

Alumina Refinery (Mitchell Plateau) Agreement (Termination) Bill 2015

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Western Australia

LEGISLATIVE ASSEMBLY

Alumina Refinery (Mitchell Plateau) Agreement (Termination) Bill 2015

A Bill for

An Act to amend the *Alumina Refinery (Mitchell Plateau) Agreement Act 1971* to provide for the ratification of an agreement for the termination of the Alumina Refinery (Mitchell Plateau) Agreement and to provide for related matters, and to consequentially amend the *Mining Act 1978*.

The Parliament of Western Australia enacts as follows:

1 **Part 1 — Preliminary**

2 **1. Short title**

3 This is the *Alumina Refinery (Mitchell Plateau) Agreement*
4 *(Termination) Act 2015*.

5 **2. Commencement**

6 This Act comes into operation as follows —

- 7 (a) Part 1 — on the day on which this Act receives the
8 Royal Assent;
9 (b) the rest of the Act — on the day after that day.

**Part 2 — *Alumina Refinery (Mitchell Plateau)*
Agreement Act 1971 amended**

3. Act amended

This Part amends the *Alumina Refinery (Mitchell Plateau)*
Agreement Act 1971.

4. Long title amended

In the long title delete “**effect;**” and insert:

**effect, to ratify a further agreement for the termination of
the Agreement,**

5. Section 2 amended

In section 2 insert in alphabetical order:

Mitchell Plateau area has the meaning given in the
Fifth Schedule clause 1;

pending application means a tenement application
made, but not determined, under the *Mining Act 1978*
before the day on which the *Alumina Refinery*
(Mitchell Plateau) Agreement (Termination) Act 2015
section 6 comes into operation;

Temporary Reserve 5610H means the reserve of that
designation created under the *Mining Act 1904* and
continued under the *Mining Act 1978*;

tenement application means an application for a
mining tenement under the *Mining Act 1978*;

termination agreement means the agreement a copy of
which is set out in the Fourth Schedule;

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6. Section 4 replaced

Delete section 4 and insert:

4. Ratification and operation of termination agreement

- (1) The termination agreement is ratified.
- (2) Without limiting or otherwise affecting the operation of the *Government Agreements Act 1979*, the termination agreement is to operate and take effect despite any other Act or law.

5A. Cancellation of Temporary Reserve 5610H

Temporary Reserve 5610H is cancelled by force of this section.

5B. Termination of pending applications in respect of Mitchell Plateau area

- (1) Each pending application in respect of land wholly or partly within the Mitchell Plateau area is terminated by force of this section.
- (2) No action, claim or demand lies against the State, the Minister or any other person in respect of any matter or thing arising from the termination of a pending application under this section.

5C. Temporary prohibition on tenement applications in respect of Mitchell Plateau area

- (1) In this section —
relevant area means the Mitchell Plateau area or that area modified to the extent necessary to reflect any changes to the boundaries of land contiguous to that area resulting from survey or cadastral information.

- 1 (2) Despite anything in the *Mining Act 1978*, a tenement
2 application cannot be made during the designated
3 period in respect of land wholly or partly within the
4 Mitchell Plateau area.
- 5 (3) For the purposes of subsection (2), the designated
6 period is the period —
- 7 (a) beginning on the day on which the *Alumina*
8 *Refinery (Mitchell Plateau) Agreement*
9 *(Termination) Act 2015* section 6 comes into
10 operation; and
- 11 (b) ending on the day fixed under subsection (4).
- 12 (4) When the Minister is satisfied that the relevant area has
13 been reserved under the *Land Administration Act 1997*
14 Part 4 for the purposes of a national park and classified
15 as a class A reserve under that Part, the Minister must,
16 by notice published in the *Gazette*, fix a day for the
17 purposes of subsection (3)(b).
- 18 (5) The day fixed must be the day after the day on which
19 the notice is published in the *Gazette*.
20

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7. Fourth and Fifth Schedules inserted

After the Third Schedule insert:

Fourth Schedule — Termination agreement

[s. 2]

