

ALUMINA REFINERY
(MITCHELL PLATEAU)
AGREEMENT.

No. 60 of 1972.

AN ACT to amend the Alumina Refinery (Mitchell Plateau) Agreement Act, 1971.

[Assented to 31st October, 1972.]

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 (Mitchell Plateau) Agreement Act Amendment Act, 1972.* Short title and citation.

(2) In this Act the Alumina Refinery (Mitchell Plateau) Agreement Act, 1971, is referred to as the principal Act.

No. 60.] *Alumina Refinery (Mitchell Plateau) Agreement.* [1972

(3) The principal Act as amended by this Act may be cited as the Alumina Refinery (Mitchell Plateau) Agreement Act, 1971-1972.

Section 2
amended.

2. Section 2 of the principal Act is amended—

- (a) by adding after the word “the” in line two of the interpretation “the Agreement”, the word “First”;
- (b) by substituting for the passage “1969.” in line four of the interpretation “the former Agreement”, the passage “1969;” ; and
- (c) by adding at the end thereof the following interpretation—

“the Variation Agreement” means the Agreement of which a copy is set out in the Second Schedule to this Act. .

Section 3A
added.

3. The principal Act is amended by adding after section 3 a section as follows—

Ratification
of Variation
Agreement.

3A. The Variation Agreement is ratified. .

Schedule
amended.

4. The heading to the Schedule to the principal Act is deleted and the following headings substituted—

THE SCHEDULES.

FIRST SCHEDULE.

Second
Schedule
added.

5. The principal Act is amended by adding at the end thereof the following schedule—

SECOND SCHEDULE.

THIS AGREEMENT made the 31st day of August One thousand nine hundred and seventy two BETWEEN THE HONOURABLE JOHN TREZISE TONKIN, M.L.A., THE PREMIER AND TREASURER OF THE STATE OF WESTERN AUSTRALIA acting for and on behalf of the said State and Instrumentalities thereof from time to time (hereinafter called "the State") and AMAX BAUXITE CORPORATION a company incorporated in the State of Delaware United States of America and registered as a foreign company in the State of Western Australia (hereinafter referred to as "the said State") under the provisions of the Companies Act 1961 and having its registered office situated at Perth in the said State (hereinafter called "the Company") of the other part.

WHEREAS:

- (a) The parties are the parties to the agreement between them defined in Section 2 of the Alumina Refinery (Mitchell Plateau) Agreement Act 1971 (which agreement is hereinafter referred to as "the principal Agreement").
- (b) The Company has pursuant to Clause 4 of the principal Agreement carried out certain field and office engineering studies and market and finance studies into the feasibility of developing bauxite reserves within the mining areas (as defined in the principal Agreement) and establishing a bauxite mining and beneficiation operation and an alumina plant and has concluded from such studies that such development is not presently economically feasible.
- (c) The Company has requested the State for a deferral of the Company's obligations which request the State has agreed to as a result of which the parties desire to add to and amend the principal Agreement as hereinafter provided.

NOW THIS AGREEMENT WITNESSETH:

1. In this Agreement, subject to the context:
 - "Alcoa" means Alcoa of Australia (W.A.) Limited.
 - "Pinjarra refinery site" shall have the same meaning in this Agreement as is given to it under Clause 1 of the Agreement defined in Section 2 of the Alumina Refinery (Pinjarra) Agreement Act 1969.

Words and phrases to which meanings are given under Clause 1 of the principal Agreement (other than words and phrases to which meanings are given in this Agreement) shall have the same respective meanings in this Agreement as are given to them in Clause 1 of the principal Agreement.

2. (1) The provisions of this Agreement other than Clause 3 shall not come into operation until the Bill referred to in that Clause has been passed by the Parliament of Western Australia and comes into operation as an Act.

(2) If the said Bill is not passed this Agreement will then cease and determine and neither of the parties hereto will have any claim against the other of them with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

(3) On the said Bill commencing to operate as an Act all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

3. 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 the 31st day of December, 1972.

