

CEMENT CONTRACT RATIFICA- TION ACT.

Act No. 27, 1930.

An Act to ratify a certain contract made between
The Standard Portland Cement Company
Limited, and the Minister for Public Works
relating to the supply of cement for the
service of His Majesty. [Assented to, 23rd
June, 1930.]

George V.
No. 27, 1930.
—

BE it enacted by the King's Most Excellent Majesty,
by and with the advice and consent of the Legis-
lative Council and Legislative Assembly of New South
Wales in Parliament assembled, and by the authority of
the same, as follows :—

1. (1) This Act may be cited as the “Cement Short title.
Contract Ratification Act, 1930.”

(2) This Act shall bind the Crown.

2.

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Ratification
of contract.

2. The contract, a copy of which is contained in the Schedule to this Act, is hereby ratified, and may be carried into effect by the Secretary for Public Works.

SCHEDULE.

AGREEMENT made the thirteenth day of May, one thousand nine hundred and thirty, between The Standard Portland Cement Company Limited, a Company incorporated under the Companies Act, 1899, and whose registered office is situated at Sydney in the State of New South Wales (hereinafter called "the Company" which expression shall where the context admits include its permitted assigns) of the one part and the Honorable Ernest Albert Buttenshaw the Minister for Public Works of the said State for and on behalf of His Majesty King George V (hereinafter called "the Minister" which expression shall where the context admits include his successors in office and his and their assigns) of the other part Whereas the Company is entitled to and operating extensive works for the manufacture of Portland cement near Charbon Siding hereinafter mentioned Now it is agreed as follows :—

1. The Company will manufacture sell supply and deliver and the Minister will buy and accept subject to the provisions of this Agreement sixty-five thousand tons of Portland cement per annum for the term of three years commencing on the first day of September, one thousand nine hundred and thirty, or upon such later date as the Minister may determine: Provided however that each of the years of the said term shall be increased by the extensions (if any) to which the Company shall become entitled under clause four.

2. (a) The said cement to be delivered by the Company under this Agreement shall be such as fulfils the provisions of this Agreement and shall comply in all respects with the "Australian Standard Specification for Portland Cement No. A.2.1926" (a copy whereof has been sealed and signed by the parties hereto for purposes of identification) as hereby altered and amended that is to say :

Clause 1—After the word "argillaceous" in second line, insert "or other silica, alumina, or iron oxide-bearing materials."

Clause 2—Delete.

Clause 5—Delete.

Clause 7—Read 10 per cent. in lieu of 18 per cent.

Clause 8—Insoluble residue, read 2.00 instead of 1.50 sulphuric anhydride, read 2.75 instead of 2.00.

Clause 10—The quantity of water to be used shall be from 30 per cent. to 35 per cent. in lieu of one-quarter to one-third ($\frac{1}{4}$ to $\frac{1}{3}$). In lieu of 250 in Table I, read 325, and in lieu of 325 read 400.

Clauses

Clauses 10, 13, 14, 15 and 16—Temperature range in water and test room to be from 70 deg. to 75 deg. Fahrenheit in lieu of 55 deg. to 75 deg. No. 27, 1930.

Clause 11—For Table II, insert the following :—

Description.	Age at Test Days.	Storage of cubes.	Compressive strength lbs. per sq. in.
Mortar cubes three parts standard sand, one part cement by weight.	7	1 day air, six days water. Temperature, 70 deg. to 75 deg. F.	3,500
"	28	1 day air, 27 days water. Temperature, 70 deg. to 75 deg. F.	4,500
"	28	1 day air, 6 days water, 21 days air. Temperature, 70 deg. to 75 deg. F.	5,000

The rate of loading shall be approximately 1,100 lb. per second.

Clause 17—Omit the first paragraph. Omit the words after "testing" in the last paragraph and insert "and retesting as provided by and under the Agreement for Sale." The Test Certificate, page 26, shall not apply.

(b) The said Australian Standard Specification for Portland Cement No. A.2.1926 as so altered and amended is hereinafter referred to as the "Australian Standard Specification" and shall be deemed to be incorporated herein as if the same were herein set forth at length and the Company will observe and perform and cause to be observed and performed all the provisions thereof on its part and the part of its employees to be observed and performed.

