

ALUMINA REFINERY (WORSLEY) AGREEMENT.

No. 10 of 1978.

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

[Assented to 15th May, 1978.]

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 Act Amendment Act, 1978.* short title and citation.

(2) In this Act the Alumina Refinery (Worsley) Agreement Act, 1973, is referred to as the principal Act. Act No. 67 of 1973.

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(3) The principal Act as amended by this Act may be cited as the Alumina Refinery (Worsley) Agreement Act, 1973-1978.

Section 3
amended.

2. Section 3 of the principal Act is amended by inserting immediately before the word "Schedule", in line four, the word "First".

New section
added.

3. The principal Act is amended by adding a new section, to stand as section 6, as follows—

Supplemen-
tary
Agreement.

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

New section
added.

4. The principal Act is amended by adding a new section, to stand as section 7, as follows—

Effect of
Supplemen-
tary
Agreement.

7. Notwithstanding the provisions of section 4 of this Act, on and after the coming into operation of the Alumina Refinery (Worsley) Agreement Act Amendment Act, 1978, the Agreement which is referred to in section 3 of this Act and which was executed pursuant to that section shall operate and take effect subject to its provisions as those provisions are amended by the Supplementary Agreement. .

Schedule
amended.

5. The Schedule to the principal Act is amended by deleting the title "SCHEDULE." and substituting the title "FIRST SCHEDULE.".

Second
Schedule
added.

6. The principal Act is amended by adding a further schedule, to stand as the Second Schedule, as follows—

SECOND SCHEDULE.

THIS AGREEMENT made the 18th day of April 1978 BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, O.B.E., M.L.A., Premier of the State of

1978.] *Alumina Refinery (Worsley)* [No. 10.
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Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (hereinafter referred to as "the State") of the one part and ALWEST PTY. LIMITED (hereinafter called "Alwest") a Company incorporated under the Companies Act, 1961, of Western Australia and having its registered office at 44 Stirling Street, Perth, in the said State and DAMPIER MINING COMPANY LIMITED (hereinafter called "Dampier") a Company also incorporated under the said Act and having its registered office at 37 Saint George's Terrace, 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 parties are the parties to the agreement between them dated the 22nd day of August, 1974, the execution of which by the State was authorized pursuant to section 3 of the Alumina Refinery (Worsley) Agreement Act, 1973 (which agreement is hereinafter referred to as "the principal agreement").
- B. The Joint Venturers have given notice of their desire to proceed with the objects of the principal agreement in accordance with the provisions of Clause 2 thereof.
- C. The Minister has at the request of the Joint Venturers pursuant to the provisions of Clause 25 of the principal agreement extended the time for performance by the Joint Venturers of their obligations under the principal agreement to the 31st day of October 1978.
- D. The State pursuant to subclause (2) of Clause 3 of the principal agreement created a temporary reserve over all the Crown land referred to therein and granted to the Joint Venturers rights of occupancy over such temporary reserve.
- E. The parties desire to amend 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 unless and 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) as to Clause 1—

(a) by adding after the definition “access channel” the following definition—
“Alcoa” means Alcoa of Australia Limited;

(b) by adding after the definition “bauxite” the following definitions—

“Berth A” means the land known as Berth A at Bunbury and the wharf and alumina handling facilities constructed thereon by Alcoa pursuant to paragraph (a) of subclause (2) of Clause 4 of the Agreement set out in the Schedule to the Alumina Refinery (Pinjarra) Agreement Act, 1969;

“Berth B” means the land for the wharf and storage area immediately east of Berth A to be leased to the Joint Venturers at Bunbury pursuant to paragraph (c) of subclause (2) of Clause 12 of this Agreement;

(c) by adding after the definition “Crown Land” the following definition—

“environmental review and management programme” means any environmental review and management programme and any variation thereof referred to in Clause 5A hereof; and

(d) by deleting the definition of “State Electricity Commission” and adding the following definition—

“State Energy Commission” means the State Energy Commission of Western Australia established pursuant to the State Energy Commission Act, 1945; ;

