

WESTERN AUSTRALIA

**ALUMINA REFINERY (WORSLEY)
AGREEMENT AMENDMENT ACT
1992**

No. 63 of 1992

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

[Assented to 11 December 1992.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Alumina Refinery (Worsley) Agreement Amendment Act 1992*.

Commencement

2. This Act shall come 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 1991 Index to
Legislation of Western Australia, p. 9.]*

Section 6B inserted

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

“ **Third Supplementary Agreement**

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

”

Section 9 inserted

5. After section 8 of the principal Act the following section is inserted —

“ **Effect of Third Supplementary Agreement**

8. 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 1992, operate and take effect subject to its provisions as those provisions are amended by the First, Second and Third Supplementary Agreements. ”.

Fourth Schedule added

6. After the Third Schedule to the principal Act, the Fourth Schedule is added —

“ **FOURTH SCHEDULE** [Section 6B]

THIS AGREEMENT is made the 24th day of September 1992

B E T W E E N :

THE HONOURABLE CARMEN MARY LAWRENCE, B. Psych., Ph.D., 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 30th Floor, 77 St George’s Terrace, 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 Building, 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 (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 as follows :

(1) Clause 5 (2) —

by inserting after “refinery”, in the second place where it occurs, the following —

“ and to be exported from the State of Western Australia ”.

(2) Clause 5 (3) (c) —

by deleting paragraph (c) and substituting the following paragraph —

“ (c) from and including 1 July 1991 pay to the Bunbury Port Authority for or in connection with the Joint Venturers’ use of the port of Bunbury such port charges fees dues levies and other imposts as are payable pursuant to legislation applicable to the port or regulations made thereunder PROVIDED THAT —

- (i) except as specified in subparagraph (ii) of this paragraph, no charges other than Port Infrastructure Charges as set out in Table 3 in Part 1 of Schedule 2 to the *Bunbury Port Authority Regulations 1962* as amended from time to time or other charges payable pursuant to the said regulations in lieu of or in substitution for such Port

Infrastructure Charges shall be payable in respect of cargoes passing over the wharf at Berth A or, if the Joint Venturers construct a wharf at Berth B, over that wharf; and

- (ii) nothing herein shall be taken to imply any exemption from the payment of any port charges fees dues levies or other imposts that would normally be payable by ships using the port of Bunbury; ”.

(3) Clause 5 (10) (a) —

- (a) by deleting the marginal note thereto and substituting the following —

“ Royalties on Alumina and Bauxite after 1 January 1989 ”;

- (b) by deleting subparagraph (i) and substituting the following —

“ (i) pay to the State a royalty on all alumina produced at the refinery from bauxite the property of the Crown during each quarterly period ending on the last day of March June September and December in each year commencing from and including the quarter beginning 1 January 1989 calculated in accordance

with the following
formula —

$$R = RF \times AP \times TS$$

Where:

R = amount of royalty
payable to the State
for the quarter;

RF = $\frac{1.06}{100}$ for the period
commencing on
1 January 1989 and
ending on 31 July
1991, and $\frac{1.65}{100}$
thereafter;

AP = the average alumina
export price per tonne
from Australia for the
preceding four
quarters as released by
the Australian Bureau
of Statistics in
Harmonised Trade
Access System Reports
(HTRACCS Reports)
under Australian
Harmonised
Export Commodity
Classification Number
28182000 (or future
equivalent);

TS = the number of tonnes
of alumina shipped
sold or otherwise
disposed of by the
Joint Venturers during
the quarter.

The above formula shall be
subject to review by the

special grade bauxite the property of the Crown mined by the Joint Venturers pursuant to this Agreement, a royalty at the relevant rate specified in the regulations under the *Mining Act 1978*;

”.

- (5) By inserting after Clause 5C the following clause —

“ 5D. The royalty payable under this Agreement in respect of alumina shall be subject to review by the parties hereto as at 31 July 1998 and thereafter as at the last day of each succeeding period of seven years PROVIDED THAT in any review the parties shall have regard to the average of the rates of royalty in respect of bauxite and alumina paid in Australia for the preceding twelve months having regard also to such matters as the respective tonneages mined, the degree of processing required, the alumina content and other characteristics of the bauxite.