(c) Provided nevertheless that if there should be any inconsistency between the provisions of the Australian Standard Specification and the provisions of this Agreement the latter shall prevail.

3. (a) In this clause the word "Superintendent" when used shall unless the context otherwise requires mean the Officer-in-Charge of the Testing and Inspection Branch of the Department of Public Works or the person acting as such for the time being.

(b) Cement as soon as manufactured shall be stored by the Company in sheds or bulk silos approved by the Superintendent. The said sheds and silos and the cement stored therein shall subject to this Agreement be under the sole control of the Superintendent or his agent, but neither of them nor the Government of the said State shall incur any responsibility or liability whatsoever in respect thereof in consequence of the Superintendent or his agent having such control. In no case shall any cement under test be removed from such control.

(c)

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(c) As soon as practicable after manufacture of the cement and in any case before twenty-one days from the date of its manufacture the Company will apply to the Superintendent or his agent on such forms as the Superintendent shall from time to time approve to test in accordance with the Australian Standard Specification and this Agreement cement in the said sheds or silos and with every such application will pay to him for such testing the fee of three pounds (£3) for every one thousand five hundred (1,500) bags of cement (if in jute bags) or part thereof or for every two thousand (2,000) bags of cement (if in paper bags) or part thereof or for every eighty-three (83) tons or part thereof if in bulk.

(d) Notwithstanding anything in this Agreement contained if the Superintendent should in respect of any application certify that any portion of cement in bulk has been found not satisfactory then although he has certified in respect of other portions of such cement that the cement is satisfactory the whole of the said cement shall be deemed to have been certified as not satisfactory and no part thereof shall be delivered under this Agreement and any retesting hereunder shall be a retesting of the whole of the said cement and shall be applied for and paid for by the Company accordingly.

(e) After receipt of every such application the Superintendent or his agent will take such samples of the cement applied to be tested as the Superintendent considers necessary. All such samples shall become the property of the Minister and no payment shall be made therefor to the Company.

(f) The procedure in sampling shall be as follows, but may be modified or extended from time to time by the Superintendent. Setting samples shall consist of approximately eight (8) ounces in weight, and shall be selected from such positions in the silo if the cement is in bulk as the Superintendent or his agent decide or from the centre of bags if it is in bags in the proportion of one bag in every seventy-five (75) bags. The bags from which such samples will be taken shall be as indicated by the Superintendent or his agent.

For the aggregate test samples to bulk thirty (30) pounds when mixed will be taken from the same positions in the silo or bags as those from which the setting samples are selected.

(g) The Company and its employees will afford the Superintendent and his agents all materials, labour facilities, and assistance for taking and packing samples under this Agreement.

(h) On the completion of all the tests provided for by and under this Agreement the Superintendent will issue a certificate giving the results thereof and stating whether or not the tests have been found satisfactory, and such certificate shall be final and conclusive of the matters therein stated and that samples have been duly taken and the tests duly made under this Agreement.

(i) When any cement has been tested as aforesaid and the Superintendent certified that it has been found not satisfactory the Company shall immediately remove the same from the said sheds and/or silos unless the Superintendent consents to the Company continuing to hold it therein for such time as he shall fix for further testing

testing hereunder at the Company's expense. Within such time the Company shall apply as hereinbefore provided for the testing of such cement accordingly and if the Superintendent shall then find it to be not satisfactory the Company will if required by the Superintendent immediately remove the same from the said sheds and/or silos.

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(j) Each quantity of cement which is under test or which has been tested shall be kept distinct and separate from all other cement.

(k) When any cement in jute or paper bags has been tested hereunder and has been certified by the Superintendent to be found satisfactory he or his agent shall in the case of the jute bags seal each of such bags and stamp the seal with a stamp approved of by the Superintendent and shall in the case of the paper bags mark each of such bags with a stamp approved by the Superintendent.

(l) The only cement which the Company shall be entitled to deliver under this Agreement is cement which has been stored as aforesaid and which has been tested as provided by and under this Agreement and which has been certified by the Superintendent to have been found satisfactory: Provided that where six months or more have elapsed since the date of manufacture of any cement so stored tested and certified it shall be retested hereunder but at the expense of the Minister and if it is then certified by the Superintendent to have been found not satisfactory it shall not be delivered under the Agreement but shall if required by the Superintendent be immediately removed from the said sheds and/or silos.