(2) as to Clause 5—

(a) subclause (1)—

(i) by substituting for the words “coming into operation of this Agreement” in lines 1 and 2, the passage “31st of

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October 1978 or the date of the approval of the environmental review and management programme whichever is the later,";

- (ii) by substituting for the words "the commencement date" in line 7; the words "such later date"; and
- (iii) by substituting for the passage "appropriate)" in line 13, the passage "appropriate to a capacity not exceeding two million (2 000 000) tons per annum subject to the provisions of Clause 5B hereof");

(b) subclause (2)—

by substituting for the words "date of this Agreement" in lines 3 and 4 of subparagraph (i) of the proviso to subclause (2) and in lines 5 and 6 of subparagraph (ii) of that proviso, the passage "31st of October 1978";

(c) subclause (3)—

- (i) by deleting subparagraphs (i) and (ii) of paragraph (a);
- (ii) by substituting for subparagraph (iv) of paragraph (a) the following subparagraph—

(iv) in the event of their electing to construct a wharf and associated facilities at Berth B, construct such wharf and associated facilities in accordance with plans and specifications approved by the State;

(d) subclause (7) paragraph (d)—

by substituting for the passage "1.2" in line 4, the figure "1"; and

(e) subclause (10)—

(i) paragraph (a)—

by substituting for the passage in lines 32 to 48 inclusive of subparagraph (i), the following passage—

"For the purposes of this formula the mean quarterly world selling price per ton of aluminium for any quarter is deemed to be the average (expressed in cents) of the first four prices in each of the four

quarters which immediately precede that quarter as quoted in the London "Metal Bulletin" in respect of one pound of aluminium virgin ingots under the description "Canadian CIF all main ports excl. USA, Canada, UK and Latin America" multiplied by 2,240 and converted to Australian currency.

For the purpose of this formula the conversion rate from another currency to Australian dollars shall be the mean between the buying and selling rate for telegraphic transfers quoted by a trading bank acceptable to the Minister for Mines. The formula referred to in this subparagraph shall be subject to review by the parties—

- (I) as at the last day of the period of 7 years from the production date and thereafter as at the last day of each succeeding period of 7 years; or
- (II) if the formula becomes inoperative by reason of the London "Metal Bulletin" ceasing to publish the information required to determine factor "M" in the said formula.

In the event of any dispute between the parties arising from any review under this subparagraph the matter shall be referred to arbitration hereunder;" and

(ii) paragraph (b)—

by substituting for paragraph (b) the following paragraph—

- (b) (i) upon the expiration of the period referred to in subparagraph (i) of paragraph (a) of this subclause pay to the State on all 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;

(ii) permit the State to review the rate of royalty of 26.25 cents per ton mentioned in subparagraph (i) of paragraph (a) of this subclause seven years after the production date and thereafter as at the last day of each succeeding period of seven years PROVIDED HOWEVER THAT the rate of royalty fixed by the State in any review pursuant to this subparagraph shall be the royalty rate for alumina specified in the regulations under the Mining Act at the date of review and PROVIDED FURTHER THAT such rate shall not be greater than the assessed rate of the average of the rates of royalty in respect of bauxite (mined within the Commonwealth of Australia) paid to the Commonwealth of Australia and to all States thereof for the 12 months immediately preceding the date of review having regard to such matters as the respective tonnages mined, the degree of processing required, the alumina content and other characteristics of the bauxite and PROVIDED FURTHER THAT in the event of the rate specified in the regulations under the Mining Act being greater than the said assessed rate, then the assessed rate shall apply PROVIDED ALWAYS that subject to the proviso to subparagraph (i) of paragraph (a) of this subclause in no case shall the rate of royalty on alumina be less than 26.25 cents per ton; ;

- (3) by adding after Clause 5 a new Clause 5A as follows—

5A. (1) The Joint Venturers shall not later than the 31st of October 1978 submit to the Minister for approval by the State a detailed environmental review and management programme as to measures

Environment,
Environmental
Review
and Management
Programme.

to be taken in respect of the Joint Venturers' undertakings pursuant to Clause 5, and the mining operations associated therewith for the protection and management of the environment including rehabilitation and/or restoration of the mined areas and areas used for the disposal of red mud, the prevention of the discharge of tailings, slimes, pollutants or overburden and the minimization of salt release into the surrounding country, water courses, lakes or underground water supplies and the prevention of soil erosion.

