

ALUMINA REFINERY (MITCHELL PLATEAU) AGREEMENT (TERMINATION) BILL 2015

Introduction and First Reading

Bill introduced, on motion by **Mr C.J. Barnett (Minister for State Development)**, and read a first time.
Explanatory memorandum presented by the minister.

Second Reading

MR C.J. BARNETT (Cottesloe — Minister for State Development) [12.12 pm]: I move —

That the bill be now read a second time.

The purpose of this bill is to ratify an agreement made on 20 February 2015 between the state, Mitchell Plateau Bauxite Company Pty Ltd and Alcoa of Australia Ltd, which I will refer to as the termination agreement. This agreement will, upon its ratification, terminate the Alumina Refinery (Mitchell Plateau) Agreement 1971, which I will refer to as the state agreement. This bill is necessary in order to amend the Alumina Refinery (Mitchell Plateau) Agreement Act 1971, which I will refer to as the principal act, to ratify the termination agreement.

I am very pleased to bring this bill to Parliament as it will allow for the land covered by the state agreement to be included within the boundary of the proposed Kimberley national park. The proposed Kimberley national park was one of the Liberal government's key election commitments in 2013 and, along with the creation of the great Kimberley marine park, is a central component of this government's Kimberley science and conservation strategy. Protecting the unique environment of the Kimberley has been an unrealised aspiration of successive governments, the conservation movement and the public. One of this government's proudest achievements has been to do just that through the implementation of the Kimberley science and conservation strategy. This is the largest conservation project ever undertaken in Western Australia, delivered in collaboration with traditional owners, non-government organisations and pastoralists. The strategy is a major state government priority, with an investment of \$81.5 million, and will protect a significant part of the only Australian bioregion to have no recorded extinctions of mammals since European settlement.

Together, the proposed Kimberley national park and the great Kimberley marine park will cover almost 50 000 square kilometres, forming interconnected protected areas containing some of the most spectacular natural and cultural features in Australia. These include the renowned World Heritage-listed Purnululu National Park, home to the famous Bungle Bungles and Mini Palms Gorge, and the wonderful marine environments of Camden Sound, a known humpback whale calving area and habitat for snubfin dolphins, and the Horizontal Falls, which offers visitors a once-in-a-lifetime experience and where huge tidal movements create a waterfall effect on the ocean surface—a truly unique spectacle.

The government commenced discussions with the Mitchell Plateau joint venturers in late 2013 with the aim of negotiating the termination of the state agreement. In recognition of the significant conservation and cultural values of the area, the joint venturers indicated their willingness to work with the government on achieving this broader outcome by agreeing to relinquish their right of occupancy of temporary reserve 5610H and to terminate the state agreement. The termination agreement was executed in February 2015 following the completion of negotiations. I would like to acknowledge the substantial contribution of Rio Tinto Aluminium and Alcoa of Australia to this outcome. The companies have worked closely and co-operatively with government during what have been very detailed and lengthy negotiations to ensure that the significant conservation and cultural values of this area can be appropriately preserved within a new national park.

The government is also engaging with the Dambimangari, Wunambal-Gaambera and Willinggin native title holders to develop joint management arrangements for the national park and to address the future act requirements under the commonwealth Native Title Act 1993. Significantly, as part of the creation of the national park, the state government has committed to amending legislation, to be progressed shortly, to enable national parks to be jointly vested with native title holders. This will recognise and give effect to the vital role and responsibilities of traditional owners in the management and protection of this unique and remarkable landscape and the cultural and environmental values within. This bill and the termination of the state agreement are an important precursor and significant step to achieving this outcome.

To put this termination agreement into context, I will now provide some background on the state agreement. The Alumina Refinery (Mitchell Plateau) Agreement 1971 was originally entered into between the state and Amax Bauxite Corporation in November 1971. Since the early 1980s, the Mitchell Plateau joint venture has held rights as the "company" under the state agreement, including the right of occupancy over the temporary reserve. The Mitchell Plateau joint venture is currently a venture between the Mitchell Plateau Bauxite Company, with 65.625 per cent, and Alcoa of Australia, with 34.375 per cent, and the Mitchell Plateau Bauxite Company, as the majority participant, is the manager of the joint venture. The Mitchell Plateau Bauxite Company Pty Ltd is a wholly owned subsidiary of Rio Tinto Aluminium (Holdings) Limited.