4. The said cement shall be delivered "free on rail" at Charbon Siding which is at about one hundred and fifty-four (154) mileage on the Western Line in the said State in such quantities and at or within such time and times as the Minister or his agent shall by notice in writing from time to time direct and the quantity of cement which the Minister shall direct the Company to deliver each month in pursuance of this clause shall be approximately one-twelfth of the annual quantity which is to be delivered by the Company as provided by clause one: Provided always that should any strike lock-out industrial strife or other industrial disturbance fire storm tempest shortage of water on account of drought or any other Act of God or the King's enemies or force majeure affect the observance or performance of the Company's obligations under this clause the Minister shall make a fair and reasonable extension of time for the observance and performance of the Company's obligations under this clause.

5. The said cement shall be delivered as aforesaid in jute bags, each of which shall contain about one hundred and twenty-five (125) pounds of cement or if and whenever required by the Minister in paper bags each of which shall contain about ninety-four (94) pounds of cement. Before delivery of the said cement the bags shall first be approved of by the Minister or his agent. The Minister and/or his agent shall make the inspection for approval of the jute bags to be used and of the paper bags to be used (in case the Minister has required delivery in paper bags) within fourteen days of receipt of notice in that behalf from the Company its servants or agents and in default of such inspection being made within such time the Company shall be entitled to deliver without

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without any such inspection in such bags in good order and condition as the Company may then have but nothing herein shall authorise delivery in paper bags without the prior requirement of the Minister.

6. The Company shall produce to the Minister from time to time certificates from the proper agents of the Minister stating the quantities of the said cement which have been delivered by it as herein provided and the number of the bags so delivered and that the provisions of clauses two three and five and the Australian Standard Specification have been complied with in respect of the cement so delivered and the bags containing it.

7. The price for the said cement delivered as provided in clause four hereof shall be three pounds fifteen shillings (£3 15s.) per ton of two thousand two hundred and forty (2,240) pounds (if delivered in jute bags) or three pounds thirteen shillings and ninepence (£3 13s. 9d.) per ton of two thousand two hundred and forty (2,240) pounds if delivered in paper bags. Such prices (hereinafter in this clause referred to as "provisional prices") are to be taken to have been based upon the rates of wages and hours of work of workmen in force on the thirty-first day of January, one thousand nine hundred and thirty, being those respectively as mentioned in the Schedule hereto and the provisional prices shall be subject to adjustments from time to time as follows that is to say :

(a) If the rates of wages paid by the Company to any of its workmen engaged in or about the manufacture of cement at its works near Charbon Siding aforesaid shall by reason of any award or order of any Court or other competent authority of the Commonwealth or the State or of any industrial agreement duly recorded with any such Court or authority and approved by the Minister be greater or less than the rates of wages as mentioned in the Schedule hereto the amount of the increase or reduction so occasioned in the cost of the manufacture of the cement hereby agreed to be manufactured and sold (so far only as the same is attributable to the workmen engaged as aforesaid whose rates of wages have been so increased or reduced) shall be added to or subtracted from the provisional prices or the prices otherwise payable to the Company under this Agreement as the case may be.

(b) If the hours of work of workmen as mentioned in the Schedule hereto be, in the case of any of the Company's workmen engaged in or about the manufacture of cement at its said works increased or decreased by reason of any award or order of any Court or other competent authority of the Commonwealth or the State or of any industrial agreement duly recorded with any such court or authority and approved by the Minister the amount of the increase or reduction so occasioned in the cost of the manufacture of the cement hereby agreed to be manufactured and sold (so far only as the same is attributable to the workmen engaged as aforesaid whose hours of work have been so increased or decreased) shall be added to or subtracted from the provisional prices or the prices otherwise payable to the Company under this Agreement as the case may be.

