

WESTERN AUSTRALIA

**ALUMINA REFINERY (WORSLEY)
AGREEMENT AMENDMENT
ACT 1995**

No. 15 of 1995

AN ACT to amend the *Alumina Refinery (Worsley) Agreement Act 1973*.

[Assented to 4 July 1995.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Alumina Refinery (Worsley) Agreement Amendment Act 1995*.

Commencement

2. This Act comes into operation on the day on which it receives the Royal Assent.

Principal Act

3. In this Act the *Alumina Refinery (Worsley) Agreement Act 1973** is referred to as the principal Act.

[* *Act No. 67 of 1973.*

*For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, p. 10.]*

Section 6C inserted

4. After section 6B of the principal Act the following section is inserted —

“

Fourth Supplementary Agreement

6C. The Agreement, a copy of which is set forth in the Fifth Schedule, in this Act referred to as the Fourth Supplementary Agreement, is approved and ratified.

”.

Section 8 amended

5. Section 8 of the principal Act (the section that refers to the effect of the Third Supplementary Agreement) is amended by deleting the section designation “8.” and substituting the following section designation —

“ 9. ”.

Sections 10 and 11 inserted

6. Before the First Schedule to the principal Act the following sections are inserted —

“

Effect of Fourth Supplementary Agreement

10. Notwithstanding section 4 but without affecting any agreement made pursuant to clause 24 (1) of the Agreement referred to in section 3, that Agreement shall, on and after the coming into operation of the *Alumina Refinery (Worsley) Agreement Amendment Act 1995*, operate and take effect subject to its provisions as those provisions are amended by the First, Second, Third and Fourth Supplementary Agreements.

Minister to seek advice from Minister for the Environment in certain circumstances

11. (1) Before —

- (a) making an agreement under clause 12C (2) of the Agreement; or
- (b) approving amendments to Plan Z under clause 12C (7) (b) of the Agreement,

the Minister is to seek advice from the Minister for the Environment as to whether, if not for this Act, any matter to be included in the agreement or in the amendments would be in breach of the *Environmental Protection Act 1986*.

(2) The Minister is to cause —

- (a) the text of any advice received by the Minister from the Minister for the Environment as a result of seeking advice under subsection (1);

- (b) the text of any agreement made by the Minister under clause 12C (2) of the Agreement; and
- (c) a copy of any amendments to Plan Z approved by the Minister under clause 12C (7) (b) of the Agreement,

to be laid before each House of Parliament within 12 sitting days of that House after the advice is received, the agreement is made or the amendments are approved by the Minister.

(3) In this section —

“the Agreement” means the Agreement referred to in section 3, as amended by the Fourth Supplementary Agreement;

“Minister for the Environment” means the Minister to whom the administration of the *Environmental Protection Act 1986* is for the time being committed by the Governor;

“Plan Z” means the plan marked Z referred to in clause 12C (1) of the Agreement.

”

Fifth Schedule added

7. After the Fourth Schedule to the principal Act the following Schedule is added —

“

FIFTH SCHEDULE

[section 6C]

THIS AGREEMENT is made the 26 day of February 1994
B E T W E E N :

THE HONOURABLE RICHARD FAIRFAX COURT,
B.Com., M.L.A., Premier of the State of Western Australia,
acting for and on behalf of the Government of the said
State and its instrumentalities (hereinafter called "the
State") of the one part .

AND

REYNOLDS AUSTRALIA ALUMINA, LTD. A.R.B.N.
009 473 492 a corporation incorporated under the laws in
force in the State of Delaware in the United States of
America and having its registered office in the State of
Western Australia at 8th Floor, Griffin Centre, 28 The
Esplanade, Perth, **THE SHELL COMPANY OF
AUSTRALIA LIMITED** A.C.N. 004 610 459 a company
incorporated in the State of Victoria and having its
registered office at Level 18, 1 Spring Street, Melbourne,
**KOBE ALUMINA ASSOCIATES (AUSTRALIA) PTY.
LIMITED** A.C.N. 008 907 524 a company incorporated in
the State of Western Australia and having its registered
office at 7th Floor, 26 St. George's Terrace, Perth and
NISSHO IWAI ALUMINA PTY. LIMITED A.C.N.
009 309 344 a company incorporated in the State of
Western Australia and having its registered office at
Level 5, Capita Centre, 5 Mill Street, Perth (hereinafter
collectively called "the Joint Venturers" in which term shall
be included their respective successors and permitted
assigns and appointees) of the other part.