The purpose of the state agreement was to establish a refinery to produce alumina from the identified bauxite resource at Mitchell Plateau in the Kimberley region of Western Australia. A temporary reserve covering an area of approximately 175 900 hectares, or 1 759 square kilometres, was established under the Mining Act 1904 in November 1972 to protect bauxite resources in the area. In 1972, a right of occupancy over the temporary reserve was granted for prospecting for the purposes of the state agreement. This right has been renewed since 1972. In 1985, 14 mining leases—MLs 80/47–60—at Cape Bougainville, approximately 100 kilometres north northeast of Mitchell Plateau, were granted under the Mining Act 1978 to the joint venturers for the purposes of the project under the state agreement. These leases, referred to as the Cape Bougainville mining leases, were renewed in 2006 for a further 21 years and will expire in 2027.

The state agreement requires the joint venturers to submit detailed proposals to the minister responsible for the state agreement for the development of bauxite mining and a refinery. The joint venturers have actively investigated the development of a bauxite mine and refinery; however, the development of an integrated project has proven economically challenging.

The principal activity that has been carried out under the state agreement is exploration. Existing infrastructure at Mitchell Plateau includes an airstrip, which was originally constructed for large cargo planes and is now used by the joint venturers and the Department of Parks and Wildlife for servicing the Kandiwal Aboriginal community and for growing tourism. There is an access track from the Kalumburu road to the airstrip, which is also used by tourists to the region. The area is therefore still largely undeveloped. The joint venturers have also committed \$760 000 to complete rehabilitation works associated with past exploration in the area.

I now turn to the provisions of the bill, which are outlined in detail in the explanatory memorandum that I have tabled. The key provisions are as follows. Clause 6 will replace section 4 of the Alumina Refinery (Mitchell Plateau) Agreement Act 1971—that is, the principal act—with a new section that ratifies the termination agreement and provides for it to operate despite any other act or law without limiting or affecting the operation of the Government Agreements Act 1979. Clause 6 also inserts a new section 5A that cancels the temporary reserve; a new section 5B that terminates all pending applications for mining tenements over the “Mitchell Plateau area”—being in essence the area of the temporary reserve—and for the state not to be liable with respect to such termination; and a new section 5C that precludes the making, or grant, of any application for a mining tenement over the Mitchell Plateau area until the creation of a national park, classified as class A reserve, over the Mitchell Plateau area. These provisions essentially terminate the state agreement, cancel the temporary reserve and preserve the Mitchell Plateau area from mining tenement applications until the Mitchell Plateau area is made a national park. The creation of the park is a separate process being managed by the Department of Parks and Wildlife and the Department of the Premier and Cabinet. Clause 7 inserts as the fourth schedule to the principal act a copy of the termination agreement and also inserts the fifth schedule, which defines the Mitchell Plateau area. Clause 9 inserts a signpost in the Mining Act 1978 that its provisions regarding the application for, and grant of, mining tenements are subject to provisions in the bill regarding the application for, and grant of, tenements over the Mitchell Plateau area.

The key provisions of the termination agreement, contained in the proposed fourth schedule, are as follows. Clause 4(1): the state agreement is terminated on and from the operative date; that is, the operative date is the day after this bill receives royal assent. Clause 4(2): the company remains liable for any prior breach under the state agreement and in respect of any indemnity given under the state agreement. Clause 4(3)(a): the Cape Bougainville mining leases on and from the operative date shall continue in force, subject to the provisions of the Mining Act, and shall cease to have the benefit of the rights and privileges conferred by the state agreement. Clause 4(3)(b): from the operative date up to the earlier of the expiry of the current term of each mining lease, 2027, or the date on which the current holders cease to hold greater than a 30 per cent interest—in aggregate or by one of them—in the mining lease, the holder of the mining lease shall not be required to comply with the expenditure conditions under the Mining Act. The Cape Bougainville mining leases do not form part of the proposed national park, and it was considered appropriate to continue this exemption given the joint venturer’s agreement to relinquish its right of occupancy and to terminate the state agreement. Clause 4(4): the company to pay to the state \$760 000 to fund rehabilitation of priority exploration areas within the area of the temporary reserve. Clause 4(5): the company to indemnify the state for a period of 20 years from the operative date, against third party claims for any work undertaken by the company pursuant to the state agreement, other than ground disturbance exploration works, but not to the extent the claim relates to activities of the state, including future rehabilitation and other on-ground activities. The exclusion from the indemnity of any future third party claims relating to prior ground disturbance exploration works is consistent with the state undertaking future rehabilitation works. Clause 5: on and from the operative date, the right of occupancy over the temporary reserve is to be deemed surrendered.

Upon ratification of the bill by Parliament and upon it becoming operative, the provisions will take effect, including the simultaneous termination of the state agreement and protection of the Mitchell Plateau area,

pending creation of the national park. This bill and termination agreement are significant milestones towards achieving conservation of a significant area of the Kimberley.

I commend the bill to the house.

Debate adjourned, on motion by **Mr M. McGowan**.