(c)

- (c) As often as any increase or decrease shall be made as aforesaid in any of the rates of wages or hours of work upon which the provisional prices are taken to have been based the Company will thereupon notify the same to the Minister.
 - (d) All additions to and subtractions from the prices under this clause shall take effect on the first day of the month following the increase or decrease in rates of wages or hours of work as the case may be and shall be applied to cement delivered on and after the said day.
 - (da) For the purpose of determining the amount of any addition to or subtraction from the prices under this clause the annual output of the Company's works shall be deemed to be at the date the addition or subtraction takes effect hereunder twice the output of such works during the six months preceding the date on which the addition or subtraction takes effect and the output for a period less than a year shall be deemed to be proportionate to such annual output.
 - (e) The Superintendent of Stores of the Department of Public Works (hereinafter called the Stores Superintendent which expression shall include the person acting in such office for the time being) shall certify from time to time the amounts which are respectively to be added to or subtracted from the prices under this clause and his certificate shall subject to proved error in calculation be final and conclusive thereof.
 - (f) The Company at all times and from time to time on demand between the hours of 9 a.m. and 5 p.m. on any week-day other than Saturdays and public holidays will produce to the Minister and his agents and the Stores Superintendent all books vouchers documents and evidence which they or any of them may require to enable him and them to ascertain the rates of wages paid by the Company to any workmen and the hours of work of any of the Company's workmen as aforesaid and the extent of any increase or reduction in the prices under this clause as aforesaid and will afford the Minister and his agents and the Stores Superintendent and cause all of them to be afforded all information and facilities for such purposes.
8. The said prices shall include payment by the Minister for the bags in which the cement is delivered and the Company shall pay to the Minister the sum of twopence (2d.) for each jute bag which shall be returned to the Company at Charbon Railway Siding provided that the Company shall not be liable to make such payment for any jute bags so returned in respect of which the Company shall obtain from the proper agent of the Minister a certificate to the effect that such bags so returned have been rendered useless owing to careless handling or wilful mishandling or from becoming wet whilst under the control of the Minister or his agent—it being the intention of the parties that the Company is not to avoid payment for bags rendered useless by fair wear and tear occasioned by taking the same from rail at Charbon Siding to the respective places at which the cement is used and by returning the same to the Company at Charbon Railway Siding. In case of any dispute between the Company and the Minister as to whether any

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any bags so returned have or have not been rendered useless owing to careless handling or wilful mishandling or from becoming wet whilst under the control of the Minister or his agent the decision of the proper agent of the Minister in regard thereto shall be conclusive and binding on the Company.

9. The Company shall instal and maintain in some convenient position at the place of manufacture of the cement hereby agreed to be sold such faithful good and properly constructed weighing machines approved by the Minister as he may consider necessary for the purpose of weighing the said cement. Such cement shall be so weighed that the weight of the bags shall not be included in the weight of cement as sold to the Minister.

10. During the first week of each month the Company shall render a voucher in the prescribed form containing its claims under this Agreement for the preceding month. No payment shall be made in any case unless and until the Company has furnished the Minister with the certificates of his proper agents as hereinbefore provided and the Company shall not be entitled to demand payment except in accordance with such certificates and payment shall be made to the Company within twenty-one days after such voucher shall have been rendered as aforesaid: Provided that the Minister shall not be bound to pay within such period in cases where it is impracticable to do so.

11. The Company shall not without the previous consent of the Minister in writing agree to sell or dispose of or part with the execution of (whether by appointment of an agent or agents or otherwise) or assign encumber or sublet this Agreement or any part thereof or all or any of the moneys payable under it or any other benefit whatsoever arising or which may arise under it. Any consent to an agreement for sale or to dispose of or part with the execution of or to assign encumber or sublet this Agreement or any part or all or any of the said moneys or any other benefit aforesaid shall not discharge the Company from any of its liabilities under this Agreement and shall extend only to the permission actually given and shall not prevent or affect any of the Minister's rights or remedies in respect of other or subsequent breaches of this clause.

12. The Minister and his agents shall at all times during the continuation of these presents have the right to enter upon and into the lands of the Company whereon the cement is manufactured and the buildings and works thereon to inspect the same and the units plant and machinery thereon or therein and the Company and its employees will afford him and them all facilities for such purpose.

13. Any notice which the Minister is required or entitled to give to the Company under this Agreement shall be deemed to be duly given if addressed to the Company and delivered or left at or sent by registered post in an envelope prepaid addressed to its registered office or delivered to the Secretary at the registered office of the Company or left at the office of the Company at its works near Charbon hereinbefore mentioned or sent by registered post prepaid in an envelope addressed to it at Charbon aforesaid. Any notice sent by registered post shall be deemed to have been served on the Company at the time when the envelope containing the same should have been delivered in the ordinary course

of

of post and to prove such service it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted by registered post.

