

ALUMINA REFINERY (WORSLEY) AGREEMENT.

No. 95 of 1982.

AN ACT to amend the Alumina Refinery (Worsley)
Agreement Act 1973-1978.

[Assented to 1 December 1982.]

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:—

1. (1) This Act may be cited as the *Alumina Refinery (Worsley) Agreement Amendment Act 1982*.

Short title
and citation.

(2) In this Act the Alumina Refinery (Worsley) Agreement Act 1973-1978 is referred to as the principal Act.

Act No. 67
of 1973;
amended by
Act No. 10
of 1978.

(3) The principal Act as amended by this Act may be cited as the Alumina Refinery (Worsley) Agreement Act 1973-1982.

Section 6
amended.

2. Section 6 of the principal Act is amended by inserting after "as the" the following—

“ First ” .

Section 6A
inserted.

3. After section 6 of the principal Act, the following section is inserted—

Second
Supplement-
ary
Agreement.

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

Section 7
amended.

4. Section 7 of the principal Act is amended by inserting after "amended by the" the following—

“ First ” .

Section 8
inserted.

5. After section 7 of the principal Act, the following section is inserted—

Effect of
Second
Supplement-
ary
Agreement.

“ 8. Notwithstanding section 4 of this Act but without affecting any agreement made pursuant to clause 24 (1) of the Agreement referred to in section 3 of this Act, that Agreement shall, on and after the coming into operation of the Alumina Refinery (Worsley) Agreement Amendment Act 1982, operate and take effect subject to its provisions as those provisions are amended by the First and Second Supplementary Agreements. ” .

6. After the Second Schedule to the principal Act, the following schedule is added—

Third
Schedule
added.

“ **THIRD SCHEDULE.**

THIS AGREEMENT made the 21st day of October, 1982 BETWEEN THE HONOURABLE RAYMOND JAMES O'CONNOR, 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 BHP MINERALS LIMITED the name whereof was formerly Dampier Mining Company Limited a company incorporated under the Companies Act 1961 of Western Australia and having its registered office at 37 St. George's Terrace, Perth in the said State, REYNOLDS AUSTRALIA ALUMINA, LTD. a company 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 77 St. George's Terrace, Perth, THE SHELL COMPANY OF AUSTRALIA LIMITED a company incorporated in the State of Victoria and having its principal office in the State of Western Australia at 200 St. George's Terrace, Perth and KOBE ALUMINA ASSOCIATES (AUSTRALIA) PTY. LIMITED a company incorporated in the State of Western Australia and having its registered office at 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 a certain deed of assignment dated the 7th day of February, 1980) 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 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 agreement dated the 28th day of May, 1981 (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 WITNESSETH—

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 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 said State and comes into operation as an Act.

3. The principal agreement is hereby varied as follows:

(1) Clause 1—

(a) by inserting in paragraph (f) of the definition of "Crown land" after "land" the following—

" (other than Wellington Locations 5336, 5337, 5338 and 5339, Murray Locations 1715, 1716 and 1717 and Williams Locations 15702 and 15703) " ;

(b) by deleting the definition of "mineral lease";

(c) by deleting the definition of "Mining Act";

(d) by inserting after the definition of "Land Act" the following definitions—

" "Mining Act 1904" means the Mining Act 1904 and the amendments thereto and the regulations made thereunder as in force on 31st December, 1981;

"Mining Act 1978" means the Mining Act 1978; " ;

(e) by deleting, in the definition of "Minister for Mines", "Mining Act" and substituting "Mining Act 1904 and the Mining Act 1978";

(f) by inserting after the definition of "stockpile area" the following definition—

" "the Mining Lease" means the mining lease referred to in Clause 7 (1) hereof and includes any renewal thereof and according to the requirements of the context shall describe the land leased as well as the instrument by which it is leased; " ;

(g) by inserting, in the paragraph commencing "Reference in this Agreement to an Act", after "Act", where it first occurs, the following—"other than the Mining Act 1904".

(2) Clause 3—

(a) subclause (4)—

by deleting “Mining Act” and substituting
“Mining Act 1904”;

(b) by inserting the following subclause—

“ (5) The temporary reserve and the rights of occupancy in respect thereof referred to in this Clause shall, subject to this Agreement, continue in force under the Mining Act 1904 as though that Act had not been repealed. ” .