4. (1) The Company covenants with the State that the Company shall, prior to the 31st day of December, 1972, cause Alcoa to give to the State written notice of the intention of Alcoa to construct additional facilities at the Pinjarra refinery site for the treatment of bauxite to produce alumina which shall have the effect of increasing the total capacity of the Pinjarra refinery to produce not less than eight hundred thousand (800,000) metric tons of alumina per annum.

(2) The notice required of Alcoa under subclause (1) of this Clause shall include the proposed date of commencement of construction, which date shall be no later than the 31st day of March, 1973, and the estimated date of completion of the additional facilities, which date shall be no later than the 31st day of March, 1976.

5. Anything contained in the principal Agreement to the contrary notwithstanding, the Company's obligations under the principal Agreement whether or not such obligations have presently accrued, shall be deferred until the 30th day of June, 1980 PROVIDED THAT if, during the calendar year 1980 and prior to the 30th day of June of such year, the Company submits a detailed report to the Minister that in the opinion of the Company development of the bauxite reserves within the mining areas is not then economically feasible or is not feasible due to an insufficient number of participants for the project the subject of the principal Agreement the State shall, at the option and request of the Company, defer the Company's obligations for an additional four (4) years until the 30th day of June, 1984.

6. The principal Agreement is hereby amended by:

(a) substituting the following for subclause (1)(a) of Clause 2 of the principal Agreement:

"(1) (a) without further action by the Company, cause to be granted to the Company pursuant to the Mining Act successive renewals (each for a period of twelve months) of the rights of occupancy held or applied for by the Company as at the 30th day of June, 1972, in respect of the mining areas at an annual rental payable in advance in respect of each mining area of:

one thousand dollars (\$1,000) during the period from the 1st day of July, 1973 until the 30th day of June, 1976;

two thousand dollars (\$2,000) during the period from the 1st day of July, 1976 until the 30th day of June, 1979;

three thousand dollars (\$3,000) during the period from the 1st day of July, 1979 until the 30th day of June, 1982; and

five thousand dollars (\$5,000) thereafter

but otherwise on the same terms the last of which renewals notwithstanding its currency shall in relation to the mining area concerned expire—

- (i) on the date of grant of a mineral lease of that mining area to the Company under Clause 8 (1) (a) hereof;
- (ii) on the expiration of three years from the commencement date; or
- (iii) on the determination of this Agreement pursuant to its terms

whichever shall first happen.

The rental payable in respect of the rights of occupancy held by the Company shall for and in respect of the year ending the 30th day of June, 1973 be increased to one thousand dollars (\$1,000) per annum in respect of each mining area.

- (b) substituting the following for Clause 4 of the principal Agreement:

“4 (1) The Company will at such times and to the extent that it deems necessary, engage in field, office, engineering, market and finance studies and such other matters necessary to enable it to finalize and to submit to the Minister the detailed proposals and other matters in accordance with the provisions of Clause 5 (1) hereof.

(2) The Company shall co-operate with the State and consult with the representatives or officers of the State regarding matters referred to in subclause (1) of this Clause.

(3) The Company will, at such time as it deems necessary, employ and retain expert consultant engineers to investigate, report upon, and make recommendations in regard to the sites for and design of the Company's wharf (including areas for installations stockpiling and other purposes in the port area) reasonably required by the Company under this Agreement but in such regard the Company will require the consultant engineers to have full regard for the general development of the port area and the dredging thereof and of approaches thereto

with a view to the reasonable use by others of the port area and approaches and the Company will furnish to the State copies of such report and recommendations.

(4) The Company shall not later than the 30th day of June in each year prior to the commencement date submit to the Minister a report concerning the position of the Company in connection with the project the subject of this Agreement."