14. (a) The Company shall on notice from the Minister so to do place upon fixed deposit in the name of the Minister in some bank to be approved of by the Minister the sum of three thousand pounds (£3,000) to be held by the Minister as security for the due and proper performance and observance by the Company of the provisions of this Agreement until all the provisions of this Agreement have been completely performed and observed by the Company or until this Agreement has been determined by the Minister under the power given to him in that respect by clause sixteen hereof and on such determination the moneys so deposited shall be forfeited to the Minister and shall be retained by him as liquidated damages. If this Agreement is not determined as aforesaid and if the Company should make default in the performance or observance of any provision of this Agreement the amount of all loss and damage whether liquidated or otherwise which the Minister shall have sustained thereby may be deducted from the sum so deposited to the extent thereof and the balance if any of such amount shall be a debt payable to and recoverable by the Minister from the Company. In no case shall the Company be entitled to require the Minister to return to it the sum so deposited until all questions claims and disputes are finally settled.

(b) If the moneys lodged by the Company as deposit as aforesaid shall not be forfeited as aforesaid and if and to the extent that the same shall not be applied towards the loss or damages sustained by the Minister as aforesaid the Company shall be entitled to receive all interest which shall accrue due on the deposit as and when such interest becomes payable but the Minister shall not be liable or answerable in any way for any loss on the money so deposited or for any loss of interest thereon whether by reason of the fixed deposit not being renewed from time to time or otherwise howsoever.

(c) If the Company fails to deposit the sum of three thousand pounds (£3,000) as hereinbefore provided within fourteen days of notice from the Minister so to do the Minister may immediately determine this Agreement without prejudice to his rights and remedies in consequence of such default.

15. If the Company shall fail to deliver cement of the description and condition it is required to deliver hereunder in such quantities as directed by any notice under clause four or any part thereof at or within the time or times therein stated or as extended by such clause—

(a) the Minister shall be entitled to purchase such quantity of Portland cement as the Company has so failed to deliver from any other corporation or person at such price as he shall consider reasonable at the risk and expense of the Company and all loss and expense which the Minister may sustain by reason of such failure to deliver on the part of the Company shall be a debt due to and be recoverable by the Minister from the Company and the quantities of cement so purchased may at the option of the Minister be deducted from the quantity which the Minister has agreed to purchase from the Company by clause one or at the option of the Minister;

(b)

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(b) The Company shall pay to the Minister as liquidated damages a sum calculated at the rate of five shillings per ton for each ton or portion of a ton not delivered as aforesaid for each day or part thereof the Company shall fail so to deliver.

16. In the event of the Company being wound up either voluntarily or by order of the Court or (without prejudice to the rights of the Minister under paragraph (c) of clause fourteen) if the Company shall make default in the observance or performance of any provision contained in this Agreement the Minister may by notice in writing call upon the Company to show cause within a period therein limited why he should not determine this Agreement and if the Company fails in the opinion of the Minister (which shall be final and conclusive thereon) satisfactorily to show such cause within the said period the Minister may immediately determine this Agreement without prejudice to his rights and remedies in consequence of any such or other default.

17. If the Company shall fail to deliver cement of the description and condition it is required to deliver hereunder in such quantities as directed by any notice under clause four or any part thereof at or within the time or times therein stated or as extended by such clause the Minister may by notice in writing call upon the Company to show cause within a period therein limited why it should not be taken that the Company has repudiated this Agreement and if the Company fails in the opinion of the Minister (which shall be final and conclusive thereon) satisfactorily to show such cause within the said period the Company shall be deemed to have repudiated this Agreement and the damages and loss sustained by the Minister by reason of such repudiation shall be immediately recoverable by him from the Company without prejudice to his rights in respect of any previous default.

18. None of the provisions of this Agreement which are to be observed or performed on the part of the Company or its employees shall be varied waived discharged or released unless by the express consent in writing of the Minister.

19. (a) The expression "the Board" when used in this clause shall mean the Board of Advice and Reference of the Department of Public Works comprising such officers of the Public Works Department or other department of the Government service designated officially or otherwise as may have been or shall from time to time be appointed members thereof by His Excellency the Governor and the Executive Council.