**Continuous
programme
of investiga-
tion and
research.**

(2) The Joint Venturers shall implement the environmental review and management programme approved under subclause (1) of this Clause and any variation thereof that the State may approve from time to time and shall carry out continuous investigations and research (including monitoring and the study of sample areas) to ascertain the effectiveness of the measures they are taking pursuant to the approved environmental review and management programme for the protection and management of the environment.

Reports.

(3) The Joint Venturers shall, during the currency of this Agreement, at yearly intervals commencing twelve months after the environmental review and management programme is approved, submit an interim report to the State concerning investigations and research carried out pursuant to subclause (2) of this Clause and at 3 yearly intervals commencing from such date submit a detailed report to the State on the result of the investigations and research during the previous 3 years.

**Additional
Information.**

(4) The State may require the Joint Venturers to submit additional information in respect of all or any of the matters the subject of the detailed report.;

(4) by adding after Clause 5A a new Clause 5B as follows—

**Environ-
ment,
further
expansion
of refinery.**

5B. If the Joint Venturers proposed to expand the refinery beyond a capacity of two million (2 000 000) tons per annum the provisions of Clause 5A shall apply *mutatis mutandis* in respect of the Joint Venturers' proposed expansion and the mining operations associated therewith.;

(5) by adding after Clause 5B a new Clause 5C as follows—

5C. Notwithstanding anything to the contrary contained in this Agreement, the Joint Venturers shall—
Joint
Venturers'
advances.

- (a) advance to the State the sum of two million dollars (\$2 000 000) when the Joint Venturers commence to ship alumina through the Port of Bunbury; and
- (b) in the event of their electing to construct a wharf and associated shipping facilities at Berth B, if required by the State, advance to the State the total cost of any additional harbour works required from time to time to enable the Joint Venturers to use Berth B. ;

(6) as to Clause 6—

(a) subclause (2)—

by substituting for subclause (2) a new subclause as follows—

(2) If as a result of the studies undertaken under subclause (1) of this Clause the Joint Venturers and the State are satisfied that a smelter is technically and economically viable and competitive on world markets then the Joint Venturers shall establish a smelter and have it operating at a capacity and within a time to be agreed.;

(b) subclause (3)—

by adding after the word "will" in line 7 of subclause (3), the passage "subject to subclause (4) of this Clause"; and

(c) by adding after subclause (3) a new subclause (4) as follows—

(4) Where a request is made to the Joint Venturers to supply alumina to a third party pursuant to subclause (3) of this Clause, and the Joint Venturers demonstrate to the satisfaction of the Minister that compliance with this request would

require substantial capital outlay by the Joint Venturers or would deplete the proven reserves of bauxite available to the Joint Venturers to the extent that such reserves remaining would not be sufficient to permit the continued operation of the refinery to a level consistent with that permitted under the provisions of subclause (1) of Clause 5 hereof and any expansions necessary to meet the requirements of such third party for the remainder of the term of the mineral lease as renewed from time to time, the Minister shall at the request of the Joint Venturers release the Joint Venturers from any obligation to supply alumina pursuant to the said subclause (3);

(7) as to Clause 7—

(a) subclause (1)—

by substituting for the words “commencement date” in line 3, the passage “31st October 1978”;

(b) subclause (2)—

by substituting for the passage “lease but this subclause shall not apply to privately owned land within the mineral lease, unless the owner and occupier have been advised by the Joint Venturers as to the effect of the terms of this Agreement insofar as they relate to privately owned land within the mineral lease and have expressly agreed in writing to the Joint Venturers exercising with respect to his land the right of noncompliance with those labour conditions.” in lines 4 to 11 inclusive, the passage “lease.”; and