2015

**THE HONOURABLE COLIN JAMES BARNETT
PREMIER OF THE STATE OF WESTERN AUSTRALIA**

AND

**MITCHELL PLATEAU BAUXITE CO. PTY. LIMITED
ACN 008 545 499**

**ALCOA OF AUSTRALIA LIMITED
ACN 004 879 298**

**ALUMINA REFINERY (MITCHELL PLATEAU) AGREEMENT 1971
TERMINATION AGREEMENT**

[Solicitor's details]

1 **THIS AGREEMENT** is made this 20th day of February 2015
2 **BETWEEN**
3 **THE HONOURABLE COLIN JAMES BARNETT**, MEc., M.L.A.,
4 Premier of the State of Western Australia, acting for and on behalf of the
5 said State and instrumentalities thereof from time to time ("**the State**") of the
6 one part
7 **AND**
8 **MITCHELL PLATEAU BAUXITE CO. PTY. LIMITED** ACN
9 008 545 499 of 123 Albert Street, Brisbane, Queensland and **ALCOA OF**
10 **AUSTRALIA LIMITED** ACN 004 879 298 of Corner Davy and Marmion
11 Streets, Booragoon, Western Australia (together called "**the Company**" in
12 which term shall be included their respective successors and permitted
13 assigns) of the other part.
14 **WHEREAS:**
15 **A.** The State and the Company are now the parties to the agreement
16 dated 17 November 1971 which agreement was ratified by the
17 Agreement Act and subsequently varied or supplemented by
18 agreements dated 31 August 1972, 15 May 1973, 29 October 1985
19 and 29 August 2003, and which agreement as subsequently varied or
20 supplemented is referred to in this Agreement as "**the Principal**
21 **Agreement**".
22 **B.** The State and the Company wish to terminate the Principal
23 Agreement in the manner and on the terms set out in this Agreement.
24 **NOW THIS AGREEMENT WITNESSES:**
25 **1. Definitions**
26 In this Agreement subject to the context:
27 **Agreement Act** means the *Alumina Refinery (Mitchell Plateau)*
28 *Agreement Act 1971* (WA).
29 **Cape Bougainville Mining Leases** means mining leases
30 80/47 - 80/60 (both inclusive).
31 **LAA** means the *Land Administration Act 1997* (WA).
32 **Mining Act** means the *Mining Act 1978* (WA).
33 **Operative Date** has the meaning given in clause 3(2).

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1 **Right of Occupancy** means the right of occupancy in respect of the
2 Temporary Reserve referred to in, and renewed pursuant to, the
3 Principal Agreement.

4 **Temporary Reserve** means Temporary Reserve 5610H.

5 **this Agreement, hereof and hereunder** refer to this Agreement,
6 whether in its original form or as from time to time added to, varied or
7 amended.

8 **2. Interpretation**

9 In this Agreement:

- 10 (a) clause headings do not affect interpretation or construction;
- 11 (b) words in the singular shall include the plural and words in the
12 plural shall include the singular according to the requirements
13 of the context;
- 14 (c) one gender includes the other genders;
- 15 (d) a covenant or agreement by more than one person binds, and
16 is enforceable against, those persons jointly and each of them
17 severally;
- 18 (e) a reference to a "person" includes a body corporate;
- 19 (f) a reference to an Act includes the amendments to that Act for
20 the time being in force and also any Act passed in
21 substitution therefor or in lieu thereof and the regulations for
22 the time being in force thereunder;
- 23 (g) a reference to any document includes that document as from
24 time to time added to, varied or amended and notwithstanding
25 any change in the identity of the parties;
- 26 (h) a reference to a clause or schedule is a reference to a clause in
27 or schedule to this Agreement, and a reference to a subclause
28 or paragraph is a reference to the subclause of the clause or
29 paragraph of the clause or subclause as the case may be in, or
30 in relation to, which the reference is made;
- 31 (h) a reference to this Agreement includes all recitals, schedules
32 and annexures; and
- 33 (i) "including" means "including, but not limited to".