(b) Subject to and without impairing in any way the finality of any opinion certificate or other act or instrument of the Minister or other person by or under any provision of this Agreement or the Australian Standard Specification if any dispute or difference shall arise between the Minister and the Company touching this Agreement or the Australian Standard Specification or the construction of them or either of them or the rights duties or obligations of any person or corporation under them or either of them or as to any other matter in anywise arising out of or connected with the subject matter of this Agreement or the Australian Standard Specification the same shall be referred to the Board which shall inquire into and may hear evidence in respect thereof and shall decide the same and may make such order as to costs or otherwise as to the Board shall seem just.

(c)

(c) The Board shall have full control of the procedure to be followed in any such inquiry and may decide in each case whether the parties may be represented by counsel, solicitor or agent

(d) The decision of the Board as to all matters of fact which are disputed in such inquiry shall be final and binding on all parties.

(e) Should the Company not be satisfied with any decision of the Board on a point of law the Company may within fourteen days require the Board to state its decision in the form of a special case. And unless the Company so require the Board to state its decision in the form of a special case within the time mentioned the Company shall be taken to be satisfied with the decision of the Board and shall be bound thereby.

(f) If the Company require the Board to state its decision in the form of a special case the Company may institute proceedings as may be necessary in order that such special case may be submitted without any pleadings for the opinion and final decision of the Supreme Court with power to the judges upon the hearing thereof to draw conclusions of fact and to vary or refer back the said decision to the Board and such final decision may be entered up as a judgment of the Supreme Court by either party to the Agreement under section 56 of the Common Law Procedure Act 1899 but if any special case be so stated the taxed costs of both parties of and incidental thereto and of signing judgment as aforesaid shall be added together and the Company shall bear the proportion of such total sum which the amount disallowed shall bear to the amount claimed by it and the balance shall be borne by the Minister.

(g) The Company shall have no right of action or suit against the Minister in any court under or in respect of this Agreement or the Australian Standard Specification or for any breach thereof or failure or delay or default thereunder or otherwise or arising out of or in connection with the premises except—

(i) for accounts admitted to be payable by the Minister or amounts decided by the Board under these conditions to be due; or

(ii) for the purpose of having a special case stated to the Supreme Court as hereinbefore provided.

(h) The decision of a majority for the time being of the Board shall be as binding as the decision of the Board and a majority for the time being of the Board shall have and may exercise all the powers of the Board.

20. This Agreement is subject to ratification by the Parliament of the said State and if it is not ratified by Parliament before the thirtieth day of September one thousand nine hundred and thirty it shall be null and void.

21. In this Agreement the word "month" shall unless the context otherwise requires mean calendar month.

In witness whereof the parties hereto have respectively executed these presents the day and year first above written.

THE

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THE SCHEDULE HEREINBEFORE REFERRED TO.

The rates of wages and hours of work of workmen in force on the thirty-first day of January one thousand nine hundred and thirty upon which the prices stated in clause seven of this Agreement (and therein referred to as "provisional prices") are to be taken to have been based are the rates of wages and hours of work prescribed by the Cement Makers (State) Award—Standard Portland Cement Company's Employees dated the twenty-first day of April one thousand nine hundred and twenty-seven and published in the New South Wales Industrial Gazette on the twenty-ninth day of April one thousand nine hundred and twenty-seven Volume 31 as varied by Award dated the twenty-ninth day of July one thousand nine hundred and twenty-seven and published in the said Gazette on the fifth day of August one thousand nine hundred and twenty seven Volume 32 and as interpreted by the Award dated the twenty-third day of January one thousand nine hundred and twenty-nine and published in the said Gazette on the first day of February one thousand nine hundred and twenty-nine Volume 35 and as varied by Award dated the twentieth day of January one thousand nine hundred and thirty and published in the said Gazette on the thirty-first day of January one thousand nine hundred and thirty Volume 37.

The Common Seal of Standard Portland Cement Company Limited was hereunto affixed by the authority of the Directors previously given in the presence of the two Directors whose signatures are set opposite and in the presence of—

P. R. HIGGINS, A. J. SWAN, Directors.	(L.S.)
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W. BAIN,
Secretary.

Signed sealed and delivered by the Honorable Ernest Albert Buttenshaw the Minister for Public Works aforesaid in the presence of—

E. A. BUTTENSHAW. (L.S.)

R. A. JOHNSON.

RACECOURSES