(c) subclause (9)—

by substituting for subclause (9) the following subclause—

(9) (a) The Joint Venturers shall not commence any mining or related operations (including prospecting, other than that which would be permitted by a permit to enter by virtue of section 151 of the Mining

Act) for the purposes of this Agreement on any privately owned land within the mineral lease unless and until—

- (i) the Joint Venturers have first ^{Consent.} obtained the consent of the owner and occupier of such land; and
- (ii) the Joint Venturers have ^{Compensation Agreement.} entered into a written agreement with the owner and occupier of such land for compensation arising out of their operations or proposed operations on the land, and lodged a true copy of the agreement with the Minister for Mines; and
- (iii) the Joint Venturers have ^{Restoration Agreement.} entered into a written agreement with the owner and occupier of such land for the purpose of providing for adequate restoration of the land after mining and that agreement has been approved by the Minister.

- (b) (i) Where an owner and/or occupier unreasonably withholds or refuses consent as provided in subparagraph (i) of paragraph (a) of this subclause, the Joint Venturers may apply to the Warden to dispense with such consent.

The Warden shall have jurisdiction to hear such application and his decision shall be binding on the parties.

- (ii) Where the Joint Venturers and an owner and/or occupier are unable to reach agreement as provided in subparagraph (ii) of paragraph (a) of this subclause, then where a reasonable time has elapsed after the commencement of negotiations either party may apply to the Warden to determine the amount of such compensation and the

<sup>Procedure
for
disputes—
consent to
mine.</sup>

<sup>Compensa-
tion.</sup>

provisions of sections 169 to 172 inclusive of the Mining Act shall apply. The Joint Venturers shall lodge a copy of the Warden's determination with the Minister for Mines.

Restoration.

(iii) Where the Joint Venturers and the owner and/or occupier are unable to reach agreement as provided in subparagraph (iii) of paragraph (a) of this subclause, then where a reasonable time has elapsed after the commencement of negotiations either party may apply to the Minister to determine the restoration to be carried out by the Joint Venturers and the determination of the Minister shall be binding on the parties.

(c) The Warden shall have power to adjudicate on matters arising pursuant to subparagraphs (i) and (ii) of paragraph (b) of this subclause, concurrently.

(d) If pursuant to this subclause the Joint Venturers become entitled to commence mining or related operations on privately owned land the Joint Venturers shall be deemed under this Agreement to have an estate or interest in such land sufficient to support a caveat under Part V of the Transfer of Land Act, 1893.

(e) On the first occasion that the Joint Venturers or their agent enter upon private land in the mineral lease the Joint Venturers shall ensure that a notice to the effect that entry is being made pursuant to this Agreement is handed to the owner and occupier of such land. ;

(8) as to Clause 8—

(a) by substituting for subclause (3) the following subclause—

(3) The provisions of section 96 of the Public Works Act, 1902, shall not apply to any railway to be

Caveatable Interest.

constructed pursuant to this Agreement but any such railway shall, for all purposes, be deemed to be constructed under the authority of a special Act passed on the date of the request of the Joint Venturers under subclause (1) of this Clause and in accordance with section 96 (1) of the Public Works Act.;

(9) by adding after Clause 8 a new Clause 8A as follows—

8A. Where the State and the Joint Venturers enter into any arrangement for the repayment to the State of moneys borrowed by the State for the purposes of fulfilling any obligation of the State incurred pursuant to this Agreement, the liability of the Joint Venturers for such repayment shall not be subject to Clause 19 hereof.;

Liability
of Joint
Venturers
for
repayment
of moneys
to the
State.

