

ALUMINA REFINERY (PINJARRA) AGREEMENT.

No. 116 of 1976.

**AN ACT to amend the Alumina Refinery (Pinjarra)
Agreement Act, 1969-1972.**

[Assented to 1st December, 1976.]

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 (Pinjarra) Agreement Act Amendment Act, 1976.*

Short title
and citation.

(2) In this Act the Alumina Refinery (Pinjarra) Agreement Act, 1969-1972, is referred to as the principal Act.

Act No. 75 of
1969 as
amended by
Act No. 48
of 1972.

(3) The principal Act as amended by this Act may be cited as the Alumina Refinery (Pinjarra) Agreement Act, 1969-1976.

Section 1A
amended.

2. Section 1A of the principal Act is amended—

(a) by substituting for the interpretation of the term “the agreement” the following interpretation—

“the agreement” means the agreement of which a copy is set forth in the First Schedule to this Act, as amended by the first supplementary agreement and the second supplementary agreement; ;

(b) by adding after the word “the”, being the first word in the interpretation of the term “the supplementary agreement”, the word “first”;

(c) by deleting the passage “Act.”, in line three of the interpretation of the term “the supplementary agreement”, and substituting the passage “Act;” ; and

(d) by adding after the interpretation of the term “the supplementary agreement” the following interpretation—

“the second supplementary agreement” means the agreement of which a copy is set forth in the Third Schedule to this Act. .

Section 3
amended.

3. Section 3 of the principal Act is amended by adding after the word “The”, being the first word in the section, the word “first”.

Section 4
added.

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

Second
supple-
mentary
agreement.

4. The second supplementary agreement is ratified. .

5. The principal Act is amended by adding a Schedule to stand as the Third Schedule, as follows—

Third
Schedule
added.

THIRD SCHEDULE.

S.1A

THIS AGREEMENT made the Fifteenth day of November 1976 BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, O.B.E., 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 referred to as "the State") of the one part and ALCOA OF AUSTRALIA (W.A.) LIMITED the name whereof was formerly Western Aluminium No Liability and later Alcoa of Australia (W.A.) N.L. a company duly incorporated under the Companies Statutes of the State of Victoria and having its principal office in that State at 535 Bourke Street, Melbourne and having its registered office in the State of Western Australia at Hope Valley Road, Kwinana (hereinafter referred to as "the Company" which term shall include its successors and permitted assigns) of the other part.

WHEREAS the parties are the parties to and desire to amend the agreement between them defined in Section 1A of the Alumina Refinery (Pinjarra) Agreement Act, 1969-1972 of the State of Western Australia (which agreement is hereinafter referred to as "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) Clause 4(2) is amended—

(a) as to paragraph (c)—

(i) by substituting for the passage "pay to the State the sum of one million five hundred thousand dollars (\$1 500 000) being the Company's agreed contribution under a contract to be entered into by the State for" in lines one to four inclusive, the passage "advance to the State the sum of

two million three hundred thousand dollars (\$2 300 000) to assist in" ; and

- (ii) by deleting the passage commencing with the word "As" in line nine and ending with the passage "hereof." in line twenty-five of the paragraph. ;
- (b) by inserting a new paragraph to follow paragraph (c) as follows:
- (cc) advance to the State or the Bunbury Port Authority in addition to the sum of two million three hundred thousand dollars (\$2 300 000) referred to in paragraph (c) of this subclause the sum of four million dollars (\$4 000 000) to assist in additional dredging and removal of rock from the access channel and turning basin of the inner harbour to a depth of forty (40) feet. ;
- (c) as to paragraph (d)—
- (i) by substituting for the marginal note "Contribution for additional dredging." the marginal note "Third party participation". ;
 - (ii) by deleting the passage commencing with the word "in" in line one and ending with the word "THAT" in line seven;
 - (iii) by substituting for the words "such additional dredging" in line nine, the passage "the additional dredging referred to in paragraph (cc) of this subclause" ; and
 - (iv) by substituting for the passage "return to the Company such part of the Company's contribution as is equitable," in lines fourteen, fifteen and sixteen, the passage "pay to the Company such amount as the Minister determines is equitable;" ;
- (d) by deleting paragraph (f); and
- (e) by inserting a new paragraph to follow paragraph (h) as follows:
- (hh) without in any way limiting the Company's obligations pursuant to Clause 4A hereof pay to the

