

NORTHERN TERRITORY OF AUSTRALIA

MINING (GOVE PENINSULA NABALCO AGREEMENT) ACT 1968

As in force at 28 June 1976

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 28 June 1976. Any amendments that commence after that date are not included.

MINING (GOVE PENINSULA NABALCO AGREEMENT) ACT 1986

An Act to approve an Agreement between the Commonwealth of Australia and Nabalco Pty Limited and for purposes connected with that Agreement

1 Short title

This Act may be cited as *the Mining (Gove Peninsula Nabalco Agreement) Act 1986*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Definitions

In this Act, unless the contrary intention appears:

statute means an Ordinance or State Act of the State of South Australia in force as a law of the Territory and includes regulations, rules and by-laws made under an Ordinance or such a State Act.

the Agreement means the Agreement made on 22 February, 1968, between the Commonwealth and the Company, being the agreement set out in the Schedule.

the Company has the meaning defined in the definition of ***the Company*** in clause 1 of the Agreement.

4 Approval of Agreement

The Agreement is approved.

5 Minister and Administrator to exercise powers consistently with Agreement

- (1) The Minister and the Administrator shall exercise their powers under the laws of the Territory in relation to the Company consistently with the provisions of the Agreement.

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- (2) Without limiting the generality of subsection (1), the Minister and the Administrator shall exercise their powers under the laws of the Territory in relation to:

- (a) the special mineral lease as defined in clause 1 of the Agreement; and
- (b) all leases, licences, easements and other titles to be granted to the Company pursuant to subclause (2) to (6) inclusive of clause 4 of the Agreement,

consistently with the provisions of the Agreement.

6 Powers of Minister and Commonwealth in relation to leases, &c.

- (1) The Minister may grant to the Company such leases and the Commonwealth may grant to the Company such licences, easements and other titles as are required to be granted to the Company for the purpose of giving effect to clause 4 of the Agreement.
- (2) Any lease (including any special mineral lease), licence, easement or other title granted pursuant to this section has effect according to its terms.
- (3) If the Minister grants a special mineral lease pursuant to this section he may:
 - (a) vary it for the purpose of giving effect to clause 4 or 6 of the Agreement; or
 - (b) renew it for the purpose of fulfilling the covenant in clause 2 of the form of lease in the First Schedule to the Agreement.
- (4) If the Minister grants a special purposes lease pursuant to this section, he may renew it for the purpose of giving effect to clause 4 of the Agreement.
- (5) If the Commonwealth grants a licence, easement or other title pursuant to this section it may renew it for the purpose of giving effect to clause 4 of the Agreement.
- (6) Where:
 - (a) a special mineral lease is varied or renewed pursuant to this section; or
 - (b) a special purposes lease, licence, easement or other title is renewed pursuant to this section,

it has effect according to its terms as so varied or renewed.

7 Provisions concerning mortgages and charges under clause 16 of Agreement

- (1) Neither a mortgage or charge, being a mortgage or charge:
- (a) in a form commonly known as a floating charge;
 - (b) consented to by the Minister pursuant to clause 16 of the Agreement; and
 - (c) given by the Company over a lease, licence, easement or other title granted under or pursuant to the Agreement,

nor a transfer or assignment in exercise of any power of sale contained in such a mortgage or charge shall require any approval or consent other than such consent as may be necessary under clause 16 of the Agreement.

- (2) A mortgage or charge of a kind referred to in subsection (1) shall not be rendered ineffectual as an equitable charge:
- (a) by the absence of any approval or consent otherwise than as required by clause 16 of the Agreement; or
 - (b) because the mortgage or charge is not registered under any provision of the Act under which the lease, licence, easement or other title over which it is given is granted.

8 Leases, &c., under Agreement not to be subject to or capable of partition, &c.

No lease, sublease, licence, easement or other title granted or assigned under or pursuant to the Agreement shall be:

- (a) subject to or capable of partition, whether by agreement or by decree or order of any court of competent jurisdiction or otherwise; or
- (b) subject to the making of an order for sale under the *Partition Act, 1881*, of the State of South Australia in its application to the Territory.

9 Necessary power conferred on Commonwealth Minister and Administrator

- (1) A specified person has, by reason of this section, such power as is necessary to be conferred on him in order to enable him to do an act or thing which:
- (a) he is, under the Agreement or a lease, required or permitted to do so; and
 - (b) it is necessary for him to do in order to give effect to the Agreement or a lease according to its terms.
- (2) In this section:

lease means a special mineral lease or special purposes lease granted pursuant to the Agreement.

specified person means, in relation to the doing of an act or thing, a person, being the Commonwealth, the Minister or the Administrator, specified in the Agreement or a lease as the person who shall or will or may do that act or thing.

