

WESTERN AUSTRALIA

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# ALUMINA REFINERY AGREEMENT AMENDMENT ACT

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No. 99 of 1986

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AN ACT to amend the *Alumina Refinery Agreement Act 1961*.

[Assented to 11 December 1986.]

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

## Short title

1. This Act may be cited as the *Alumina Refinery Agreement Amendment Act 1986*.

**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 Agreement Act 1961\** is referred to as the principal Act.

[\*Reprinted as approved 1 September 1969 and amended by Acts Nos. 47 of 1972, 34 of 1974 and 15 of 1978.]

**Section 2 amended**

4. Section 2 of the principal Act is amended—

(a) in the definition of “the agreement” by inserting after “the sixth supplementary agreement” the following—

“ and the seventh supplementary agreement ”;

(b) in the definition of “the sixth supplementary agreement” by deleting the full stop and substituting a semicolon; and

(c) by inserting after that definition the following definition—

“ “the seventh supplementary agreement” means the agreement of which a copy is set forth in the Eighth Schedule. ”.

**Section 3G inserted**

5. After section 3F of the principal Act the following section is inserted—

Seventh supplementary agreement approved

“ 3G. (1) The seventh supplementary agreement is approved.

(2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the seventh supplementary agreement shall operate and take effect notwithstanding any other Act or law. ”.

**Eighth Schedule added**

6. After the Seventh Schedule to the principal Act the following Schedule is added—

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**EIGHTH SCHEDULE**

(Section 2)

THIS AGREEMENT is made the 20th day of November 1986 BETWEEN THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called “the State”) of the one part and ALCOA OF AUSTRALIA LIMITED a company duly incorporated in the State of Victoria and having its principal office in the State of Western Australia at Cnr Davy & Marmion Streets, Booragoon (hereinafter referred to as “the Company”) of the other part.

WHEREAS:—

- (a) the State and the Company are the parties to the agreement defined in section 2 of the Alumina Refinery Agreement Act 1961 (which agreement as varied or amended is hereinafter referred to as “the Principal Agreement”);
- (b) the State has requested the Company to refrain from exercising its rights to mine bauxite within certain areas comprised within the mineral lease granted to the Company pursuant to the Principal Agreement; and
- (c) the parties desire to vary the Principal Agreement as hereinafter provided.

NOW THIS AGREEMENT WITNESSES as follows:—

1. Subject to the context, 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 State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31st December 1986.
3. The provisions of this Agreement other than this clause 3 and clause 2 shall not come into operation until the Bill referred to in clause 2 has been passed by the Parliament of Western Australia and comes into operation as an Act.
4. The Principal Agreement is hereby varied as follows:—
  - (1) Clause 2—
    - (a) by deleting the definition of “Minister” and substituting the following definition—

“ “Minister” means the Minister in the Government of the State for the time being responsible (under whatsoever title) for the administration of the Ratifying Act and includes the successors in office of the Minister;”;
    - (b) by inserting, in their appropriate alphabetical positions, the following definitions:—

“ “Authority” means the National Parks and Nature Conservation Authority established by section 21 of the Conservation Act;

“Conservation Act” means the Conservation and Land Management Act 1984;

“conservation area” means the areas of the mineral lease within the solid black boundaries on Plan E being respectively the reserves known as ‘Dale’ ‘Serpentine’ and ‘Monadnock’, and parts of the reserve known as ‘Lane-Poole’;

“Plan E” means the plans marked “E” comprising four sheets initialled by the parties hereto for the purposes of identification;

“Land Act” means the Land Act 1933;

“recreation area” means the area of the mineral lease within the broken black boundary on Plan E being part of the reserve known as ‘Lane-Poole’;

(2) By inserting after clause 9 the following clause:—

“9A. The following provisions shall apply in respect of the conservation area and the recreation area:—

(1) The State shall arrange that the conservation area and the recreation area are reserved under section 29 of the Land Act and classified as of Class A by proclamation pursuant to the provisions of section 31 (1) of the Land Act for the purposes and on and subject to the conditions:—

(a) as to the conservation area, set out in the First Schedule hereto; and

(b) as to the recreation area, set out in the Second Schedule hereto,

and for those purposes and subject to those conditions respectively vested in the Authority pursuant to section 33 (2) of the Land Act.

(2) The State covenants and agrees with the Company that the State will not, during the currency of this Agreement, vary or revoke or seek to vary or revoke a classification or vesting order made in accordance with subclause (1) of this clause save with the prior consent in writing of the Company except that the State may amend any such classification or order pursuant to the Land Act for water purposes, the State first giving the Company reasonable opportunity to mine any such areas as may be affected by flooding.

(3) The State covenants and agrees with the Company that notwithstanding sections 60 and 61 of the Conservation Act any proposed management plan and any amendment, revocation or substitution for an existing management plan from time to time prepared by the Authority pursuant to section 56 (1) (e) of the Conservation Act in respect of or affecting the conservation area or the recreation area and any management thereof\* shall be consistent with and shall not prejudice the rights of the Company under this Agreement.

\*(whether pursuant to an approved management plan or not)

(4) Subject to subclause (5) of this clause the Company covenants with the State that during the currency of this Agreement it will not conduct mining operations in the conservation area PROVIDED HOWEVER that the Company may continue to exercise any rights conferred upon the Company by this Agreement or the mineral lease

in relation to access on, over or through the conservation area for and the construction and use of any railway, road, conveyor or pipeline for the transport of bauxite or any other substance mined or produced or required by the Company in connection with its mining operations. The Company, before exercising any such rights, shall consult with the Authority to ensure that wherever reasonably possible any such exercise shall be compatible with conservation aims in respect of the area.