3. Ratification and operation

- (1) This Agreement, other than this clause and clauses 1 and 2, does not come into operation except in accordance with subclause (2).
- (2) This Agreement, other than this clause and clauses 1 and 2, comes into operation on the day on which it is ratified by an Act of the Parliament of Western Australia (Operative Date) unless, before that day, it terminates under subclauses (4) or (5).
- (3) The State must introduce in the Parliament of Western Australia before 31 March 2015, or a later date agreed between the parties to this Agreement, a Bill to ratify this Agreement and must endeavour to secure its passage as an Act.
- (4) If by 31 December 2015 this Agreement has not been ratified by an Act of the Parliament of Western Australia then, unless the parties to this Agreement otherwise agree, this Agreement terminates on that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (5) The parties agree that if the Principal Agreement is otherwise determined in accordance with its provisions on a day prior to the Operative Date, then this Agreement shall also terminate on and from that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

4. Termination of Principal Agreement

- (1) Subject to the remainder of this clause, the Principal Agreement is hereby terminated with effect on and from the Operative Date and, except as otherwise provided in this Agreement, neither the State nor the Company shall have any claim against the other with respect to any matter or thing in or arising out of the Principal Agreement.
- (2) Notwithstanding subclause (1), but subject to subclause (6), the Company shall remain liable for any antecedent breach or default under the Principal Agreement and in respect of any indemnity given under the Principal Agreement.
- (3) Notwithstanding subclause (1):
 - (a) on and from the Operative Date the Cape Bougainville Mining Leases shall continue in force only under and, except

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- 1 as provided in this subclause, subject to the provisions of the
2 Mining Act and, for the avoidance of doubt, shall cease to
3 have the benefit of the rights and privileges conferred by the
4 Principal Agreement;
- 5 (b) in relation to each of the Cape Bougainville Mining Leases,
6 for the period from and including the Operative Date up to
7 and including the earlier of:
- 8 (i) the date of expiry of the current term of that mining
9 lease; and
- 10 (ii) the date on which the companies comprising the
11 Company at the date of this Agreement cease to hold
12 greater than a 30% interest in that mining lease
13 (where such interest may be held individually by one
14 of those companies or by both of them in the
15 aggregate),
- 16 the holder of that mining lease shall not be required:
- 17 (iii) to comply with the expenditure conditions prescribed
18 under the Mining Act that are applicable to that
19 mining lease; or
- 20 (iv) to lodge a Form 5 (operations report—expenditure on
21 mining tenement) in relation to that mining lease in
22 compliance with the requirements of the Mining Act;
23 and
- 24 (c) in relation to each of the Cape Bougainville Mining Leases, if
25 exploration or mining expenditure has been incurred in the
26 relevant reporting period in relation to that mining lease, the
27 holder of that mining lease must notwithstanding the
28 reporting exemption contained in paragraph (b)(iv) file, or
29 cause to be filed, as the case may be, the mineral exploration
30 report required by section 115A of the Mining Act in relation
31 to that mining lease at the times that would otherwise have
32 been applicable (including whenever required under
33 section 115A(2)(b)) if such exemption had not been granted,
- 34 and on application under section 103G of the Mining Act made within
35 3 months after the Operative Date, the State shall cause an
36 endorsement to be made in the register maintained under section 103F

- 1 of the Mining Act that the provisions of this subclause apply to the
2 Cape Bougainville Mining Leases.
- 3 (4) Within 14 days after the Operative Date the Company shall pay to the
4 State an amount of \$760,000 to fund rehabilitation and other proposed
5 on-ground activities of the State within the area of land comprised
6 within the Temporary Reserve immediately before the Operative
7 Date.
- 8 (5) Subject to subclause (6), on and from the Operative Date the
9 Company will indemnify and keep indemnified the State and the
10 State's employees, agents and contractors in respect of all actions,
11 suits, claims, demands or costs of third parties arising out of or in
12 connection with any work carried out by the Company pursuant to the
13 Principal Agreement or relating to its operations under the Principal
14 Agreement or arising out of or in connection with the construction,
15 maintenance or use by the Company or its employees, agents,
16 contractors, assignees or sublessees of the Company's works or
17 services the subject of the Principal Agreement or the plant, apparatus
18 or equipment installed in connection with the Principal Agreement.
- 19 This indemnity shall remain in force for a period ending on the date
20 which is 20 years after the Operative Date.
- 21 (6) The Company is not liable to indemnify the State and the State's
22 employees, agents and contractors under subclause (5) or under the
23 Principal Agreement (as the case may be):
- 24 (a) to the extent that the relevant action, suit, claim, demand or
25 cost relates to activities or works carried out before the
26 Operative Date by the State or the State's employees, agents
27 or contractors (including activities or works funded by the
28 Company);
- 29 (b) to the extent that the relevant action, suit, claim, demand or
30 cost relates to rehabilitation or other on-ground activities of
31 the State undertaken after the Operative Date as contemplated
32 by subclause (4);
- 33 (c) to the extent that the relevant action, suit, claim, demand or
34 cost relates to earthworks or ground disturbances, within the
35 area of land comprised within the Temporary Reserve
36 immediately before the Operative Date, relating to