(10) as to Clause 12—

(a) by substituting for subclause (1) the following subclause—

(1) if so required by the Joint Venturers acquire for them any land other than Crown land as may be reasonably required for the refinery; the price at which such land will be made available to the Joint Venturers to be the actual cost of acquisition by the State;;

(b) by adding after subclause (1) a new subclause (1A) as follows—

(1A) If so required by the Joint Venturers cause to be granted to them notwithstanding the provisions of any Act—

(a) a lease of such Crown land as may be reasonable for the purposes of the construction and operation of the refinery and the water storage therefor together with an adequate buffer zone therefor; and

(b) a lease of such Crown land as may be reasonable having regard to the Joint Venturers' proposals as approved by the

Minister under subclause (4) of Clause 5 for the purposes of construction of red mud ponds and red mud disposal,

such leases shall contain such terms and conditions as are reasonable having regard to the Joint Venturers' requirements hereunder and in particular shall contain the following provisions—

- (i) the term thereof (unless sooner determined) shall expire on the same date as that on which the term of the mineral lease or any renewal thereof terminates or is determined;
- (ii) the rental payable thereunder shall be one peppercorn per annum payable if and when demanded; and
- (iii) the Joint Venturers shall pay to the Conservator compensation in accordance with subclause (3) of Clause 16 hereof; ;

(11) by adding after Clause 12 a new Clause 12A as follows—

Joint use of
Berth B.

12A. Notwithstanding the provisions of subparagraph (v) of paragraph (a) of subclause (3) of Clause 5, and subparagraph (ii) of paragraph (b) of subclause (3) of Clause 5, in the event of Alcoa desiring to have the use of the wharf and alumina shiploading and associated facilities on Berth B jointly with the Joint Venturers, the Joint Venturers will negotiate in good faith with Alcoa with a view to entering into an agreement as to such joint use including the construction or expansion of any such wharf and such facilities which may be necessary. Unless such agreement is entered into before the expiration of 6 months from the date upon which Alcoa shall have given notice in writing of such desire to the Joint Venturers, the Joint Venturers will consent to submit any disputes or differences as to the terms and conditions under which such joint use shall take place to the arbitration of two arbitrators and an umpire in accordance with the Arbitration Act, 1895. In any such arbitration the arbitrators shall appoint their umpire before proceeding in the reference, or in default of appointment in accordance with the provisions of the said Act.;

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(12) by adding after Clause 12A a new Clause 12B as follows—

12B For the purpose of this Agreement in respect of any land leased to the Joint Venturers pursuant to the Bunbury Port Authority Act, 1909 that Act shall be deemed to be modified by—

Modifications
to Bunbury
Port
Authority
Act.

- (a) the deletion of the proviso to section 25; and
- (b) the inclusion of a power to grant leases or licences for terms or periods (including renewal rights) and for such purposes as are consistent with the provisions of this Agreement, in lieu of the terms or periods and purposes referred to in section 25.;

(13) As to Clause 13—

(a) subclause (1)—

- (i) by substituting for the passage “1.2” in line 2, the figure “1”; and
- (ii) by substituting for the figure “5” in line 6, the figure “6”;

(b) subclause (2)—

by substituting for subclause (2) the following subclause—

(2) The Joint Venturers shall if required by the State advance a sum or sums to be agreed between the parties to enable the State to design and construct a pipeline together with ancillary works of appropriate size to supply 3 million gallons of water per day to the refinery;

(c) subclause (6)—

by deleting the last sentence; and

(d) by adding a new subclause (8) as follows—

(8) The Joint Venturers shall pay to the State for water supplied by the State pursuant to the provisions of subclauses (2) and (6) of this Clause a fair price to be negotiated between the parties having regard to the actual cost of providing, operating and maintaining such water supply.;

(14) as to Clause 14—

by substituting for the passage "1.2" in line 7,
the passage "1";

(15) as to Clause 15—

(a) subclause (1)—

by substituting for the word "Electricity" in line 7, the word "Energy";

(b) subclause (3)—

by substituting for the word "Electricity" in line 2, the word "Energy"; and

(c) by adding a new subclause (4) as follows—

(4) The Joint Venturers and the State Energy Commission are empowered to enter into arrangements for the sale or exchange of energy by the Joint Venturers to or with the State Energy Commission.;

(16) by adding after Clause 15 a new Clause 15A as follows—

Alternative sources of energy

15A (1) The State acknowledges the importance to the Joint Venturers of an assured source of energy at competitive prices and that at the present time coal is the only such Western Australian source. However, it is contemplated that supplies of natural gas may become available. In addition, the discovery or development of other sources of energy or advances in technology may result in other sources of energy becoming available and their use being practicable and economically advantageous to the Joint Venturers.

