedied the State may by notice signed and given in like manner forthwith determine this Agreement.
 9. The Company shall indemnify the State against all claims and demands by third persons in respect of damage or loss caused by the operation of the open cut by the Company.
 10. The State will on the written request of the Company made within one calendar month of the expiration of the said period if the Company shall have observed and performed the provisions and conditions hereof in all respects and if at the expiration of the said period the State shall not have sold the open cut grant to the Company for the further period of ten years from the date of its request the rights conferred by Clause 1 hereof at a royalty of six pence per ton of coal won from the open cut payable in the manner provided in Clause 3
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hereof (excepting the minimum fee therein mentioned) and otherwise subject to the same provisions and conditions as are herein contained excepting clauses 2 and 4 hereof, and this present clause.

- 11. In the event of any dispute or difference between the parties arising in relation to or in respect of any matter arising under or out of this Agreement either party may forthwith give to the other notice in writing of the existence of the dispute or difference which shall be submitted to a single arbitrator. The provisions of this clause shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1928 of the said State.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first before written.

Signed Sealed and Delivered by the said JOHN GLADSTONE BLACK McDONALD in the presence of—

T. FORRISTAL, Accountant to the Treasury.

JOHN G. B. McDONALD

The Common Seal of ROCHE BROS PROPRIETARY LIMITED was hereto affixed by authority of a resolution of the Board of Directors in the presence of—

V. J. ROCHE, Director. C. W. BURTON, Secretary.

SEAL

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THIRD SCHEDULEPreamble,
section 3.**CONTRACT OF SALE**

The Honorable JOHN GLADSTONE BLACK McDONALD in his capacity as Premier for the time being of the State of Victoria for and on behalf of THE STATE OF VICTORIA (hereinafter called "the State") HEREBY ACKNOWLEDGES that the State has sold to WINCHELSEA COAL PROPRIETARY LIMITED a Company incorporated under the **Companies Act 1938** of the said State the registered office of which is situate at 31 Queen-street Melbourne in the said State (hereinafter called "the Company" which expression shall where the context admits include its permitted assigns) AND the Company HEREBY ACKNOWLEDGES that it has purchased from the State the hereditaments described in the first schedule hereto with all fixtures and improvements thereon except those fixtures and improvements described in the second schedule hereto (all of which are hereinafter called "the mine") subject to the right reserved in the said first schedule at the price of One hundred and thirty-five thousand pounds subject to the conditions of this contract which the Company agrees to observe in all respects.

Conditions

1. The purchase price of the mine shall be One hundred and thirty-five thousand pounds of which a deposit of Five hundred pounds shall be paid by the Company to the State on or before the execution of this contract.
2. The Company shall pay to the State on or before the expiration of the period of five years from the date of this contract (hereinafter called "the said period") the residue of the purchase money (namely the sum of One hundred and thirty-four thousand five hundred pounds) PROVIDED THAT in the event of the prior determination by the State pursuant to Clause 8 thereof of an agreement bearing the same date as this contract and made between the State of the one part and Roche Bros Proprietary Limited of the other part the residue of the purchase money or so much thereof as is then owing together with interest thereon from the date of such determination at the rate of three and one-half per centum per annum shall upon the State giving to the Company written notice of such determination immediately become due and payable.
3. For every ton of coal won from the mine between the date hereof and the date on which the Company becomes entitled to possession pursuant to Clause 5 hereof and in respect of which the State is paid a royalty of not less than three shillings a sum equal to two shillings and eight pence shall be deducted from the residue of the purchase price.

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4. All payments under this contract shall be made to the Accountant to the Mines Department at Melbourne aforesaid.
5. The Company shall subject to payment of the residue of the purchase money be entitled to vacant possession of the mine either upon the expiration of the said period or upon the prior determination by the State of the agreement referred to in Clause 2 hereof.
6. The Company shall insure the improvements hereby sold to their full insurable value in the name of the Treasurer for the time being of the State against loss or damage by fire so long as any moneys remain owing under this contract.
7. As soon as possible after the payment in full of the purchase money there will be completed and issued to the Company—
 - (a) a Crown Grant of the land first mentioned in the said first schedule free from the reservations conditions and limitations referred to in Sections 167, 168, 294 and 295 of the **Land Act 1928**; and
 - (b) subject to the provisions of the Land Acts and the Mines Acts and the regulations thereunder a Crown Grant of the land secondly mentioned in the said first schedule and a Mineral Lease for coal mining on or in the land thirdly mentioned in the said first schedule.
8. The Company shall not without the prior written consent of the Premier for the time being of the State assign this contract or any part thereof.
9. This contract shall be conditional upon the approval and ratification hereof by Act of Parliament of the State and in the event of such approval and ratification not being obtained on or before the date of possession under Clause 5 hereof the deposit shall be refunded to the Company.
10. Time shall be of the essence of this contract and of all the conditions (except Condition 9) hereof.

IN WITNESS WHEREOF the parties hereto have executed this contract the 29th day of May One thousand nine hundred and fifty-one.

The First Schedule Above Referred to

The estate and interest defined by Clause 7 hereof in ALL THOSE pieces of land in the said State described in—

First Certificates of Title volume 3343 folio 668475 volume 3377 folio 675223 volume 4532 folio 906336 and volume 4822 folio 964375;

Secondly Crown Grant volume 4545 folio 908872; and

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Thirdly Mineral Lease volume 327 folio 36045 entered in the Register Book in the Office of Titles:

RESERVING unto the State and its licensees the right to mine for and win coal therefrom until the Company is entitled to possession under Clause 5 thereof.

The Second Schedule Above Referred to

- A.
 - (1) Old winch in winch house.
 - (2) Old coal bins and crusher (in course of being dismantled).
 - (3) 3½ yard Ruston Procter steam shovel.
 - (4) Old coal storage bins at head of aerial ropeway (in course of being dismantled).
 - (5) Old aerial ropeway from mine to Wensleydale Station (in course of being dismantled).
 - (6) Two old winches and one steam boiler on side of hill below old winch house.
 - (7) Thompson steam engine.
 - (8) Tange steam engine.
- B.
 - (1) Five-room cement sheet residence.
 - (2) Steel and galvanised iron workshop approximately 60 feet × 60 feet (in course of erection).
 - (3) Weatherboard single-room bungalow approximately 10 feet × 12 feet.
 - (4) Seven-room galvanised iron building approximately 30 feet × 35 feet. (Men's quarters.)
 - (5) Galvanised iron oil store approximately 12 feet × 8 feet.
 - (6) Coal crushing and screening plant.
 - (7) Water-pipe lines and electric power lines.
 - (8) Pump house and pump in coal cut.
- C.
 - (1) Two 1,000-gallon oil storage tanks on wooden stand.
 - (2) Two underground petrol storage tanks and two petrol bowsers.

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Signed Sealed and Delivered by the said
JOHN GLADSTONE BLACK
McDONALD in the presence of—

T. FORRISTAL,
Accountant to the Treasury.

} JOHN G. B. McDONALD

The Common Seal of WINCHELSEA
COAL PROPRIETARY LIMITED
was hereto affixed by authority of a
resolution of the Board of Directors in the
presence of—

V. J. ROCHE, Director.

J. A. ROCHE, Director.

} SEAL

ENDNOTES

1. General Information

The **Winchelsea Coal Mine Act 1951** was assented to on 25 September 1951 and came into operation on 25 September 1951.

2. Table of Amendments

There are no amendments made to the **Winchelsea Coal Mine Act 1951** by Acts and subordinate instruments.

3. Explanatory Details

No entries at date of publication.