(5) If at any time and from time to time during the currency of this Agreement the Company considers that the conservation area or a part or parts thereof has suffered degeneration or deterioration in the conservation values of its indigenous flora and fauna it may, after first consulting with the Authority, give to the Minister a notice specifying the area or areas it considers so affected and which it then desires to mine (herein a "review area") whereupon:—

(a) the State shall, within two months of such notice, constitute an environmental review committee (herein "the Committee") the membership of which will include representatives from a voluntary organisation or voluntary organisations having a special interest in conservation, the Company and the Authority;

(b) the Committee's terms of reference shall be to examine and report upon the conservation values of the indigenous flora and fauna within the review area or areas, such report to be submitted to the Minister within six months of the date of constitution of the Committee; and

(c) the Minister shall within two months after receipt of the Committee's report notify the Company in writing of his decision either to permit or refuse mining by the Company for bauxite pursuant to the terms of this Agreement and the mineral lease upon that review area or areas subject to such terms and conditions as he may reasonably specify PROVIDED THAT before giving his approval to mining aforesaid, whether conditionally or unconditionally, the Minister shall first consult with and obtain the concurrence thereto of the Minister in the Government of the State for the time being responsible for the administration of the Conservation Act."

(3) By inserting after clause 33 the following schedules:—

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#### FIRST SCHEDULE

Conditions to be set out in the proclamation of the conservation area as of Class A pursuant to section 31 (1) of the Land Act 1933:—

1. The area is reserved for the purpose of conservation and the agreement defined in section 2 of the Alumina Refinery Agreement Act 1961 (herein "the Agreement") and shall vest in and be held by the National Parks and Nature Conservation Authority (herein "the Authority") established by section 21 of the Conservation and Land Management Act 1984 (herein "the Conservation Act").

2. Alcoa of Australia Limited and its successors and permitted assigns (herein "the Company") may exercise at all times those rights conferred upon the Company by the Agreement in relation to access on, over or through the area for the construction and use of any railway, road, conveyor or pipeline for the transport of bauxite or any other substance

produced or required by the Company in connection with its mining operations. The Company before exercising any such rights, shall consult with the Authority to ensure that wherever reasonably possible any such exercise shall be compatible with conservation aims in respect of the area.

3. The Company may carry on mining operations in the area subject to and in accordance with the provisions of clause 9A of the Agreement and in that event the State may grant or cause to be granted permits and licences to take and contract for the sale of forest produce on any area in which such mining operations are to be so carried out provided there is then in force in respect of the subject area a management plan pursuant to Part V of the Conservation Act.
4. Subject to clause 9A (3) of the Agreement the management plans in respect of the area shall be prepared in accordance with section 56 (1) (e) of the Conservation Act and management of the area shall be carried out pursuant thereto or where for the time being there is no management plan in respect thereof in such a manner that only necessary operations as defined by section 33 (4) of that Act are undertaken but save as otherwise provided in these conditions the area shall be managed as if it were a national park under that Act.
5. (a) The area known as "Serpentine" may be used by the State for the purpose of providing for future linkage through the reserve to connect appropriately with the water supply system subject to consultation with the Authority in relation to satisfactory compliance with the requirements of the reserve.
- (b) The State may grant or cause to be granted permits and licences for the sale of forest produce of the pine plantation areas within the area known as "Monadnock" provided there is then in force in respect of that area a management plan pursuant to Part V of the Conservation Act.
- (c) In order to preserve sight lines from any reserves for trigonometrical stations vegetation may be removed from any portion of the area by or on behalf of any department authority or agency of the State after consultation with the Authority to ensure that minimal removal consistent with providing the necessary sight lines is undertaken and the Authority shall incorporate this requirement in the management plan for the area.
- (d) Access (with or without vehicles) to the area by persons employed by or acting for or on behalf of any department authority or agency of the State shall be on the same basis as such persons would have access to a State Forest having similar characteristics to the relevant part of the area but before any such entry there shall be consultation with the Authority in regard thereto.

#### SECOND SCHEDULE

Conditions to be set out in the proclamation of the recreation area as of Class A pursuant to section 31 (1) of the Land Act 1933:—

1. The area is reserved for the purposes of recreation and enjoyment of the natural environment and the agreement defined in section 2 of the Alumina Refinery Agreement Act 1961 (herein "the Agreement") and shall vest in and be held by the National Parks and Nature Conservation

Authority (herein "the Authority") established by section 21 of the Conservation and Land Management Act 1984 (herein "the Conservation Act").

- 2. Alcoa of Australia Limited and its successors and permitted assigns (herein "the Company") may exercise at all times those rights conferred upon the Company by the Agreement to conduct mining and other operations within the area upon and subject to the terms of the Agreement.
- 3. Subject to clause 9A (3) of the Agreement the management plans in respect of the area shall be prepared in accordance with section 56 (1) (e) of the Conservation Act and management of the area shall be carried out pursuant thereto or where for the time being there is no management plan in respect thereof in accordance with section 33 (3) of that Act.
- 4. The State may grant or cause to be granted permits and licences to take and contract for the sale of forest produce on the area provided there is then in force in respect of the subject area a management plan pursuant to Part V of the Conservation Act.
- 5. Access (with or without vehicles) to the area by persons employed by or acting for or on behalf of any department authority or agency of the State shall be on the same basis as such persons would have access to a State Forest having similar characteristics to the relevant part of the area but before any such entry there shall be consultation with the Authority in regard thereto."

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 BRIAN THOMAS BURKE,  
M.L.A. in the presence of:—

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BRIAN BURKE.

D. PARKER,  
MINISTER FOR MINERALS AND ENERGY

THE COMMON SEAL of ALCOA OF  
AUSTRALIA LIMITED was  
hereunto affixed in the  
presence of:—

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(C.S.)

DIRECTOR P. Spry-Bailey

DIRECTOR R. A. G. Vines