(2) The State undertakes that it will have regard to the Joint Venturer's energy requirements in planning future energy supply, and will where practicable keep the Joint Venturers informed of natural gas, oil and other sources of energy which become available in the south west of Western Australia. The State will use its best endeavours to ensure that the Joint Venturers have reasonable access to energy supplies on terms and conditions to be commercially negotiated.;

(17) as to Clause 16—

(a) subclause (1)—

by substituting for the passage “land within the mineral lease.” in line 4, the passage “land.”;

(b) subclause (2)—

by adding after the word “mining” in line 17, the words “or other”;

(c) subclause (3)—

by substituting for the passage “mining activities.” in line 6, the passage “operations hereunder.”;

(d) subclause (4)—

by adding after the word “lease” in line 2, the words “and the Joint Venturers’ operations hereunder”;

(e) subclause (7)—

by substituting for the passage “lease.” in line 4, the passage “lease and the Joint Venturers’ operations hereunder.”; and

(f) subclause (10)—

by substituting for the words “commencement date” in line 3, the passage “31st of October, 1978”;

(18) as to Clause 18—

by adding the following passage to the end of the Clause—

“Upon the grant of any such lease or other mining tenement the land contained therein shall be deemed to be automatically excised from the mineral lease (with abatement of future rent in respect to the area excised).”;

(19) As to Clause 20—

(a) by adding after the word “to” in line 3 the words “each other or to”; and

(b) by adding after the word “however” in line 18 the passage “(except in the case of an assignment to any Joint Venturer)”;

(20) as to Clause 30—

by substituting for the passage “the date hereof.” in the last line of subclause (1), the passage “the 31st of October 1978.”;

(21) as to the First Schedule—

by substituting for the First Schedule a new schedule as follows—

FIRST SCHEDULE.

1. Rates per ton mile for bauxite carried on trains operating between agreed loading sites and the refinery and coal on trains between the Collie coalfield and the refinery and alumina on trains between the refinery and port of Bunbury back loading with any of caustic soda and fuel oil, lime and limestone.

BAUXITE:

(i) agreed loading sites to the refinery:

Up to 492,104 tons per annum	Gazetted By-law Rates less 10 per cent	Cents per net ton mile
Over 492,104 tons and up to 984,207 tons per annum		1.10
Over 984,207 tons and up to 1,968,414 tons per annum		1.00
Over 1,968,414 tons and up to 2,952,621 tons per annum90
Over 2,952,621 tons and up to 3,936,828 tons per annum85
Over 3,936,828 tons and up to 4,921,035 tons per annum80
Over 4,921,035 tons and up to 5,905,242 tons per annum75
Over 5,905,242 tons and up to 6,889,449 tons per annum725
Over 6,889,449 tons per annum70

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When bauxite loading sites are more than 52 miles from the refinery the above rates shall be reduced by .025 cents per net ton mile.

ALUMINA, CAUSTIC SODA, FUEL OIL, LIME AND LIMESTONE:

(ii) alumina from the refinery to the port of Bunbury and backloading with caustic soda fuel oil lime and limestone:

Up to 246,052 tons per annum	Gazetted By-law Rates less 10 per cent	Cents per net ton mile
Over 246,052 tons and up to 492,104 tons per annum	1.70	
Over 492,104 tons and up to 738,155 tons per annum	1.50	
Over 738,155 tons and up to 984,207 tons per annum	1.40	
Over 984,207 tons and up to 1,230,259 tons per annum	1.30	
Over 1,230,259 tons and up to 1,476,311 tons per annum	1.25	
Over 1,476,311 tons and up to 1,722,362 tons per annum	1.20	
Over 1,722,362 tons and up to 1,968,414 tons per annum	1.15	
Over 1,968,414 tons and up to 2,460,518 tons per annum	1.10	
Over 2,460,518 tons per annum	1.07	