(3) Clause 5—

subclause 10 paragraph (b)—

by deleting “Mining Act” wherever it occurs and substituting “Mining Act 1978”.

(4) Clause 7—

(a) subclause (1)—

by deleting subclause (1) and the marginal note thereto and substituting the following—

“ (1) The Joint Venturers having made application to the State for a mineral lease of certain land within the area delineated in blue on the plan marked “X” and initialled by or on behalf of the parties hereto for identification, the State shall cause to be granted to the Joint Venturers a mining lease of such of the land shown coloured yellow on the Department of Mines Original Plan 854 (recorded in the Department of Mines, Perth) as is Crown land and such of the land within the blue boundary shown on the said Original Plan 854 as is left uncoloured and comprises privately owned land in respect of which the mineral rights are reserved to the Crown or Crown

The Mining Lease.

land (notwithstanding that the surveys of the said lands have not been completed but subject to corrections to accord with survey when completed) for the mining of bauxite and the Mining Lease shall be so granted under and (except to the extent that the provisions of the Mining Act 1978 are inconsistent with this Agreement) subject to the Mining Act 1978 but in the form set out in the Second Schedule hereto. ” ;

(b) subclause (2)—

by deleting subclause (2) and the marginal note thereto and substituting the following—

Expenditure
conditions.

“ (2) During the currency of this Agreement and subject to compliance with their obligations hereunder the Joint Venturers shall not be required to comply with the expenditure conditions imposed by or under the Mining Act 1978 in regard to the Mining Lease. ” ;

(c) subclause (6)—

(i) by deleting “Mining Act” and substituting “Mining Act 1978”;

(ii) by deleting “the date of receipt of the application referred to in subclause (1) of this Clause” and substituting “the date of the grant thereof”;

(d) subclause (7)—

by deleting subclause (7) and the marginal note thereto and substituting the following—

Further
mining
lease.

“ (7) Within the first six (6) months of the twelve (12) months immediately preceding the expiration of the second renewed period of twenty-one (21) years of the Mining Lease the Joint Venturers, if the refinery

is then being operated pursuant to this Agreement, may give notice to the State that they desire a further mining lease under the Mining Act 1978 for bauxite of the leased area or of a part or parts thereof for a term of twenty-one (21) years and the State shall within six (6) months from its receipt of that notice notify the Joint Venturers of the terms and conditions upon which it is prepared to grant notwithstanding the provisions of the Mining Act 1978 such a further mining lease of the leased area or of a part or parts thereof (as the case may be) and the Joint Venturers for a period of three (3) months thereafter will have the right to accept such further mining lease on those terms and conditions and for a period of two (2) years the State shall not offer to grant a mining lease of the leased area or any part thereof to any person other than the Joint Venturers which permits the mining of bauxite on more favourable terms and conditions than have been offered to the Joint Venturers. ” ;

(e) subclause (8)—

by deleting “The” and substituting “Subject to Clause 7D hereof, the”;

(f) subclause (9)—

(i) paragraph (a)—

by deleting “section 151 of the Mining Act” and substituting “section 32 of the Mining Act 1978”;

(ii) paragraph (b) subparagraph (ii)—

by deleting “sections 169 to 172 inclusive of the Mining Act” and substituting “subsections (3), (5) and (6) of section 123 and paragraph (b) of subsection (1) of section 124 of the Mining Act 1978”.

(5) By inserting after Clause 7 the following clauses—

Minerals
contained
within
bauxite.

“ 7A. (1) Without limiting the provisions of this Agreement with respect to the production of associated chemicals and by-products the Joint Venturers shall, subject to the provisions of this Clause, have the right to extract from bauxite mined hereunder, either prior to or at the same time as it is processed into alumina, minerals (other than alumina) contained within that bauxite.

(2) (a) The Joint Venturers shall not extract any minerals pursuant to this Clause otherwise than in accordance with a mode or modes of operations first approved by the Minister.

(b) Any approval given by the Minister pursuant to this subclause may be given subject to such conditions as the Minister may reasonably determine.

(c) The Minister may before giving any approval pursuant to this subclause require that the Joint Venturers first obtain the approval of the State to a variation of the environmental review and management programme.

(3) The Joint Venturers in respect of minerals extracted pursuant to this Clause, shall pay to the State royalties at the rates from time to time prescribed under the Mining Act 1978 and shall comply with the provisions of the Mining Act 1978 and regulations made thereunder with respect to the filing of production reports and payment of royalties.