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1 exploration activities conducted pursuant to the Principal
2 Agreement; or

3 (d) to the extent that the relevant action, suit, claim, demand or
4 cost relates to third party use after the Operative Date of
5 works, services, plant, apparatus or equipment constructed,
6 operated or maintained by the Company within the area of
7 land comprised within the Temporary Reserve immediately
8 before the Operative Date, including the airstrip and the
9 access road.

10 (7) For the avoidance of doubt a reference to matters or things in, under,
11 pursuant to, conferred by or arising out of or in connection with the
12 Principal Agreement for the purposes of this clause includes matters
13 or things deemed to be so attributed to the Principal Agreement by
14 section 6 of the Agreement Act.

15 **5. Termination of Right of Occupancy**

16 (1) The Right of Occupancy shall be deemed to have been surrendered
17 with effect on and from the Operative Date.

18 (2) The Company shall remain liable for any antecedent breach or default
19 of the conditions of the Right of Occupancy.

20 **6. Applicable law**

21 This Agreement is to be interpreted according to the law for the time
22 being in force in the State of Western Australia.

23
24 **EXECUTED** as a deed.

25
26
27 **SIGNED by THE HONOURABLE**)
28 **COLIN JAMES BARNETT**) [Signature]
29 in the presence of:)
30
31

32 [Signature] _____
33 Signature of witness

34
35
36 NICOLE JANE HENDERSON
37 Name of witness

EXECUTED by MITCHELL PLATEAU)
BAUXITE CO. PTY. LIMITED)
ACN 008 545 499 in accordance with)
section 127(1) of the *Corporations Act 2001* (Cth))

[Signature] [Signature]
Signature of Director Signature of Secretary

PAUL GERARD ARNOLD ALFRED PATRICK GRIGG
Full Name Full Name

EXECUTED by ALCOA OF AUSTRALIA)
LIMITED ACN 004 879 298 in accordance)
with section 127(1) of the *Corporations Act*)
2001 (Cth))

[Signature] [Signature]
Signature of Director Signature of Secretary

SIMON NICOLAS BUTTERWORTH MELANIE KATHERINE BROWN
Full Name Full Name

Fifth Schedule — Mitchell Plateau area

[s. 2]

Division 1 — Description

1. Mitchell Plateau area

(1) In this clause —

high water mark means ordinary high water mark at spring tides;

point means a point on the surface of the Earth identified by a number on the map set out in Division 2.

(2) The Mitchell Plateau area is the area of land bounded by —

- (a) the straight line starting at the intersection of the high water mark and the straight line connecting points 1 and 2, and ending at point 2; and
- (b) the straight lines connecting points 2 to 38; and
- (c) the straight line starting at point 38 and ending at the intersection of the high water mark and the straight line connecting points 38 and 39; and
- (d) the line along the high water mark starting at the intersection of the high water mark and the straight line connecting points 38 and 39 and ending at the intersection of the high water mark and the straight line connecting points 40 and 41; and
- (e) the straight line starting at the intersection of the high water mark and the straight line connecting points 40 and 41, and ending at point 41; and
- (f) the straight lines connecting points 41 to 44; and
- (g) the straight line starting at point 44 and ending at the intersection of the high water mark and the straight line connecting points 44 and 45; and
- (h) the line along the high water mark starting at the intersection of the high water mark and the straight line connecting points 44 and 45 and ending at the