”.

- (6) Clause 7 —

- (a) by deleting subclauses (4) and (5) and substituting the following —

“ (4) Rental under the Mining Lease shall be paid to the State yearly in advance and for the first seven years of the lease shall be calculated at the rate of one dollar ninety-three cents (\$1.93) per annum for every square

kilometre contained in the leased area.

- (5) After the expiration of the first seven years from the granting of the Mining Lease and at the expiration of every seven year period of the lease thereafter the rental for the lease shall be reviewed. The rental for each such period after the first seven years shall be calculated separately in accordance with the following formula —

$$B \times AP/_{\$61} = R$$

Where:

B = the rental mentioned in subclause (4) of this Clause;

AP = the average alumina export price per tonne from Australia for the four quarters in the year to and including the 31st day of March immediately preceding the date of review as released by the Australian Bureau of Statistics in Harmonised Trade Access System Reports (HTRACCS Reports) under Australian Harmonised Export C o m m o d i t y Classification Number 28182000 (or future equivalent);

R = the new rental;

PROVIDED THAT —

- (i) the provisions of clause 5 (10) (a) (i) of this Agreement relating to review of the formula therein contained shall apply *mutatis mutandis* to the above formula;
 - (ii) in no case shall the adjusted rental be less than one dollar ninety-three cents (\$1.93) per square kilometre. ”;
- (b) in subclause (8), by deleting “mile or residual part of a square mile” and substituting the following —
- “ kilometre or residual part of a square kilometre ”;
- (c) by inserting after subclause (14) the following subclause —
- “ (15) Notwithstanding the provisions of the *Mining Act 1978* the Joint Venturers may from time to time during the currency of this Agreement apply to the Minister for areas held by the Joint Venturers under an exploration licence or mining lease granted under the *Mining Act 1978* to be included in the Mining Lease. The Minister shall confer with the Minister for Mines in regard to any such application and if they approve the application the Minister for Mines shall upon

the surrender of the relevant mining tenement include the area the subject thereof in the Mining Lease subject to such of the conditions of the surrendered mining tenement as the Minister for Mines determines. In respect of any such land:

- (a) the land shall in addition to any conditions so determined by the Minister for Mines be subject to the same terms covenants and conditions as apply to the Mining Lease;
- (b) the Minister for Mines may make such apportionment of rents as may be necessary in connection therewith;
- (c) the land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Joint Venturers' expense.

”.

(7) Clause 7B —

by inserting after subclause (1a) the following subclause —

- “ (1b) (a) If any of the Joint Venturers assigns the whole or any part of its rights under this Agreement in accordance with Clause 20 hereof and such assignment takes effect before the date of grant of a

mining lease or mining leases applied for pursuant to this Clause then the interest of the assigning Joint Venturer in any application for such mining lease shall be held on trust for the assignee pending the grant of such mining lease.

- (b) Upon a grant of a mining lease referred to in paragraph (a) of this subclause the assigning Joint Venturer shall forthwith transfer its title to and interest in the mining lease to the assignee and such mining lease shall be deemed to be granted pursuant to this Clause. ”.

(8) Clause 7C —

by deleting “hereof” and substituting the following —

“ hereof unless the Minister otherwise agrees) ”.

(9) Clause 7D —

by deleting Clause 7D and substituting the following clause —

“ 7D. (1) Nothing in this Agreement shall prohibit the Joint Venturers from marking out and applying for a mining lease or mining leases for all minerals including bauxite subject to the provisions of

the *Mining Act 1978* in respect of:

- (a) land surrendered by the Joint Venturers to the State pursuant to subclause (8) of Clause 7 hereof; and
- (b) land which has been excised from the Mining Lease pursuant to Clause 18 hereof

and subject to subclause (2) of this Clause the Minister for Mines may grant such mining leases.