COAL:

(iii) from an agreed point on the Collie coalfield to the refinery:

Up to 196,841 tons per annum	Gazetted By-law Rates less 10 per cent	Cents per net ton mile
Over 196,841 tons and up to 492,104 tons per annum	2.10	
Over 492,104 tons and up to 787,365 tons per annum	1.90	
Over 787,365 tons and up to 984,207 tons per annum	1.80	
Over 984,207 tons and up to 1,230,259 tons per annum	1.70	
Over 1,230,259 tons and up to 1,476,311 tons per annum	1.60	
Over 1,476,311 tons per annum	1.50	

2. The freight rates set out in paragraph 1 of this schedule are subject to the following additional conditions:

- (i) Trains shall operate up to a maximum of 6 days per week, commencing 12.01 a.m. Monday and ceasing 12.00 midnight on Saturday. The Railways Commission shall arrange a train operating pattern between Monday and Saturday consistent with the requirements of the Joint Venturers as advised from time to time under Clause 5(2)(d). The train operating pattern shall be based as far as is practicable on the utilisation of the maximum number of wagons possible per train and the least number of trains per week required to meet the haulage programme of the Joint Venturers and such trains shall be tabled at times convenient to the operational requirements of the Railways Commission. In particular the Joint Venturers shall agree with the

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Railways Commission the pattern of working including weekly and monthly despatches. The Railways Commission will not guarantee the departure and arrival of trains at stated times nor shall it be liable to the Joint Venturers for delay however caused or any consequences arising therefrom.

- (ii) Should Sunday working be required and the Railways Commission approves, the Joint Venturers shall meet the additional costs involved. Should industrial conditions preclude regular operations on Saturdays the Railways Commission reserves the right to review the freight rates.
- (iii) The Joint Venturers shall ensure that all wagons are loaded within the authorised axle load capacity and shall be subject to such minimum load per wagon and per train as may be defined by the Railways Commission.
- (iv) The rates for freight set out in this schedule have been calculated on the basis of:
 - (a) The total turnaround time at terminals being—

Bauxite:

mine site	120 minutes
refinery	100 minutes

Alumina, Caustic Soda,
Fuel Oil, Lime and
Limestone:

port of	
Bunbury	180 minutes
refinery	120 minutes

Coal:

Collie coalfield	90 minutes
refinery	90 minutes

If such times are not regularly adhered to by the Joint Venturers the Railways Commission reserves the right to review the freight rates.

If the Joint Venturers request a change in the turnaround times the Railways Commission shall advise

the Joint Venturers of the effect the requested changes would have on the freight rates. If the Joint Venturers elect to accept the new freight rates the new turnaround times shall thereupon become effective.

- (b) 52 working weeks (each of six days and excluding Sundays) per annum less two weeks for contingencies (including all gazetted public holidays) for bauxite, alumina, caustic soda, fuel oil, lime and limestone, and 45 working weeks (each of 5 days) per annum for coal and if through no fault of the Railways Commission these yearly working programmes cannot be adhered to the Railways Commission reserves the right to review the freight rates.

- (v) The rates for freight are based on wagons being loaded to capacity and shall be subject to the minimum load per wagon being not less than:

Bauxite, 72.83 tons per wagon.
Alumina, 60.53 tons per wagon.
Caustic Soda, 52.66 tons per wagon.
Fuel Oil, 55.61 tons per wagon.
Coal, 48.72 tons per wagon.
Lime and Limestone, as stipulated by the Railways Commission.

and where less is carried in any wagon freight shall be charged as though the minimum load was carried.