- (c) deleting from subclause (1) of Clause 5 of the principal Agreement the words "By the 31st day of December 1971 or if the Company requests an extension to the 30th day of June 1972 then by that date (or such further extended date if any as the Minister may approve) the Company will where not already done submit to the Minister—" and substituting therefor the words "By the 30th day of June 1980 or if the Company submits a detailed report to the Minister that in the opinion of the Company development of the bauxite reserves within the mining areas is not then economically feasible or is not feasible due to an insufficient number of participants for the project, and the Company requests a deferral of its obligations up to the 30th day of June, 1984 then by that date the Company will where not already done submit to the Minister—"
- (d) deleting subclause (5) of Clause 5 of the principal Agreement.
- (e) substituting the following for subclause (3) of Clause 6 of the principal Agreement:

(3) Notwithstanding that under subclause (1) of this clause any detailed proposals of the Company are approved by the State or the Minister or determined by arbitration award unless each and every such proposal and matter is so approved or determined by the 30th day of June 1985 then at any time after that date the Minister may give to the Company twelve (12) months notice of intention to determine this Agreement and unless before the expiration of the said twelve (12) months period all the detailed proposals and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of Clause 10 (n) hereof.

- (f) deleting in subclause (1) (a) of Clause 8 of the principal Agreement the words "six years" and substituting therefor the words "three years"

7. In the event that Alcoa fails, by the 31st day of December 1972, to give the State notice of its intention to construct the said additional facilities at the Pinjarra refinery site or fails, subject to the provisions of Clause 8 of this Agreement by the 31st day of March 1973 to commence construction of the said additional facilities or to complete construction of the said additional facilities by the 31st day of March,

1972.]

*Alumina Refinery (Mitchell
Plateau) Agreement.*

[No. 60.

1976 the State shall be entitled, if such failure is not remedied within ninety (90) days after notice thereof by the State to the Company, to cancel this Agreement, whereupon this Agreement will cease and determine and neither of the parties to this Agreement will have any claim against the other of them with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

8. If the commencement or completion of construction of the said additional facilities by Alcoa is delayed, interrupted, or prevented by reason of any event of force majeure (as hereinafter defined) the date of such commencement or completion shall be extended for a period of time equal to the time that such force majeure prevailed or for a period of one year, whichever is the shorter. For the purpose of this Clause an event of force majeure shall mean strike, labour difficulty, lockout, fire, explosion, earthquake, flood mobilization, war (declared or undeclared), hostilities, riots, rebellion, revolution, or any acts of any government or governments or any subdivision or agencies thereof, acts of public enemies, acts of God, inability or delay in obtaining equipment, machinery, or materials required for the construction of the said additional facilities PROVIDED THAT Alcoa shall use all reasonable endeavours to minimise the effect of the said events as soon as possible after their occurrence.

9. The State hereby agrees with the Company that notwithstanding anything contained in the Mining Act or in any other Act of the said State either presently or coming into effect in the future, in the event of the Company being granted mineral claims or other mining tenements in respect of land which is proposed to be used for the purpose of the Company's project the subject of the principal Agreement, the Company's obligations which it would, but for the operation of this clause, be under as holder of such mineral claims and other mining tenements shall, so long as the Company is the holder of such mineral claims and other mining tenements, be deferred (with the exception of obligations as to rent and to survey) so long as the Company's obligations under the principal Agreement are deferred pursuant to this Agreement.

10. Except as hereby expressly varied or added to, the rights and liabilities of the parties under the principal Agreement shall continue in full force and effect.

11. The State shall exempt this Agreement from any stamp duty which, but for the operation of this Clause would or might be chargeable.

No. 60.] *Alumina Refinery (Mitchell Plateau) Agreement.* [1972

IN WITNESS WHEREOF this Agreement has been executed the day and year first hereinbefore written.

SIGNED by the said THE HONOUR- }
ABLE JOHN TREZISE TONKIN, } JOHN T. TONKIN.
M.L.A. in the presence of— } }

H. E. GRAHAM,
Minister for Development and Decentralisation.

DON MAY,
Minister for Mines.

AMAX BAUXITE CORPORATION
by

IAN MacGREGOR,
Vice President.

ROBERT MARCUS,
Vice President.

Attested by

CRAIG A. DAVIS,
Assistant Secretary.