- (2) No mining lease shall be granted pursuant to this Clause without the prior approval of the Minister.
- (3) A mining lease granted pursuant to this Clause shall, in addition to any covenants or conditions that may be prescribed or imposed pursuant to the *Mining Act 1978*, be subject to the following special conditions:
 - (a) any mining of bauxite must be carried on by or on behalf of the Joint Venturers subject to and in accordance with this Agreement;
 - (b) the provisions of section 82 (1) (d) of the *Mining Act 1978* shall be

modified so that in respect of bauxite but not other minerals the mining lease may only be assigned or underlet in accordance with Clause 20 hereof; and

- (c) the Joint Venturers shall be liable to pay royalties to the State in accordance with subclause (10) of Clause 5 hereof on alumina produced from bauxite mined from the mining lease and the provisions of the *Mining Act 1978* shall be modified accordingly so that the Joint Venturers shall not be obliged to pay royalties on bauxite mined from the mining lease where that bauxite is so processed into alumina at the refinery.

”.

(10) Clause 9 (2) —

(a) paragraph (a) —

- (i) by inserting after “such road” the following —

“ intersecting with roads used or capable of use by the public or which the public are authorised or permitted to use by law or intersecting with railways

”;

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Amendment Act 1992*

(ii) by deleting the following —

“ at all intersections with
public roads and railways ”;

(b) paragraph (b) —

by inserting after “alignments” and also
after “any road” the following —

“ on Crown land ”.

(11) Clause 12A —

by deleting “Arbitration Act, 1895” and
substituting the following —

“ *Commercial Arbitration Act 1985* and
notwithstanding section 20 (1) of that
Act each party may be represented
before the arbitrators by a duly
qualified legal practitioner or other
representative ”.

(12) Clause 12B —

by deleting paragraph (a) and substituting the
following —

“ (a) the deletion of subsections (2), (3)
and (4) of section 25; and ”.

(13) By deleting Clause 18 and substituting the
clause set forth in the Schedule to this
Agreement.

(14) Clause 28 —

by deleting “Arbitration Act, 1895” and
substituting the following —

“ *Commercial Arbitration Act 1985* and
notwithstanding section 20 (1) of that
Act each party may be represented

before the arbitrators by a duly
qualified legal practitioner or other
representative ”.

THE SCHEDULE

18. (1) Notwithstanding anything contained or implied in this Agreement or in the Mining Lease or the *Mining Act 1978* mining tenements may subject to the provisions of this Clause be granted to or registered in favour of persons other than the Joint Venturers under the *Mining Act 1978* or pursuant to the Second Schedule to that Act in respect of the area subject to the Mining Lease (including lands deemed to be part of the land in the Mining Lease pursuant to Clause 7C or subclause (5) or (6) of this Clause) except that part shown coloured red on the plan marked “Y” initialled by or on behalf of the parties hereto for the purposes of identification and except any part of the land shown coloured yellow on that plan which becomes deemed to be part of the land in the Mining Lease, unless the Minister for Mines determines that such grant or registration is likely unduly to prejudice or interfere with the current or prospective operations of the Joint Venturers hereunder with respect to bauxite assuming the taking by the Joint Venturers of reasonable steps to avoid the prejudice or interference or that there is a reasonable probability that such a grant or registration would materially reduce the quantity of economically extractable bauxite available to the Joint Venturers.
- (2) A mining tenement granted or registered pursuant to this Clause shall not confer any right to mine or otherwise obtain rights to bauxite on the tenement.