Leases for
all minerals.

7B. (1) Notwithstanding the existence of the Mining Lease the Joint Venturers may mark out and apply for a mining lease or mining leases in respect of any part of the Mining Lease for all minerals subject to the provisions of the Mining Act 1978 and, subject to subclause (2) of this Clause, the Minister for Mines may grant such mining lease or mining leases.

(2) No mining lease shall be granted pursuant to this Clause without the prior approval of the Minister.

(3) In the event of the grant of a mining lease pursuant to this Clause the land the subject thereof shall thereupon be deemed to be excised from the Mining Lease.

(4) A mining lease granted pursuant to this Clause shall in addition to any covenants and conditions that may be prescribed or imposed pursuant to the Mining Act 1978 be subject to the following special conditions—

Special conditions of mining lease.

- (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) a breach by the Joint Venturers under the mining lease shall be deemed to be a breach of this Agreement;
- (c) 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 of this Agreement;
- (d) the provisions of the Mining Act 1978 shall be modified so that the Joint Venturers shall not be obliged to pay royalties on bauxite mined from the mining lease, where the Joint Venturers are also liable for royalties on alumina produced therefrom pursuant to subclause (10) of Clause 5 of this Agreement.

7C. On the expiration or sooner determination of any mining lease granted pursuant to Clause 7B hereof the land the subject of that mining lease shall thereupon be deemed to be part of the land in the Mining Lease and shall be subject to the terms and conditions of the Mining Lease and this Agreement (other than Clause 7B hereof).

Effect of termination of mining lease.

7D. For the purpose of this Agreement in respect of any land surrendered by the Joint Venturers to the State pursuant to subclause (8) of Clause 7 hereof the Mining Act 1978 shall be deemed to be modified by the substitution for paragraph (c) of section 111 of the following paragraph—

Modification of Mining Act 1978.

“ (c) a mining lease does not authorize the holder thereof to work and mine—

- (i) the land in respect of which the lease was granted for iron; or

- (ii) any portion of the land in respect of which the lease was granted, which portion has been surrendered to the State pursuant to subclause (8) of Clause 7 of the agreement dated the 22nd day of August, 1974 (the execution of which was authorized pursuant to section 3 of the Alumina Refinery (Worsley Agreement Act 1973) as amended from time to time, for bauxite, " .

(6) Clause 12—

(a) subclause (2)—

- (i) by inserting after "lease", where it first occurs, the following—

" (over Crown land or other land as the case may be) " ;

- (ii) by inserting after the paragraph commencing "AND PROVIDED THAT any easement licence or other right" the following paragraph—

" AND PROVIDED THAT any lease of Crown land required for the purpose specified in paragraph (a) of this subclause may be granted, notwithstanding the provisions of any Act, under the Land Act but subject to the rights of the lessee under Mineral Lease 1.SA " ;

(b) subclause (4)—

by deleting "mineral lease" and substituting "mining lease";

(c) subclause (6)—

by inserting after "therewith" the following—

" and except as to any part the subject of a mining lease granted pursuant to Clause 7B hereof " .

(7) Clause 18—

(a) by inserting after “implied in” the following—

“ the Mining Act 1978 or ” ;

(b) by inserting after “hereunder” the following—

“ with respect to bauxite ” .

(8) The Second Schedule is deleted and the following Schedule substituted—

“ SECOND SCHEDULE

Western Australia

Mining Act 1978

Alumina Refinery (Worsley) Agreement Act 1973
Mining Lease

Mining Lease No.

The Minister for Mines a corporation sole established by the Mining Act 1978 with power to grant leases of land for the purposes of mining in consideration of the rents hereinafter reserved and of the covenants on the part of the Lessee described in the First Schedule to this lease and of the conditions hereinafter contained and pursuant to the Mining Act 1978 (except as otherwise provided by the Agreement (hereinafter called “the Agreement”) described in the Second Schedule to this lease) hereby leases to the Lessee the land more particularly delineated and described in the Third Schedule to this lease for bauxite (including special grade bauxite as defined in the Agreement) subject however to the exceptions and reservations set out in the Fourth Schedule to this lease and to any other exceptions and reservations which subject to the Agreement are by the Mining Act 1978 and by any Act for the time being in force deemed to be contained herein to hold to the Lessee for a term of 21 years commencing on the date set out in the Fifth Schedule to this lease with rights of renewal for two consecutive further periods of 21 years (subject to sooner determination of the said term upon cessation or determination of the Agreement) upon and subject to such of the provisions of the Mining