10 Enforcement of bond

- (1) If the Company, having been granted a special mineral lease such as is provided for in subclause (1) of clause 4 of the Agreement and having entered into a bond does not observe and carry out the provisions on its part to be observed and carried out of subclauses (4) and (5) of clause 5 of the Agreement, the Company shall, whether or not the special mineral lease has been forfeited or surrendered, be liable to pay to the Commonwealth the sum in which the Company acknowledges itself in the bond to be bound, and that sum is a debt due to the Commonwealth and may be recovered by action in any court of competent jurisdiction.
- (2) If:
- (a) the Company has entered into a bond and, in accordance with the Agreement has assigned the whole or any part of its right under the Agreement (including its rights to or as the holder of any lease, licence, easement or other title);
 - (b) the assignee has entered into a bond in substitution for the bond entered into by the Company, conditioned however to be void in case the assignee shall observe and carry out the provisions on the part of the Company to be observed and carried out of subclauses (4) and (5) of clause 5 of the Agreement; and

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- (c) the assignee does not observe and carry out those provisions, the assignee shall, whether or not the special mineral lease has been forfeited or surrendered, be liable to pay to the commonwealth the sum in which the assignee acknowledges itself in the bond to be bound, and that sum is a debt due to the Commonwealth and may be recovered by action in any court of competent jurisdiction.
- (3) In and for the purposes of any proceeding to recover the sum referred to in subsection (1) or (2):
- (a) that sum shall be deemed to be a genuine pre-estimate of the damage suffered and recoverable by the commonwealth in respect of any failure or omission on the part of the Company or the assignee such as is referred to in subsection (1) or (2) of this section;
- (b) it shall not be competent for the defence to plead:
- (i) that the damage so suffered and recoverable was less than that sum; or
- (ii) that the sum or any amount of it is a penalty or penal damages; and
- (c) evidence proving or tending to prove any of the matters set out in subparagraphs (i) and (ii) of paragraph (b) shall not be led or admitted.
- (4) In this section, **bond** means a bond such as is set out in the Third Schedule to the Agreement.

11 Application of certain Act and Regulations

Subject to this Act and the provisions of the Agreement:

- (a) the provisions of the *Mining Act* and regulations made under that Act apply to and in relation to a special mineral lease granted pursuant to the Agreement as if it were a special mineral lease granted under that Act;
- (b) the provisions of the *Special Purposes Leases Act* and regulations made under that Act apply to and in relation to a special purposes lease granted pursuant to the Agreement as if it were a special purposes lease granted under that Act; and

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- (c) the provisions of any applicable law other than this Act apply to and in relation to any other lease or any licence, easement or other title granted pursuant to the Agreements if that other lease or that licence, easement or other title were granted under that applicable law.

12 This Act to prevail over inconsistent statute, &c.

This Act prevails over any inconsistent statute or rule or practice of law or equity.

The Schedule

(Refer to "hard copy" for Agreement)

ENDNOTES

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KEY

Key to abbreviations

amd = amended
 app = appendix
 bl = by-law
 ch = Chapter
 cl = clause
 div = Division
 exp = expires/expired
 f = forms
 Gaz = Gazette
 hdg = heading
 ins = inserted
 lt = long title
 nc = not commenced

od = order
 om = omitted
 pt = Part
 r = regulation/rule
 rem = remainder
 renum = renumbered
 rep = repealed
 s = section
 sch = Schedule
 sdiv = Subdivision
 SL = Subordinate Legislation
 sub = substituted

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LIST OF LEGISLATION

Mining (Gove Peninsula Nabalco Agreement) Ordinance 1968 (Act No. 15, 1968)

Assent date	22 May 1968
Commenced	29 May 1968 (<i>Gaz</i> No.24, 29 May 1968, p 133)

Ordinances Revision Ordinance 1973 (Act No. 87, 1973)

Assent date	11 December 1973
Commenced	11 December 1973 (s 12(2))

Amending Legislation

Ordinances Revision Ordinance 1974 (Act No. 34, 1974)

Assent date	26 August 1974
Commenced	11 December 1973 (s 3(2))

Ordinances Revision Ordinance (No. 2) 1974 (Act No. 69, 1974)

Assent date	24 October 1974
Commenced	11 December 1973 (s 3)

Ordinances Revision Ordinance 1976 (Act No. 27, 1976)

Assent date	28 June 1976
Commenced	ss 1, 2 and 6: 28 June 1976 (s 6(2)); ss 3 and 4: 11 December 1973; s 5: 24 October 1974

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GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the notes to this reprint) are made by the *Ordinances Revision Ordinance 1973* (Act No. 87, 1973) (as amended) to the following provisions: ss 3, 5, 7, 10 and 11.