- (3) (a) In respect of any application for a mining tenement whether made under the *Mining Act 1904* or the *Mining Act 1978* in respect of an area the subject of the Mining Lease the Minister for Mines shall consult with the Minister and the Joint Venturers with respect to the significance of bauxite deposits in, on or under the land the subject of the application and any effect the grant of a mining tenement pursuant to such application might have on the current or prospective bauxite operations of the Joint Venturers under this Agreement.
- (b) Where the Minister for Mines, after taking into account any matters raised by the Minister or the Joint Venturers determines that the grant or registration of the application is likely to have the effect on the operations of the Joint Venturers or the bauxite referred to in subclause (1) of this Clause, he shall, by notice served on the Warden to whom the application was made, refuse the application.
- (c) Before making a determination pursuant to paragraph (b) of this subclause the Minister for Mines may request the Warden to hear the application and any objections thereto and as soon as practicable after the hearing of the application to report to the Minister for Mines on the application and the objections and the effect on the current or prospective operations of the Joint Venturers or the quantity of economically extractable bauxite that a grant of the application might have.
- (4) (a) Except as provided in subclause (3) of this Clause a Warden shall not hear or otherwise deal with an application for a mining tenement in respect of an area the subject of the Mining Lease unless and until the Minister for Mines has notified

him that it is not intended to refuse the application pursuant to subclause (3) of this Clause. Following such advice to the Warden the application shall be disposed of under and in accordance with the *Mining Act 1978* or pursuant to the Second Schedule to that Act as the case may require save that where the Warden has heard the application and objections thereto pursuant to subclause (3) of this Clause, the application may be dealt with by the Warden without further hearing.

- (b) The Joint Venturers may exercise in respect of any application heard by the Warden any right that they may have under the *Mining Act 1978* to object to the granting of the application.
 - (c) Any mining tenement granted pursuant to such application shall, in addition to any covenants and conditions that may be prescribed or imposed, be granted subject to such conditions as the Minister for Mines may determine having regard to the matters the subject of the consultations with the Minister and the Joint Venturers pursuant to subclause (3) (a) of this Clause and any matters raised by the Joint Venturers before the Warden.
- (5) (a) On the grant of any mining tenement over land the subject of the Mining Lease on or after the date of the agreement ratified by the *Alumina Refinery (Worsley) Agreement Amendment Act 1992* (whether the application for the mining tenement was made before or after that date) the land the subject of the mining tenement shall thereupon be deemed excised from the Mining Lease (with abatement of future rent in respect of the area excised but without any abatement of rent already paid

or of rent which has become due and has not been paid in advance).

(b) If the Joint Venturers apply —

(i) during the period of application for or during the term of any mining tenement referred to in paragraph (a) of this subclause; or

(ii) if that tenement is —

(A) a prospecting licence or exploration licence and a substitute tenement is granted in respect thereof pursuant to an application made under section 49 or section 67 of the *Mining Act 1978*; or

(B) a mining tenement granted pursuant to the Second Schedule to the *Mining Act 1978* and a substitute title is granted pursuant to that Schedule,

during the term of the substitute title

to the Minister to have the land the subject of such mining tenement or substitute title as the case may be revert to the Mining Lease on the termination of the mining lease or substitute title then notwithstanding anything contained in the *Mining Act 1978* on such termination the land the subject of such lease or title shall thereupon be deemed to be part of the land in the Mining Lease (with appropriate adjustment of rental) and shall be subject to the terms and conditions of the Mining Lease and this Agreement.

- (6) If a mining lease granted over land that was at any time subject to the Mining Lease is transferred to the Joint Venturers pursuant to the provisions of the *Mining Act 1978* and the Minister approves that the provisions of this subclause shall apply to that mining lease then, from the date of such approval, that mining lease shall be deemed to be a mining lease granted pursuant to Clause 7B hereof in respect of all minerals including bauxite and, without limitation, Clause 7C hereof shall apply to such mining lease upon the expiration or sooner determination thereof.

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 CARMEN)
MARY LAWRENCE in the)
presence of:) **Carmen Lawrence**

MINISTER FOR
STATE DEVELOPMENT **Ian Taylor**

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

Name of Witness Judith Fornero

Address of Witness Lot 82 Goslin Street
Sawyers Valley

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

Director B Kelly

Secretary B Pascoe

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

Director P Fromson

Secretary T Ueno

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

**NISSHO IWAI
ALUMINA LIMITED**
By its attorney

[C.S.]

Director P Fromson

Secretary T Ueno

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