WHEREAS:

- A. The State and the Joint Venturers (pursuant to certain deeds of assignment dated the 7th day of February, 1980 and the 31st day of May, 1988) are now the parties to the agreement dated the 22nd day of August, 1974 (the execution of which by the State was authorised pursuant to section 3 of the Alumina Refinery (Worsley) Agreement Act 1973) as varied by an agreement dated the 18th day of April, 1978 approved and ratified by the Alumina Refinery (Worsley) Agreement Act Amendment Act 1978 and as further varied by an agreement dated the 28th day of May, 1981 and as further varied by an agreement dated the 21st day of October, 1982 approved and ratified by the Alumina Refinery (Worsley) Agreement Amendment Act 1982 and as further varied by an agreement dated the 25th day of July, 1983 and as further varied by an agreement dated the 24th day of September, 1992 approved and ratified by the Alumina Refinery (Worsley) Agreement Amendment Act 1992 (which agreement as so varied is hereinafter referred to as "the Principal Agreement").
- B. The parties desire to vary the Principal Agreement.

NOW THIS AGREEMENT WITNESSES —

1. Unless the context otherwise requires the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
2. The provisions of this Agreement shall not come into operation until a Bill to approve and ratify this Agreement is passed by the Legislature of the State of Western Australia and comes into operation as an Act.

3. The Principal Agreement is hereby varied by inserting after Clause 12B the following clause —

- "12C. (1) The Joint Venturers may in accordance with the provisions of this Clause operate the conveyor constructed by them pursuant to Clause 5(2)(a) hereof for the transport of bauxite to the refinery between the points marked A and B on the plan marked Z ("Plan Z"), initialled by or on behalf of the parties hereto for the purposes of identification, at all times notwithstanding any provisions of the Environmental Protection Act 1986 or any other Act or law or any regulation, by-law or other exercise of statutory power (whether by the State or any local or other authority) relating to noise.
- (2) The Joint Venturers shall operate the said conveyor so as to ensure that the level of noise received at each of the measurement points marked R, S, T and U on Plan Z as a result of operation of the said conveyor for more than 90% of any 15 minute period of operation is less than 60 dB LA Slow (or such other level and/or measurement points and/or measurement method as may be agreed between the Minister and the Joint Venturers from time to time).
- (3) The Joint Venturers shall provide for the purposes of this Clause appropriate measuring equipment approved by the Minister and shall operate this equipment in accordance with arrangements to be agreed between the Minister and the Joint Venturers from time to time and shall report the results thereof to the Minister at such times and in such format as may be required by the Minister.

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Amendment Act 1995*

- (4) If and whenever the level of noise received from the said conveyor measured in accordance with subclause (2) of this Clause exceeds or has exceeded the level referred to in that subclause, the Minister may require the Joint Venturers to take, or may take at the expense of the Joint Venturers such steps as are appropriate to reduce the level of noise from the said conveyor to the said level and/or to prevent any further such occurrences (which may, in appropriate circumstances, include the temporary suspension of operation of the said conveyor).
- (5) Notwithstanding the foregoing provisions of this Clause, the Joint Venturers shall at all times take such steps as may be reasonable to maintain and service the said conveyor or any extension thereof so as to limit the noise caused by the operation of the said conveyor and any extension thereof.
- (6) Notwithstanding any right or cause of action vested in or available to or which might otherwise be vested in or available to any person, no right or claim (including, without limitation, any right of abatement or any claim for damages or an injunction) shall lie against the Joint Venturers or their agents employees officers or contractors by reason of any loss of enjoyment or amenity value, or by reason of any change in the aesthetic environment, alleged to be occasioned by noise caused by the operation of the said conveyor entering any land nor shall the Joint Venturers be liable to pay compensation for, or in respect of any damage attributable to, such noise.