Bunbury Port Authority a surcharge of sixty five (65) cents on the first thirteen million (13 000 000) tons of alumina delivered to the Company's bulk handling terminal facilities at the port as from the 1st day of April, 1976 (in this paragraph referred to as "the Alumina Surcharge") PROVIDED THAT in the event of other parties using the port to a depth below thirty six (36) feet the Minister shall reduce the Alumina Surcharge by such amount as the Minister determines is equitable. ;

(2) The following new Clauses as Clauses 4A and 4B are added after Clause 4 as follows:

4A. (1) Subject to subclause (2) of this Clause, the Company shall in respect of the twelve month period commencing from the 1st day of April, 1976 and thereafter in each succeeding period of twelve months pay to the Bunbury Port Authority wharfage charges calculated in accordance with the tonnages of alumina as follows—

Wharfage charges.

- (a) on tonnages not exceeding one million (1 000 000) tons, fifteen (15) cents per ton;
- (b) on tonnages exceeding one million (1 000 000) tons and not exceeding two million (2 000 000) tons, twelve (12) cents per ton; and
- (c) on all tonnages in excess of two million (2 000 000) tons, ten (10) cents per ton.

(2) Each of the applicable wharfage charges referred to in subclause (1) of this Clause shall be adjusted on the 1st day of April, 1982 and at three yearly intervals thereafter by a sum to be agreed between the parties hereto (or failing agreement referred to arbitration hereunder) to cover the increased or decreased cost to the Bunbury Port Authority reasonably applicable to the Company's operations.

Alteration of wharfage charges.

4B. Payment of the wharfage charges in Clause 4A hereof shall not excuse payment of the usual charges from time to time prevailing made or caused to be made by the State against vessels using the berth in respect of the usual services rendered to vessels by the State or any agency instrumentality or local or other authority in or of

Other charges.

the State and including such conservancy and pilotage charges or dues as are payable from time to time pursuant to the provisions of any Act. ;
and

(3) A new clause as Clause 16 is added after Clause 15 as follows—

Pipeline easements.

16 (1) The provisions of section 33A of the Public Works Act, 1902 shall apply to and in respect of easements in favour of the Company which have already been acquired or which are to be acquired for the purpose of the construction, maintenance and use of pipelines under paragraph (b) of subclause (6) of Clause 5 of this Agreement and for any purpose incidental to any such purpose, in the same manner as they apply to easements in favour of the Crown.

Certificate by Minister.

(2) For the purposes of subclause (1) of this Clause an instrument does not create an easement in favour of, or operate to transfer an easement to the Company unless it bears a Certificate by the Minister to that effect.

Procedure.

(3) Where an easement is created over any land pursuant to subclause (2) of this Clause:

(a) if the easement is over land that is under the operation of the Transfer of Land Act, 1893 and the instrument creating the easement is executed (whether before or after the date of the principal agreement) by a grantor then being the registered proprietor of the land affected, the easement shall notwithstanding any subsequent change in the registered proprietorship of the land and notwithstanding that the consent of any mortgagee or other person whose consent but for the operation of this paragraph would be required to any such instrument has not been obtained, be deemed to be a registerable instrument under the Transfer of Land Act, 1893 and upon presentation to the Registrar of Titles of the instrument, the Registrar shall upon payment of the prescribed fee register the same and endorse the easement as an encumbrance on the relevant Certificate of Title;

- (b) if the easement is over land that is not under the operation of the Transfer of Land Act, 1893 or the Land Act, 1933 the instrument creating such easement shall be sent by the Company to the Registrar of Deeds who shall upon payment of the prescribed fee by memorial in the Register of Deeds duly record the creation of the easement;
- (c) if the easement is over land that is subject to the Land Act, 1933 (excepting such land as is under the operation of the Transfer of Land Act, 1893), the instrument creating such easement shall be sent by the Company to the Minister for Lands who shall upon payment of the fee required by the Minister for Lands cause to be made in the appropriate register relating to the land a record of the creation of the easement.

(4) Nothing contained in this Clause shall affect the rights and obligations of the parties hereto under paragraph (b) of sub-clause (6) of Clause 5 hereof.

IN WITNESS whereof these presents have been executed by or on behalf of the parties hereto the day and year first hereinbefore written.

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

ANDREW MENSAROS,
MINISTER FOR INDUSTRIAL
DEVELOPMENT.

THE COMMON SEAL OF ALCOA }
OF AUSTRALIA (W.A.) LIMITED } [C.S.]
was hereto affixed in the }
presence of—

Director, WALDO PORTER Jr.

Secretary, E. W. HUMPHREYS.