- 1 intersection of the high water mark and the straight
2 line connecting points 1 and 2.
- 3 (3) However, the Mitchell Plateau area does not include the area
4 of land bounded by straight lines connecting points 46, 47,
5 48 and 49, starting at point 46 and ending at that point.
- 6 (4) The Mitchell Plateau area is depicted on the map set out in
7 Division 2.
- 8 (5) The position of a point is to be determined by reference to
9 the coordinates set out in Division 3 opposite the relevant
10 point number.
- 11 (6) The coordinates referred to in subclause (5) are Geocentric
12 Datum of Australia 1994 coordinates.

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1

Division 2 — Map



2

1

Division 3 — Coordinates

Point	Latitude	Longitude
1	14°35'27.24" S	125°50'44.84" E
2	14°41'33.24" S	125°50'44.84" E
3	14°43'11.86" S	125°51'43.34" E
4	14°43'11.86" S	125°52'50.20" E
5	14°45'54.54" S	125°52'50.20" E
6	14°45'54.55" S	125°55'04.55" E
7	14°48'49.00" S	125°55'04.55" E
8	14°48'49.00" S	125°56'51.57" E
9	14°53'09.28" S	125°56'51.58" E
10	14°53'09.28" S	126°00'52.45" E
11	14°49'41.05" S	126°00'52.45" E
12	14°49'41.04" S	126°10'00.00" E
13	14°55'00.00" S	126°10'00.00" E
14	14°55'00.00" S	126°08'00.00" E
15	14°56'58.36" S	126°08'00.00" E
16	14°56'58.38" S	126°05'34.55" E
17	15°01'20.19" S	126°05'34.55" E
18	15°01'20.19" S	126°01'05.17" E

Alumina Refinery (Mitchell Plateau) Agreement (Termination) Bill 2015

Part 2

Alumina Refinery (Mitchell Plateau) Agreement Act 1971
amended

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Point	Latitude	Longitude
19	15°06'00.00" S	126°01'05.17" E
20	15°06'00.00" S	126°00'00.00" E
21	15°08'19.08" S	126°00'00.00" E
22	15°08'19.09" S	125°43'43.74" E
23	14°59'58.66" S	125°43'43.74" E
24	14°59'58.66" S	125°45'30.86" E
25	14°55'38.38" S	125°45'30.86" E
26	14°55'38.38" S	125°47'09.57" E
27	14°53'24.97" S	125°48'17.01" E
28	14°53'13.00" S	125°48'11.84" E
29	14°52'48.63" S	125°46'49.63" E
30	14°51'48.34" S	125°47'02.22" E
31	14°50'47.19" S	125°48'26.40" E
32	14°50'47.19" S	125°43'43.76" E
33	14°41'37.33" S	125°43'43.75" E
34	14°41'37.33" S	125°44'50.60" E
35	14°38'05.84" S	125°44'50.60" E
36	14°38'05.85" S	125°43'43.77" E
37	14°35'55.70" S	125°43'43.77" E

Point	Latitude	Longitude
38	14°35'55.70" S	125°42'03.54" E
39	14°31'20.50" S	125°42'03.53" E
40	14°28'11.87" S	125°46'56.18" E
41	14°31'35.31" S	125°46'01.21" E
42	14°31'43.46" S	125°46'33.54" E
43	14°30'31.09" S	125°46'53.10" E
44	14°28'40.14" S	125°48'55.22" E
45	14°28'31.60" S	125°48'56.22" E
46	14°48'39.88" S	125°50'52.95" E
47	14°49'44.95" S	125°50'52.95" E
48	14°49'44.95" S	125°50'19.50" E
49	14°48'39.88" S	125°50'19.51" E

1 **Part 3 — *Mining Act 1978* amended**

2 **8. Act amended**

3 This Part amends the *Mining Act 1978*.

4 **9. Section 6 amended**

5 After section 6(3) insert:

6

7 (4) The operation of this Act is subject to the *Alumina*
8 *Refinery (Mitchell Plateau) Agreement Act 1971*
9 sections 5B and 5C.
10

11