3. The rates for freight set out in the schedule are based on costs prevailing at the 19th January, 1972, and shall be adjusted half-yearly on the first days of January and July with the new rates becoming effective on and from those dates in accordance with the following formula:

$$F_1 = F + \left[.9F \left\{ .80 \left\{ \frac{HR_1 - HR}{HR} \right\} + .05 \left\{ \frac{D_1 - D}{D} \right\} + .15 \left\{ \frac{SR_1 - SR}{SR} \right\} \right\} \right]$$

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WHERE

- (i) F1 = the new freight rate.
- (ii) F = the freight rate which was payable as at 19th January 1972.
- (iii) HR = the average hourly rate payable as at 19th January 1972.
- (iv) HR1 = the average hourly rate payable as at the date of adjustment.
- (v) D = the wholesale price (duty free) of distillate in Perth as at 19th January 1972.
- (vi) D1 = the wholesale price (duty free) of distillate in Perth as at the date of adjustment.
- (vii) SR = the price of heavy steel rails per ton c.i.f. port of Fremantle as ascertained from price schedule covering despatches from the Broken Hill Proprietary Company Limited and Australian Iron and Steel Proprietary Limited as at 19th January 1972.
- (viii) SR1 = the price of heavy steel rails per ton c.i.f. Fremantle ascertained as aforementioned as at the date of adjustment.

The rates applicable at the 19th January 1972 are:

1st class driver	\$2.2475 per hour
1st class guard	\$1.8338 per hour
trackman	\$1.4588 per hour

Average hourly rate \$1.8467

Price of distillate per gallon—21.4 cents

Price of heavy steel rails per ton c.i.f. port of Fremantle—\$113.00

PROVIDED ALWAYS that if at any time there is a change in—

- (a) the average hourly rate by the operation of any award or other wage determination; or
- (b) the list price (duty free) of distillate in Perth; or

(c) the price of heavy steel rails per ton c.i.f. port of Fremantle (as ascertained aforesaid),

and such change is effective from a date prior to the last date of adjustment a new freight rate or freight rates as the case may be shall be calculated and shall apply from the date of adjustment next following the date from which any such change as aforesaid is effective and such new freight rate or freight rates shall be substituted for the freight rate that would have applied but for the application of the provisions of this paragraph.

Adjustments made in accordance with this formula shall be expressed in a figure of dollars per ton and calculated to 4 decimal places of a dollar and in doing so the fifth decimal place shall also be calculated so that if the fifth decimal place is .5 or above, the fourth decimal place shall be increased by 1.

The escalation formula referred to above shall be subject to review by the Railways Commission after consultation with the Joint Venturers on the 1st January 1987 and thereafter at five yearly intervals.

4. All traffic transported by the Railways Commission for the Joint Venturers under this Agreement shall be carried as though accepted by the Railways Commission at Owner's risk pursuant to general condition 2(b) contained in the schedule to By-law 55 as in force at the date hereof and made under the Government Railways Act 1904 and shall be subject to the other By-laws made under the same Act.

5. Bauxite, alumina, caustic soda, fuel oil, coal, lime and limestone carried on other than unit trains in accordance with this Agreement and all other commodities shall, unless otherwise determined by the Railways Commission, be carried at gazetted rates.

6. If the Joint Venturers do not transport or discontinue the transport by rail of their requirements of bauxite for the purposes of this Agreement, the Railways Commission may in consultation with the Joint Venturers review the freight rates.

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In WITNESS whereof the parties hereto have executed this Agreement the day and year first hereinbefore mentioned.

SIGNED by the said THE
HONOURABLE SIR CHARLES
WALTER MICHAEL COURT,
O.B.E., M.L.A., in
the presence of— } CHARLES COURT

ANDREW MENSAROS
MINISTER FOR INDUSTRIAL DEVELOPMENT

THE COMMON SEAL of ALWEST
PTY. LIMITED was hereunto
affixed with the authority
of the Directors and in
the presence of— } (C.S.)

DIRECTOR

W. I. KOMMER

SECRETARY

LINDSAY E. GROOM

Executed by DAMPIER MINING
COMPANY LIMITED by being
signed in Western Australia
by its Attorney Ronald Murray
Williams under Power of Attorney } R. M. WILLIAMS
dated the 18 April, 1978 in the
presence of—

W. I. KOMMER