Act 1978 except as otherwise provided by the Agreement as are applicable to mining leases granted thereunder and to the terms covenants and conditions set out in the Agreement and to the covenants and conditions herein contained or implied and any further conditions or stipulations set out in the Sixth Schedule to this lease the Lessee paying therefor the rents and royalties as provided in the Agreement PROVIDED ALWAYS that this lease and any renewal thereof shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this lease—

- “Lessee” includes the respective successors and permitted assigns of each Lessee.
- If the Lessee be more than one the liability of the Lessee hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act and to any Act passed in substitution therefor or in lieu thereof and to the regulations and by-laws for the time being in force thereunder.

FIRST SCHEDULE.

(name address and description of the Lessee)

BHP MINERALS LIMITED a company incorporated under the Companies Act 1961 of Western Australia and having its registered office at 37 St. George's Terrace, Perth in the said State, REYNOLDS AUSTRALIA ALUMINA, LTD. a company 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 77 St. George's Terrace, Perth, THE SHELL COMPANY OF AUSTRALIA LIMITED a company incorporated in the State of Victoria and having its principal office in the State of Western Australia at 200 St. George's Terrace, Perth and KOBE ALUMINA ASSOCIATES (AUSTRALIA) PTY. LIMITED a company incorporated in the State of Western Australia and having its registered office at 5 Mill Street, Perth.

SECOND SCHEDULE.

(the agreement)

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) and any amendments to that Agreement.

THIRD SCHEDULE.

Description of land (subject to the provisions of the Agreement as to survey):

1. So much of the land shown coloured yellow on the Department of Mines Original Plan 854 (recorded in the Department of Mines, Perth) as is Crown land (as defined in the Agreement).
2. So much of the land within the blue boundary shown on the said Original Plan 854 as is left uncoloured and comprises—
 - (a) privately owned land in respect of which the mineral rights are reserved to the Crown; or
 - (b) Crown land (as defined in the Agreement).

Locality:

Mineral Field: Area, etc.:

FOURTH SCHEDULE.

All petroleum as defined in the Petroleum Act 1967 on or below the surface of the land the subject of this lease is reserved to the Crown in right of the State of Western Australia with the right of the Crown in right of the State of Western Australia and any person lawfully claiming thereunder or otherwise authorised to do so to have access to the land the subject of this lease for the purpose of searching for and for the operations of obtaining petroleum (as so defined) in any part of the land.

FIFTH SCHEDULE.

(Date of commencement of the lease).

SIXTH SCHEDULE.

(Any further conditions or stipulations).

In witness whereof the Minister for Mines has
affixed his seal and set his hand hereto this
day of 19

4. Any reference in the principal agreement (as amended by this Agreement) to "mineral lease" shall, with the exception of the reference in Clause 7 (1), be read and construed as a reference to "the Mining Lease".

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 RAYMOND
JAMES O'CONNOR, M.L.A.,
in the presence of— } R. O'CONNOR.

PETER JONES.
MINISTER FOR RESOURCES DEVELOPMENT

THE COMMON SEAL of
BHP MINERALS LIMITED
was hereto affixed by
authority of the Board of
Directors } [C.S.]

DIRECTOR D. S. ADAM.

SECRETARY G. D. STEPHENSON.

EXECUTED by REYNOLDS
AUSTRALIA ALUMINA, LTD.
by its duly appointed
Attorney BERNARD FLYNN
ARMBRUST in the presence
of— } REYNOLDS AUSTRALIA
ALUMINA, LTD.
By its Attorney
BERNARD FLYNN
ARMBRUST.
Countersigned:
W. M. SHIELDS.
M. EL-ANSARY.
Project Manager
Reynolds Australia Mines.

THE COMMON SEAL of THE SHELL COMPANY OF AUSTRALIA LIMITED was hereto affixed in accordance with its Articles of Association in the presence of—

} [C.S.]

DOCUMENT No.
287

DIRECTOR B. L. KELLY.

AUTHORISED SIGNATORY PHILIP HISLOP.

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

} [C.S.]

DIRECTOR SHINTARO KAHARU.

SECRETARY T. UJI-IE.

"