(7) (a) If the Joint Venturers at any time during the currency of this Agreement desire to extend the conveyor beyond the point marked B on Plan Z and to have the foregoing provisions of this Clause apply to the extension, they shall submit their proposals for the extension to the Minister and provide the Minister with such information as to the nature and operation of the proposed extension to the conveyor as the Minister may reasonably require.

(b) Within two months of the Minister receiving all information reasonably required by him or her under paragraph (a) of this subclause, subject to:

(i) the implementation of the proposals being approved under Part IV of the Environmental Protection Act 1986 by the Minister responsible for the administration of that Act in accordance with paragraph (d) of this subclause; and

(ii) the equipment to be used in the proposed extension to the conveyor being of a standard which will emit noise at a level less than or equal to the existing conveyor,

the Minister shall approve amendments to Plan Z in accordance with the proposals to show the route of the extension to the conveyor, subject to such

conditions as the Minister may reasonably require, provided that the Minister may not impose any conditions which are unrelated to the mitigation of noise from the proposed extension to the conveyor or which are more onerous than the conditions applying to the existing conveyor.

- (c) Where the Minister approves an amendment of Plan Z pursuant to paragraph (b) of this subclause, the provisions of subclauses (1) to (6) of this Clause shall thenceforth apply to the conveyor as shown on the amended Plan Z.
 - (d) In relation to any proposals referred to in paragraph (b)(i) of this subclause the Minister responsible for the administration of the Environmental Protection Act 1986 shall not refuse approval for the implementation of the said proposals based in whole or in part on any ground which relates to noise emissions from the proposed extension to the conveyor or grant that approval subject to any condition which relates to such noise emissions."
4. Clause 17 of the Principal Agreement is hereby varied by deleting "Nothing" and substituting the following —

"Subject to Clause 12C hereof, nothing".

IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED by the said)
THE HONOURABLE RICHARD) R F Court
FAIRFAX COURT in the)
presence of:)

MINISTER FOR RESOURCES DEVELOPMENT
Colin Barnett

EXECUTED by **REYNOLDS**) **REYNOLDS**
AUSTRALIA ALUMINA, LTD.) **AUSTRALIA**
by its duly appointed attorney) **ALUMINA, LTD.**
John David Cooper McLean) **By its attorney**
and countersigned by)
Richard Dennis Gee, both) **J McLean**
in the presence of:)

G Faliti

Signature
R Gee

Signature of Witness

Countersigned

Name of Witness
GIUSEPPINA FALITI

Address of Witness
**3/9 THE ESPLANADE
S. PERTH WA 6151**

THE COMMON SEAL of THE)
 SHELL COMPANY OF)
 AUSTRALIA LIMITED was) [C.S]
 hereunto affixed by authority)
 of the Directors in the)
 presence of:)

Director I R Freer

Secretary B H Pascoe

THE COMMON SEAL of KOBE ALUMINA)
 ASSOCIATES (AUSTRALIA) PTY.)
 LIMITED was hereunto affixed by)
 authority of the Directors in the)
 presence of:)

Director T Ueno

Secretary J A Jansen

EXECUTED by NISSHO IWAI) **NISSHO IWAI**
 ALUMINA PTY. LIMITED by its) **ALUMINA**
 duly appointed attorney KOBE) **LIMITED**
 ALUMINA ASSOCIATES) **By its attorney**
 (AUSTRALIA) PTY. LIMITED which
 affixed its common seal by the
 authority of the Directors in
 the presence of:

Director T Ueno

[C.S.]

Secretary J A Jansen

